

An Analysis of Racial Economic Disparity and the Law in the United States

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<Contents>

- . Introduction: Economic Equality for Civil Rights
- . Growing Economic Inequality
- . Lessons from the Asian American Experience
- . Call for a New Paradigm
- . Conclusion

Abstract

Over six decades have passed since the civil rights movement began in the mid-50s, but American society has not yet fully realized the promise of the civil rights movement, which at its core embodies the protection and promotion of equity and dignity of all people. Despite the historic improvements that accord the legal protection of equal rights among different races, genders, and ethnic groups, significant economic disparity among races persists. The Reverend Martin Luther King, Jr. declared, “Now our struggle is for genuine equality, which means economic equality.” However, the pursuit of economic equality has not been successful. Growing racial economic disparity creates serious social, economic, and political problems in American society and pulls America away from the ideals of the civil rights movement. Structural economic problems in the United States, such as persistent income and wealth disparities along racial lines have exacerbated inequality that divides the country. This challenge requires a fundamental paradigm change. Racial economic disparity can no longer be overcome solely by individual efforts and self-reliance. The federal government must address racial economic disparity by facilitating economic development for minorities in close cooperation and coordination with state and local governments, as well as the private sector. Before America can fully meet the objectives of the civil rights movement, this country must achieve successful economic development that bridges racial economic disparity.

Key words: Civil Rights, Racial Economic Disparity, Economic Development, Asian American Experience, Law and Development.

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I. Introduction: Economic Equality for Civil Rights

This paper discusses the importance of economic equality in the context of civil rights¹⁾ There are growing economic disparity in the United States along racial lines.

A disproportionately higher rate of poverty has existed among racial minorities for decades and creates serious social problems for regional communities, states, and the nation. This economic inequality pulls America away from achieving the ideals of the civil rights movement, which at its core embodies the protection and promotion of equity and dignity for all people. The civil rights movement, owing to the heroic sacrifices of numerous individuals under the leadership of Reverend Martin Luther King, Jr., has substantially improved the status of the United States to a nation in which there is a legal protection of equal rights among all races, genders, and ethnic groups.²⁾ Despite this achievement, however, persistent economic inequality, resulting in significant poverty among racial minorities, detracts from the ideals of the civil rights movement in the United States. Dr. King, acknowledging this problem, declared, “Now our struggle is for genuine equality, which means economic equality,” in one of his last speeches before his assassination³⁾.

In the United States, the pursuit of economic well-being has been left more or less to each individual based on this nation’s respect for individual autonomy and self-reliance, without extensive social support as found in Europe and elsewhere. The traditional American creed, which favors individual autonomy

1) This paper is modified from the author’s forthcoming article, Yong-Shik Lee, *The Last Call for Civil Rights: Toward Economic Equality*, 37 Ga. St. U. L. Rev 1265 (2021). See generally Yong-Shik Lee, *Law and Development in the United States: A Nexus with Civil Rights*, 44 S. Ill. U. L.J. 433 (2020) [hereinafter Lee, *Law and Development: Nexus*] and Yong-Shik Lee, *Law and Economic Development in the United States: Toward a New Paradigm*, 68 Cath. U. L. Rev. 229 (2019) [hereinafter Lee, *Law and Economic Development: Paradigm*].

2) See *Civil Rights Movement*, History, <https://www.history.com/topics/black-history/civil-rights-movement> [<https://perma.cc/3MLE-3K4B>] (Jan. 29, 2021).

3) *Excerpts from a Speech Given by Rev. Martin Luther King, Jr. to Sanitation Workers Striking in Memphis, March 18, 1968*, New Orleans Workers’ Ctr. for Racial Just., <http://nowcrj.org/wp-content/uploads/2015/01/King-Speech-Excerpts-1968-03-18-FINAL.pdf> (last visited Mar. 30, 2021).

and self-reliance, is admirable in its spirit and has set the mental foundation for this great nation but is no longer sufficient to lift those in need from poverty and reduce the existing economic gaps. Current structural problems, such as systemic racism embedded in society, which causes economic inequality among minorities, cannot be overcome by individual effort alone and thus require a fundamental paradigm change.⁴⁾ In other words, there is a need for the federal government, with the greatest resources among all governments in the world, to play a more active role in the economy, facilitating economic development for racial minorities in close cooperation with state and local governments and with the private sector.

The current structural problems require active participation from the federal government, just like the problems with protection of political rights of minorities through legislation and enforcement⁵⁾. With pro-development legislation and institutional frameworks, as well as systematic engagement, the

4) There were substantial federal initiatives, such as President Lyndon Johnson's agenda for the Great Society, the "New Deal" under President Roosevelt, and the Hamiltonian economic program of the 18th century, to improve the economy and foster industries, but the neoliberal policy stance since the 1980s, represented by the Washington Consensus, has mainstreamed the pro-market policy that emphasizes individual autonomy and minimizes government interventions in the economy. *See generally* Randall B. Woods, *How the Great Society Reforms of the 1960s Were Different from the New Deal*, Time (Apr. 5, 2016, 10:30 AM), <https://time.com/4280457/new-deal-great-society-excerpt/>; *Hamilton's Financial Plan*, History, <https://www.ushistory.org/us/18b.asp#:~:text=Hamilton's%20vision%20for%20reshaping%20the,a%20more%20stable%20paper%20currency> [<https://perma.cc/4KKE-ZCXM>]; George Monbiot, Neoliberalism – the Ideology at the Root of All Our Problems, The Guardian (Apr. 15, 2016, 7:00 AM), <https://www.theguardian.com/books/2016/apr/15/neoliberalism-ideology-problem-george-monbiot> [<https://perma.cc/EHQ6-SVAA>]. The 2007–08 financial crisis and the economic downturn due to COVID-19 have invoked government support measures, such as corporate bailouts and stimulus funds, but they are short-term, emergency measures to respond to the crisis rather than a long-term economic policy. *See generally* Renae Merle, *A Guide to the Financial Crisis – 10 Years Later*, The Wash. Post (Sept. 10, 2018, 1:47 PM), https://www.washingtonpost.com/business/economy/a-guide-to-the-financial-crisis--10-years-later/2018/09/10/114b76ba-af10-11e8-a20b-5f4f84429666_story.html [<https://perma.cc/2KFC-B5XL>]; *Here's Everything the Federal Government Has Done to Respond to the Coronavirus So Far*, Peter G. Peterson Found. (Mar. 15, 2021), <https://www.pgpf.org/blog/2021/03/heres-everything-congress-has-done-to-respond-to-the-coronavirus-so-far> [<https://perma.cc/P68Y-D94P>].

5) *See, e.g.*, Civil Rights Act of 1964, 42 U.S.C. §1971 *et seq.*

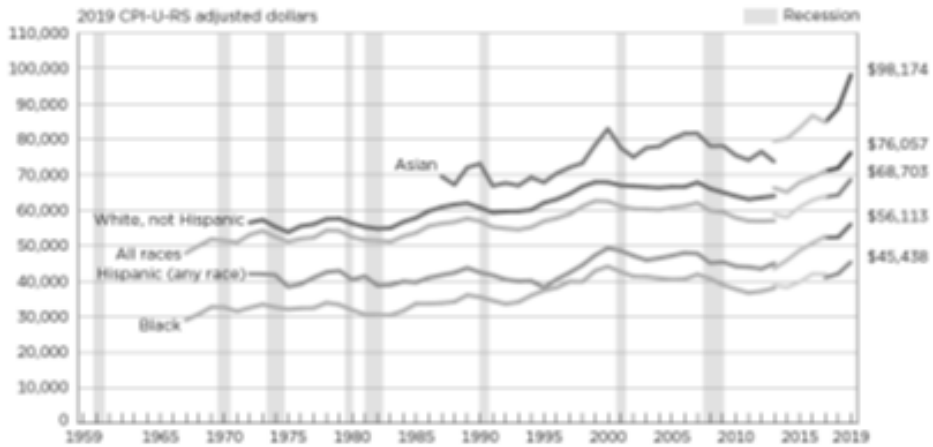
government can promote economic development for minorities. The governmental promotion of economic development is justified, as economic development for minorities will be essential to realize the goals of the civil rights movement, including the protection and promotion of equality and dignity for all people. Governmental promotion of economic development for minorities does not mean that the government should overtake the role of the market and the private sector; rather, it encourages the federal government to identify the causes of economic disparity along racial lines, develop policies, and implement measures that will reduce the existing gaps in close cooperation and coordination with state and local governments and with the private sector.

The paper is organized as follows. The section II discusses the growing economic inequality in the United States along racial lines. Section III studies the Asian American experience in the United States and draws lessons from their economic success. Section IV proposes a new legal and institutional approach (“law and development approach”) in which the federal government plays an active role for economic development by enacting pro-development legislation and setting up pro-development institutional frameworks to reduce economic disparity among races. Section V draws conclusions.

II. Growing Economic Inequality⁶⁾

There is significant economic disparity along racial lines in the United States. Legal discrimination against racial minorities in the United States may have been removed since the civil rights movement, but the elimination of legal discrimination has not bridged economic gaps among races. The following graph illustrates significant income disparities along racial lines.

6) In this discussion and the discussion in Part IV, the author draws material from his previous work, Lee, *Law and Development: Nexus*, *supra* note 1, after revision. Cited data are updated.

Figure 1: Real Median Household Income by Race and Hispanic Origin⁷⁾Table 1: Real Median Household Income by Race and Hispanic Origin⁸⁾
(2019 CPI-U-RS adjusted dollars)

	All Races	White	White, Not Hispanic	Black	Hispanic (All races)	Asian
2019	68,703	72,204	76,057	45,438	56,113	98,174
2009	59,458	61,947	65,053	38,921	45,437	78,201
1999	62,641	65,149	67,969	42,960	47,326	78,440
1989	57,705	60,699	62,005	36,099	43,761	72,070
1979	54,222	56,851	57,651	33,378	42,960	N/A
1969	51,863	54,126	N/A	32,717	N/A	N/A
1959	41,708 ⁹⁾	43,448	N/A	N/A	N/A	N/A

7) Jessica Semega et al., U.S. Census Bureau, No. P60-270, *Income and Poverty in the United States: 2019*, at 5 fig.2 (2020), <https://www.census.gov/content/dam/Census/library/publications/2020/demo/p60-270.pdf> [<https://perma.cc/F2X7-GAPQ>].

8) Semega et al., *supra* note 7, at 27–35 tbl.A-2.

9) Estimates for median income in 1959 are taken from the 1990 report; estimates were generated from U.S. Bureau of the Census, U.S. Dep't of Com., Ser. P-60, No. 174, *Money Income of Households, Families, and Persons in the United States: 1990* (1991).

The median household incomes of black minorities and of Hispanics and Latinos (Hispanics) are 40% and 26% lower than the white majority, respectively. The gap is indeed serious: the 2019 real median household incomes of Blacks (\$45,438) and Hispanics (\$56,113) were close to the income level of whites six decades ago (1959: \$43,448) and four decades ago (1979: \$56,851), respectively.¹⁰⁾ According to a study, the income gap between Black and White households remains roughly the same as it was in the 1960s.¹¹⁾ Unemployment rates are also higher for minorities: as of October 2019, the unemployment rates for Blacks and Hispanics were 5.4% and 4.1%, respectively, whereas the unemployment rate for Whites was 3.2%.¹²⁾ Asians reported a 2.9% unemployment rate.¹³⁾ COVID-19 exacerbated unemployment rates for minorities: in the third quarter of 2020, unemployment rates were as high as 13.2% for Blacks, 11.2% for Hispanics, and 10.6% for Asians, compared to 7.9% for Whites.¹⁴⁾

These significant discrepancies in income and employment status have also resulted in large gaps in household wealth among races, which have not narrowed since the passage of the Civil Rights Act.¹⁵⁾ According to a 2019 survey, whites had a median household wealth of \$188,200, compared to \$24,100 for Black households and \$36,100 for Hispanic households.¹⁶⁾ The median wealth of Black households was still less than 15% of the median wealth of White households.¹⁷⁾ Asians had a median household wealth of \$157,400 (as of 2017).¹⁸⁾ The median ratio of household debt against household wealth

10) *Id.*

11) Robert Manduca, *Income Inequality and the Persistence of Racial Disparities*, 5 Soc. Sci. 182, 190 (2018).

12) *TED: The Economics Daily*, U.S. Bureau Lab. Stat. (Nov. 6, 2019), <https://www.bls.gov/opub/ted/2019/unemployment-rate-was-3-point-6-percent-in-october-2019.htm> [<https://perma.cc/F6GN-4BEW>].

13) *Id.*

14) *Labor Force Statistics from the Current Population Survey*, U.S. Bureau Lab. Stat., https://www.bls.gov/web/empsit/cpsee_e16.htm [<https://perma.cc/ZFE8-RAU3>].

15) Neil Bhutta *et al.*, *Disparities in Wealth by Race and Ethnicity in the 2019 Survey of Consumer Finances*, Bd. Governors Fed. Rsrv. Sys. (Sept. 28, 2020), <https://www.federalreserve.gov/econres/notes/feds-notes/disparities-in-wealth-by-race-and-ethnicity-in-the-2019-survey-of-consumer-finances-20200928.htm>.

16) *Id.*

17) *Id.*

also shows the economic vulnerability of minorities. In 2017, the value of the median household debt for Whites was 44% of the median household worth, whereas the value of debt for Blacks was as much as 272% of the median household worth in 2017.¹⁹⁾ The value of the debt was 138% for Hispanics and 64% for Asians.²⁰⁾ There are also substantial gaps in home ownership among races: in the third quarter of 2020, the home ownership rate for Whites was at 75.8%; Asians at 61.0%; Hispanics at 50.9%; and Blacks lowest at 46.4%.²¹⁾

The racial economic disparity means not only substantial gaps in income and wealth but also significant poverty among minorities: the poverty rates²²⁾ of racial minorities are substantially higher than Whites; as of 2019, the poverty rates were 18.8% for Blacks and 15.7% for Hispanics, while the poverty rates of Whites and Asians were both 7.3%.²³⁾ These racial gaps are significant: the poverty rates of Blacks and Hispanics were 2.6 times and 2.1 times higher than those of Whites, respectively. The substantial poverty existing among minorities breeds serious social and political problems; for example, poverty

18) *Wealth, Asset Ownership, & Debt of Households Detailed Tables: 2017*, U.S. Census Bureau tbl.1,

<https://www.census.gov/data/tables/2017/demo/wealth/wealth-asset-ownership.html> [https://perma.cc/KX9Z-WRLQ] (Aug. 12, 2020).

19) *Id.*

20) *Id.*

21) Press Release, U.S. Census Bureau, Quarterly Residential Vacancies and Homeownership, Third Quarter 2020 (Oct. 27, 2020, 10:00 AM),

<https://www.census.gov/housing/hvs/files/qtr320/Q320press.pdf>

[https://perma.cc/3RNY-SYQD]. Adverse financial factors, such as lower credit scores and lower incomes of minorities, reduce chances for obtaining mortgage loans; and even if minorities are successful in obtaining such loans, they often receive tougher, financially burdensome mortgage terms. *See generally* José Loya & Chenoa Flippen, *The Great Recession and Ethno-Racial Disparities in Access to Mortgage Credit*, Soc. Probs. (Nov. 3, 2020),

<https://academic.oup.com/socpro/advance-article/doi/10.1093/socpro/spaa040/5953174?login=true> [https://perma.cc/UBX8-UP2C].

22) The poverty threshold for 2019 is \$20,335 for a family of three and \$26,172 for a family of four. Semega *et al.*, *supra* note 7, at 56.

23) John Creamer, *Inequalities Persist Despite Decline in Poverty for All Major Race and Hispanic Origin Groups*, U.S. Census Bureau (Sept. 15, 2020), <https://www.census.gov/library/stories/2020/09/poverty-rates-for-blacks-and-hispanics-reached-historic-lows-in-2019.html> [https://perma.cc/J57M-P2MG].

is an important cause of the disproportionate effect that COVID-19 has on minorities.²⁴⁾ According to a recent survey, minorities, despite being at a higher risk of having more serious complications related to COVID-19, are more likely to avoid healthcare due to fears of medical expenses.²⁵⁾ 58% of non-White respondents have concerns or “extreme” concerns about the out-of-pocket costs for COVID-19 treatment, compared to 32% of White respondents, reflecting the economic vulnerability of minorities.²⁶⁾

The causes of the racial economic disparity vary and include gaps in intergenerational transfers,²⁷⁾ differences in educational attainment,²⁸⁾ occupational segregation,²⁹⁾ structural changes in public employment adverse to minorities,³⁰⁾ and the degree of social prejudice and discrimination encountered in the workplace.³¹⁾ Regardless of the reasons, the present racial economic disparity justifies the call for economic equality, as made by the late Dr. King, to achieve the ideals of the civil rights movement. Without overcoming economic disparity and securing sufficient economic foundations,

24) Julius M. Wilder, *The Disproportionate Impact of COVID-19 on Racial and Ethnic Minorities in the United States*, Clinical Infectious Diseases 709, 709 (July 10, 2020), <https://academic.oup.com/cid/advance-article/doi/10.1093/cid/ciaa959/5869621> [https://perma.cc/K7DT-TD52].

25) Sara Heath, *More Non-White Patients Dread Out-of-Pocket Costs for COVID-19*, PatientEngagementHIT (Aug. 4, 2020), <https://patientengagementhit.com/news/more-non-white-patients-dread-out-of-pocket-costs-for-covid-19> [https://perma.cc/9XBP-M3R4].

26) *Id.*

27) White households are nearly three times more likely to receive inheritances than Black households, and more than four times more likely to receive inheritances than their Hispanic counterparts. Bhutta et al., *supra* note 15.

28) *See Labor Force Characteristics by Race and Ethnicity, 2018*, U.S. Bureau Lab. Stat., <https://www.bls.gov/opub/reports/race-and-ethnicity/2018/home.htm> [https://perma.cc/L7T9-T2C6].

29) Hadas Mandel & Moshe Semyonov, *Going Back in Time? Gender Differences in Trends and Sources of the Racial Pay Gap, 1970 to 2010*, 81 Am. Socio. Rev. 1039, 1047-56 (2016).

30) George Wilson et al., *Racial Income Inequality and Public Sector Privatization*, 62 Soc. Probs. 163, 180-81 (2015). “New governance” approaches implemented around the turn of the millennium have brought public employment more in line with the structure of private employment, with accompanying increases in employer discretion and decreases in employee rights. *Id.*

31) *See Labor Force Characteristics by Race and Ethnicity 2018*, *supra* note 28.

minorities will not enjoy the full equity and dignity that the civil rights movement sought to protect and promote.

This racial economic disparity contributes to the creation of a racially divided society. The 2020 presidential election demonstrates the extent of the racial division; the Republican candidate, Donald Trump, received 58% of the White votes but only 12% of the Black votes and 32% of the Latino votes.³²⁾ By contrast, the Democratic candidate, Joe Biden, received 87% of the Black votes, 65% of Latino votes, and 41% of the White majority votes.³³⁾ The current divide is not consistent with the objective of the civil rights movement toward an integrated society. An effort to cure this division must begin with a serious endeavor to bridge the racial economic disparity. The causes of this disparity and proposed remedies are further discussed in Sections III and V below.

III. Lessons from the Asian American Experience

The preceding sections have examined the economic disparity existing along racial lines. This economic disparity hampers the realization of the promises of the civil rights movement—the protection and promotion of equity and social justice for all and the creation of an integrated society. Thus, it is necessary to bridge the racial economic gaps if the ideals of the civil rights movement are to be realized. This section and the next introduce the experience of Asian Americans, often referred to as “the model minority,” to expose the issues associated with the racial divide and draw lessons from the story.³⁴⁾

Asian Americans refer to a diverse group of minority American citizens originated in the world’s largest continent, Asia, including Northeast Asia (Korea, China, and Japan), Southeast Asia (India, Pakistan, Bangladesh, Vietnam, Thailand, Myanmar, Malaysia, and the other adjacent countries), and Central Asia.³⁵⁾ This group of Americans is culturally heterogenous, religiously

32) *Exit Polls*, CNN, <https://www.cnn.com/election/2020/exit-polls/president/national-results>.

33) *Id.*

34) See discussions *infra* Part III-IV.

35) For a further discussion of the geographical parameters of Asia, see *Asia*, Britannica.com, <https://www.britannica.com/place/Asia>.

variant, and racially diverse, but the diversity of Asian Americans is often overlooked in American society.³⁶⁾ The term “model minority,” a popularly used label attached to Asian Americans, is misleading, as it overlooks dissimilar socioeconomic status among diverse ethnic and racial groups identified as Asian Americans. For example, the poverty rate of Asian Americans is considered lower than the other races (7.3% as of 2019),³⁷⁾ but this is not the case for all ethnic groups within the Asian American “umbrella”; for example, Cambodians and Hmong reportedly have very high poverty rates, 38% and 29%, respectively.³⁸⁾

The “model minority” label also tends to generate a myth that Asian Americans are a privileged group, overshadowing the continued suffering of a large number of Asian Americans: Asian Americans are equally subject to prejudice and discrimination in American society,³⁹⁾ as demonstrated by numerous incidents involving verbal and physical attacks against Asian Americans because of their (perceived but not actual) associations with a region in which COVID-19 originated.⁴⁰⁾ Asian Americans, since their first immigration to the United States in the mid-nineteenth century, have faced persecution for well over a century: Japanese Americans were sent to internment camps during the Second World War; Chinese Americans were massacred in Los Angeles in 1871, and the immigration of Chinese nationals were banned

36) See, e.g., Nathan Joo *et al.*, *Asian-American Success and the Pitfalls of Generalization*, Brookings (Apr. 20, 2016), <https://www.brookings.edu/research/asian-american-success-and-the-pitfalls-of-generalization/>.

37) See discussion *supra* Section II.A.

38) See Joo *et al.*, *supra* note 36.

39) See, e.g., Caitlin L. McMurtry *et al.*, *Discrimination in the United States: Experiences of Asian Americans*, 54 Health Servs. Rsch. 1419 (2019); see also Monica M. Trieu & Hana C. Lee, *Asian Americans and Internalized Racial Oppression: Identified, Reproduced, and Dismantled*, 4 Soc. Race & Ethnicity 67 (2017).

40) See Hannah Tessler *et al.*, *The Anxiety of Being Asian American: Hate Crimes and Negative Biases During the COVID-19 Pandemic*, 45 Am. J. Crim. Just. 636, 638 (2020), <https://link.springer.com/article/10.1007/s12103-020-09541-5> [<https://perma.cc/R8FG-UQKX>]. This article reports that for a period of a little over one month from March 19 to April 23, 2021, there were nearly 1,500 alleged instances of anti-Asian bias reported from forty-five states, with 42% of the reports hailing from California and 17% of reports from New York. *Id.*; see also Helier Cheung *et al.*, *Coronavirus: What Attacks on Asians Reveal About American Identity*, BBC News (May 27, 2020), <https://www.bbc.com/news/world-us-canada-52714804> [<https://perma.cc/HF62-RU6Y>].

for six decades (the Chinese Exclusion Act of 1882); and Korean Americans fell victim to the 1992 Los Angeles riots.⁴¹⁾ Some Asians also believe that affirmative action, a system of preference designed to assist minorities in school admissions and job placements,⁴²⁾ puts Asian Americans at a disadvantage rather than benefitting them as members of a minority group.⁴³⁾ Asians also face discrimination in job placement and wages, even at the professional level.⁴⁴⁾

Despite these predicaments, many of those identified as Asian Americans have achieved considerable economic, social, and political success. Since the 1980s, the median household income for Asian Americans has always been the highest among all races, reaching \$98,174 as of 2019, 36% higher than

41) Gillian Brockell, *The Long, Ugly History of Anti-Asian Racism and Violence in the U.S.*, The Wash. Post (Mar. 18, 2021, 7:00 AM), <https://www.washingtonpost.com/history/2021/03/18/history-anti-asian-violence-racism/> [https://perma.cc/6VKA-JXPG].

42) Affirmative action originated in the promotion of the employment of minorities with government contractors in 1961 and in government employment in 1965. Exec. Order No. 10925 (1961) and Exec. Order No. 11246 (1965). The Civil Rights Act of 1964 also permits courts, upon a finding of discrimination in violation of Title VII, to “order such affirmative action as may be appropriate.” Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 261 (codified at 42 U.S.C. § 2000e *et seq.*). Affirmative action also includes voluntary preferential measures for minorities by universities and colleges. Scholars credit affirmative action programs in admissions for a significant increase in black professionals from the 1960s to the 1990s: from 1950 to 1990, the proportion of black managers to the overall black workforce quadrupled, from 5% to 20%. William G. Bowen & Derek Bok, *The Shape of the River: Long-term Consequences of Considering Race in College and University Admissions* 10 (1998).

43) 16% of Asian Americans reportedly oppose affirmative action. Kimmy Yam, *70% of Asian Americans Support Affirmative Action. Here’s Why Misconceptions Persist*, NBC News (Nov. 14, 2020, 5:10 PM), <https://www.nbcnews.com/news/asian-america/70-asian-americans-support-affirmative-action-heres-why-misconceptions-n1247806> [https://perma.cc/2QQC-Q7UK]. In a publicized ongoing racial discrimination case, *Students for Fair Admissions v. Harvard College* (2014), the complainants argued that Harvard University unfairly discriminated against Asian American applicants in admission by using racial balancing and race as a factor in admissions. *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 397 F.Supp.3d 126, 132 (D. Mass. 2019), *aff’d*, 980 F.3d 157 (1st Cir. 2020), *certifying questions to* No. 20-1199.

44) Jeff Guo, *The Real Secret to Asian Success in America Was Not About Education*, The Wash. Post (Nov. 19, 2016, 8:11 AM), <https://www.washingtonpost.com/news/wonk/wp/2016/11/19/the-real-secret-to-asian-american-success-was-not-education/> [https://perma.cc/FXN6-JZVN].

Whites.⁴⁵⁾ The median household net wealth is also close to that of Whites,⁴⁶⁾ and the ratio of the median value of household debt against household net wealth is also lower than any other race except the White majority.⁴⁷⁾ Asian Americans have also shown exemplary compliance with social norms and laws, demonstrated by the lowest rate of incarceration among all races: as of 2018, there were only twenty-six Asian Americans incarcerated in jail per 100,000 residents, whereas there were 187 Whites, 592 Blacks, and 182 Hispanics.⁴⁸⁾ Asian Americans represent 5.9% of the total U.S. population as of 2019,⁴⁹⁾ but the Asian American population is growing—with rapidly increasing numbers of immigrants from Asia, accounting for 36% of all immigrants in 2010, which surpassed the number of immigrants of Hispanic origin.⁵⁰⁾ Asian Americans are also expanding political influence, producing eight senators since 1953, including three current members of the Senate.⁵¹⁾ An increasing number of Asian Americans have also become members of Congress, state legislators, judges, and public administrators at federal, state, and local levels.⁵²⁾

What are the causes of Asian American success? Factors such as educational attainment, dedicated family support, and a culture that fosters work ethic and encourages competition have been cited as contributing to their success.⁵³⁾ As

45) Semega *et al.*, *supra* note 7.

46) *Wealth, Asset Ownership, & Debt of Households Detailed Tables: 2017*, *supra* note 18.

47) *See* discussion *supra* Section II.A.

48) Zhen Zeng, *Jail Inmates in 2018*, U.S. Dep't Just: Bureau Just. Stat., (Mar. 2020), <https://www.bjs.gov/content/pub/pdf/ji18.pdf> [<https://perma.cc/8SWV-BBWP>].

49) *Quick Facts: People*, U.S. Census Bureau (July 1, 2019), <https://www.census.gov/quickfacts/fact/table/US/PST045219> [<https://perma.cc/9VMS-YUAA>].

50) *The Rise of Asian Americans*, Pew Res. Ctr., <https://www.pewsocialtrends.org/2012/06/19/the-rise-of-asian-americans/> [<https://perma.cc/8HLY-UCXW>] (Apr. 4, 2013).

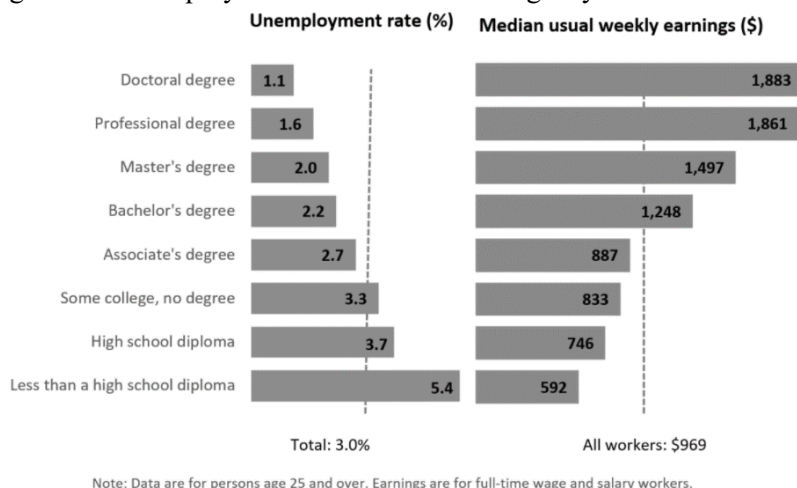
51) *Asian American Senators*, U.S. Senate, <https://www.senate.gov/senators/asian-american-senators.htm> [<https://perma.cc/M78F-DG4Y>].

52) *See, e.g.*, Pan Suk Kim & Gregory B. Lewis, *Asian Americans in the Public Service: Success, Diversity, and Discrimination*, in *Diversity & Affirmative Action* Pub. Serv. (Walter D. Broadnax ed., 2018).

53) *See, e.g.*, Joo *et al.*, *supra* note 36; *see also* Min Zhou & Jennifer Lee, *Hyper-Selectivity and the Remaking of Culture: Understanding the Asian American Achievement Paradox*, 8 *Asian Am. J. Psych.* 7, 10 (2017) (theorizing that one contribution to the success of Asian

noted, however, these factors are not the characteristics of all members of Asian American communities, and there have been criticisms vis-à-vis stereotyping Asian Americans and arguments against the emphasis on educational attainment as the key success factor for Asian Americans.⁵⁴⁾ Notwithstanding the criticism, statistics demonstrate that educational attainment has a direct correlation with income level and unemployment rate, as illustrated below (Figure 2). Asian Americans show stronger educational attainment than other races (Figure 3): 54% of Asian Americans have a bachelor's degree or a more advanced degree, compared to 36% of Whites, 23% of Blacks, and 16% of Hispanics.⁵⁵⁾ Furthermore, 21% of Asian Americans have an advanced degree, compared to 14% of whites.⁵⁶⁾

Figure 2: Unemployment Rates and Earnings by Educational Attainment⁵⁷⁾



Americans is the immigration trends of highly educated and high achieving individuals entering the United States to further their education).

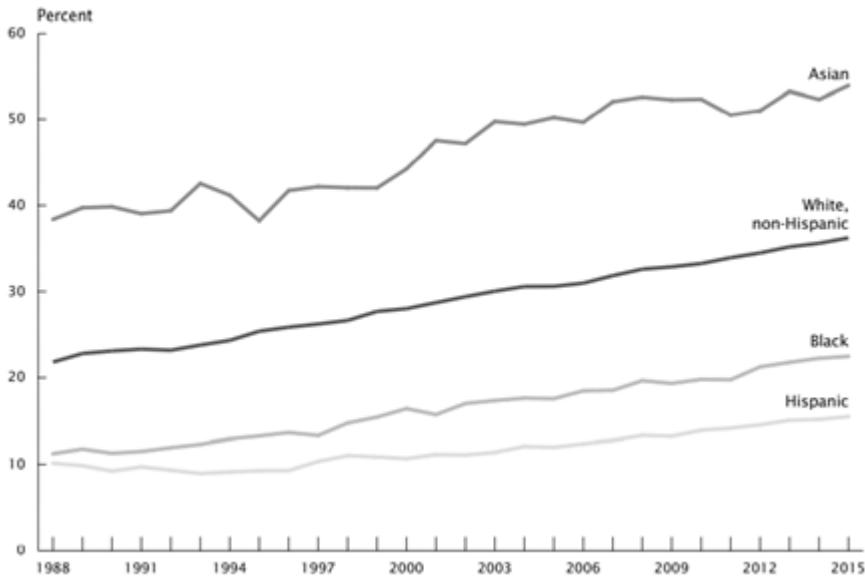
54) See Guo, *supra* note 44; see also Jennifer Lee & Min Zhou, *The Asian American Achievement Paradox* 13 (2015) (discussing the negative effects of the “model minority” stereotype, particularly for Asian Americans who do not fit the stereotype of high achieving and successful minorities); Hyung Chol Yoo *et al.*, *A Preliminary Report on a New Measure: Internalization of the Model Minority Myth Measure (IM-4) and Its Psychological Correlates among Asian American College Students*, 57 *J. Counseling Psych.* 114, 115 (2010).

55) See, e.g., Joo *et al.*, *supra* note 36.

56) *Id.*

57) *Unemployment Rates and Earnings by Educational Attainment*, U.S. Bureau Lab. Stat., <https://www.bls.gov/emp/chart-unemployment-earnings-education.htm> (Sept. 4, 2019).

Figure 3: Percentage of the Population (Twenty-Five Years and Older) with a Bachelor's Degree or Higher by Race⁵⁸⁾



Family support has also been essential to strong educational attainment. Asian Americans have the lowest rate of children whose parents lack secure employment.⁵⁹⁾ In 2018, the rate of such children among Asian Americans was 21%, whereas the rates for Blacks and Hispanics were 41% and 31%, respectively.⁶⁰⁾ The rate for Whites was also 21%.⁶¹⁾ Other indicators, such as the percentage in foster care, also confirm relatively stable family environment for Asian American children: in 2018, only 1% of children in foster case were Asian American, compared to rates of 44% for Whites, 23%

58) Camille L. Ryan & Kurt Bauman, *Educational Attainment in the United States: 2015*, U.S. Census Bureau, at 5, Fig. 3 (Mar. 2016), <https://www.census.gov/content/dam/Census/library/publications/2016/demo/p20-578.pdf> [<https://perma.cc/TLQ7-EE2J>].

59) *Id.*

60) *Children Whose Parents Lack Secure Employment by Race and Ethnicity in the United States*, The Annie E. Casey Found., <https://datacenter.kidscount.org/data/tables/5064-children-whose-parents-lack-secure-employment-by-race-and-ethnicity#detailed/1/any/false/37,871,870,573,869,36,868,867,133,38/10,11,9,12,1,185,13/11486,11487> [<https://perma.cc/3HDH-NLCP>] (Jan. 2020).

61) *Id.*

for Blacks, and 21% for Hispanics.⁶²⁾

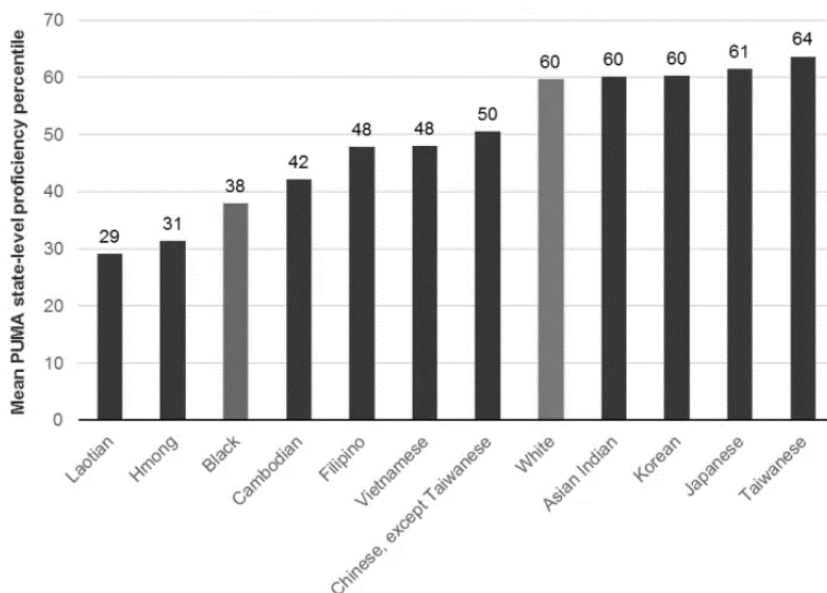
Despite the success of Asian Americans, the perception of Asian Americans as being a homogeneous “model minority” is a myth. Asian Americans are a composite of diverse groups with varied socioeconomic status,⁶³⁾ as reported by a study that income inequality is growing among Asians, and the bottom 10% income group have not seen their income grow in the past fifty years.⁶⁴⁾ It is true that a combination of strong family support and a high rate of educational attainment put many Asian Americans ahead of other minority groups in the attainment of higher economic status, but not all ethnic Asian groups have achieved this position; and the groups do not have equal educational access. The following figure (Figure 4) indicates that several ethnic Asian groups are in fact behind other races in access to “good schools” (as judged by state-level proficiency percentile)⁶⁵⁾ in California where the largest number of Asian Americans reside.

62) *Black Children Continue to Be Disproportionately Represented in Foster Care*, The Annie E. Casey Found. (Apr. 13, 2020), <https://datacenter.kidscount.org/updates/show/264-us-foster-care-population-by-race-and-ethnicity>.

63) See Joo *et al.*, *supra* note 36; see also ChangHwan Kim & Arthur Sakamoto, *The Earnings of Less Educated Asian American Men: Educational Selectivity and the Model Minority Image*, 61 Soc. Probs. 283 (2014).

64) Rakesh Kochhar & Anthony Cilluffo, *Income Inequality in the U.S. Is Rising Most Rapidly Among Asians* 4–5 (2018).

65) See Joo *et al.*, *supra* note 36.

Figure 4: Access to Good Schools by Asian Sub-Groups⁶⁶⁾

Subject to this diversity, lessons can be drawn from the Asian American experience. First, educational attainment may not in itself be a guarantee of success, but it has a strong correlation with employment and higher income that would be essential to uplift an individual's socioeconomic position.⁶⁷⁾ Second, dedicated family support—including providing children with access to

66) *Id.* This discrepancy in access to “good schools” seems to have affected higher school dropout rates and gang involvement among Southeast Asian Americans. Laura Bui, *Examining the Academic Achievement-Delinquency Relationship Among Southeast Asian Americans*, 62 Int'l J. Offender Therapy & Comp. Criminology 1558 (2017); see also Bic Ngo & Stacey J. Lee, *Complicating the Image of Model Minority Success: A Review of Southeast Asian American Education*, 77 Rev. Edu. Res. 425 (2007).

67) A question has been raised as to whether educational attainment is a cause of the Asian American success or its result. Asian Americans' strong family commitment to education has a cultural root, which is not correlated to their wealth: the Confucian tradition in East Asian culture emphasizes the value of education, as demonstrated by the national educational drive in East Asian countries, such as South Korea, Taiwan, and Singapore, during initial stages of their economic development (when a majority of their populations were still in poverty). See Leah Shafer, *The Other Achievement Gap: The Lessons We Can Learn from Asian American Success*, Harv. Graduate Sch. Educ. (Apr. 17, 2017), <https://www.gse.harvard.edu/news/uk/17/04/other-achievement-gap> [https://perma.cc/SC3B-EG68].

good schools and a stable family environment—which does not disrupt children in their formative years—is instrumental to facilitating educational attainment. Third, to maintain family support and a stable environment for children, it is also essential for parents to be in compliance with social norms and laws so that they are not separated from children on account of incarceration or other judicial interventions. Fourth, there are elements in every major culture, not just Asian, that respect labor and value honest work; these elements should be fostered in communities.

These “good policies,” although crucial to bridge the economic gaps, may not be easily implementable under the dissimilar circumstances of other minorities. The Asian American drive for education is embedded in the culture that had long history under Confucian influence and other Asian traditions valuing education.⁶⁸⁾ In addition, family support for a child’s education may not be possible, and maintaining a stable family environment for children will be difficult to expect where families are already dissolved, dysfunctional, or suffering from poverty and other forms of deprivation. Exposure to crime might also be difficult to reduce where poverty is prevalent and jobs are difficult to find. Asian American communities have also benefitted from dynamic Asian immigration since the 1980s and from the influx of energetic and motivated immigrants from Asia, who often emigrate already equipped with skills and capital.⁶⁹⁾ In addition, rapid economic development of East Asian countries, such as South Korea, Taiwan, and later China, has created economic synergies with Asian American communities in the United States—generating economic opportunities for them both directly and indirectly. These developments have favored Asian Americans with their socioeconomic improvement.

All in all, Asian Americans have achieved excellent success in American society. A continuing, publicized litigation, *Students for Fair Admissions v. Harvard College* (2014), is an ironic testimony to the success of Asian Americans.⁷⁰⁾ Harvard’s admission record indicates that 24.4% of the 2020

68) Nicholas Kristof, *The Asian Advantage*, The N.Y. Times (Oct. 10, 2015), <https://www.nytimes.com/2015/10/11/opinion/sunday/the-asian-advantage.html> [https://perma.cc/VR5T-CVAK].

69) See Guo, *supra* note 44.

70) See *Students for Fair Admissions, Inc., v. President & Fellows of Harv. Coll.*, 980 F.3d

incoming undergraduate students were Asian Americans.⁷¹⁾ Regardless of the outcome of the case, Asian Americans send students to Harvard, widely perceived to be the most prestigious university in the United States, four times more than the portion of their population in the United States. It is a testament to Asian Americans' dedicated effort for educational attainment and to their ultimate success. Both the U.S. District Court and the First Circuit Court of Appeals have ruled against the complainants, finding that Harvard's admission process considering racial elements is lawful.⁷²⁾ The complainants are known to be against affirmative action and motivated to initiate this lawsuit to remove the racial elements from the admission process altogether.⁷³⁾ Affirmative action, which is reportedly supported by a majority of Asian Americans,⁷⁴⁾ is a measure necessary to ensure diversity in colleges and workplaces. Securing a fair admission process for Asian Americans and preserving affirmative action is not mutually exclusive; while preserving spaces for other minorities through affirmative action, admissions committees can simultaneously ensure that the places that should be given to Asian American candidates are not unfairly transferred to white candidates for the purpose of "keeping the numbers" for the latter. This assurance will be consistent with the notion of the civil rights movement and social justice.

IV. Call for a New Paradigm

The law and development approach uses laws and institutions as vehicles to

157 (1st Cir. 2020). See generally Anemona Hartocollis, *The Affirmative Action Battle at Harvard Is Not Over*, The N.Y. Times (Feb. 18, 2020), <https://www.nytimes.com/2020/02/18/us/affirmative-action-harvard.html> [https://perma.cc/SP75-CNZK].

71) *Admissions Statistics*, Harv. Coll. Admissions & Fin. Aid,

<https://college.harvard.edu/admissions/admissions-statistics> [https://perma.cc/YY34-N47F].

72) *Students for Fair Admissions*, 980 F.3d at 204; *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 397 F. Supp. 3d 126, 204 (D. Mass. 2019), *aff'd*, 980 F.3d 157 (1st Cir. 2020), *certifying questions to* No. 20-1199.

73) Seth Johnson, *Students for Fair Admissions v. Harvard: Admissions Administrators Threaten the Future of Affirmative Action in the United States*, 24 Pub. Int. L. Rep. 151, 158 (2019).

74) Yam, *supra* note 43.

promote economic and social development.⁷⁵⁾ This approach originated in law and development studies. Law and development is “an area of inquiry on the interrelationship between law and development”⁷⁶⁾ where “development” is understood as “a progressive transformation of the economy and society.”⁷⁷⁾ Law and development has been concerned primarily with exploring the role of law in economic and social development in developing countries; however, the changing economic and social realities of developed countries—regional economic disparity, increasing income gaps, and deepening racial divides—render a law and development approach relevant to addressing economic and social problems in developed countries too. Resolving these problems may require a “progressive transformation” of the underlying economic and social structure through legal and institutional reform.⁷⁸⁾ This section adopts this law and development approach to address issues resulting from racial economic disparity in the United States and proposes legal and institutional reform to bridge the gaps.

The proposed legal and institutional approach addresses the causes of persistent racial economic disparity. Major legal reforms such as the Civil Rights Act of 1964⁷⁹⁾ and the Equal Employment Opportunity Act of 1972 (EEOA)⁸⁰⁾ prohibit racial discrimination in employment and attempt to promote minority job placement, but these legal measures have largely failed to bridge the economic gaps existing among races, as discussed in Section II above. This failure calls for a new approach—one that draws lessons from the Asian American experience and adopts a comprehensive, long-term legal and institutional reform that encourages minorities to reach high levels of educational attainment and provides minority families with the necessary

75) The recently developed *The General Theory of Law and Development* explains the mechanisms by which law impacts development. *See generally id.*; *see also* Yong-Shik Lee, *Law and Development: Theory and Practice* 3, 38-61 (2019).

76) Lee, *supra* note 75.

77) *Id.* at 11.

78) *See id.*; *see also* Lee, *Law and Economic Development: Nexus*, *supra* note 1; Lee, *Law and Development: Paradigm*, *supra* note 1.

79) Civil Rights Act of 1964, Pub. L. No. 88-352, 78 Stat. 241, 261 (codified at 42 U.S.C. § 2000e *et seq.*).

80) Equal Employment Opportunity Act of 1972, Pub. L. 92-261, 86 Stat. 103 (1972) (amended 42 U.S.C. §§ 2000e-2000e-8).

support to provide their children stable environments conducive to educational success. The federal government, equipped with the budget and personnel on a scale not available at the state level, should be the driver of this reform but should remain in close cooperation and coordination with state and local governments. To this end, the federal government should adopt laws, such as an amended EEOA, that provide incentives in the form of grants and other subsidies for schools and universities that actively recruit, retain, and graduate minority students.⁸¹⁾

The amended EEOA (“the amendment”) may also require the government to assist distressed minority families, such as families that have lost a provider or are at such risk due to accident, disease, death, or incarceration.⁸²⁾ The purpose of this assistance is to prevent minority families from being dissolved under financial stress and thereby protect minority children from educational disruptions. As seen above, minorities, except Asian Americans, are disproportionately incarcerated, and high incarceration rates lead to family separation, which disrupts children’s lives.⁸³⁾ Thus, legislation needs to address this problem and seek ways to minimize incarcerating parents for nonviolent crimes. Legislators should consider automatically expunging criminal records for convicted individuals who do not reoffend for a pre-set period of time so that minority parents with a prior conviction record may seek employment without prejudice and provide for their families. The amendment should also require a periodic review of the progress of educational attainment and economic status, including minority employment rates.⁸⁴⁾ The legislation should

81) Existing government support, such as increased financial support for historically Black colleges and universities (HBCUs), as well as student loan relief and interest reductions, would be helpful, but assistance should be extended across the board—not just to HBCUs—to target recruitment and retention of all minority students.

82) Current social welfare programs, such as the Supplemental Nutrition Assistance Program (SNAP) and Social Security Disability Benefits, provide minimal coverage and thus are insufficient to meet the needs of families in distress. Tax breaks, such as the earned income tax credit (EITC) and the American Opportunity Tax Credit, also offer assistance for working Americans, but these tax benefits are not available to families that cannot pay taxes due to a lack of sustained income.

83) Lois Davis *et al.*, Understanding the Public Health Implications of Prisoner Reentry in California: State-of-the-State Report 117–42 (2011) (examining the impact of incarceration on families).

be implemented at the federal level, but some of its mandates could be delegated to state and local authorities.

Distressed minority families will include those in which parents lack secure employment. As discussed above, 41% of Black children and 31% of Hispanic children have parents who lack secure employment.⁸⁴⁾ The amendment should ensure that appropriate relief is made available to such parents—not only short-term financial assistance but more proactive measures such as job training, job placement assistance, and start-up business support. The proposed remedies will require extensive engagement on the part of the government (federal, state, and local) with the objectives to provide sustainable relief to distressed minority families and to support those families to enable minority children to pursue educational attainment. The proposed government intervention is necessary to break the poverty cycle: it begins with an individual's failure to secure educational attainment, which results in an economically insecure life; then, when that individual has a child, the child's economically insecure life leads to his subsequent failure in educational attainment. The problem repeats from one generation to the next.

To this end, the amendment can mandate federal and state governments to survey the specific circumstances of economic discrepancy with relevant minority groups, identify causes and feasible remedies, and develop policies and measures to improve the economic status of minorities. The mandate should also require and facilitate active government engagement with minority groups in every aspect of this process, including investigation, identification of the problems, development of policies, and implementation of specific measures. The cooperation and collaboration among federal, state, and local governments will also be essential, and the amendment should specify the processes and procedures for this cooperation and collaboration. The amendment should also mandate the government to engage and cooperate with the private sector, including industries, businesses, and NGOs, and seek solutions as to how

84) Relevant government agencies, such as the U.S. Department of Labor and the Department of Education, issue periodic statistical reports, but there is a need for more extensive assessments with concrete recommendations to improve the economic status of minorities.

85) *Children Whose Parents Lack Secure Employment by Race and Ethnicity in the United States*, *supra* note 60.

minorities can be educated, trained, recruited, and retained in jobs that provide sustainable income or sustainable self-employment opportunities. The amendment may also provide for incentives for employers who employ minorities in industries in which they are underrepresented.

The proposed legal remedy will also require institutional support: to implement the proposed legal reform, it would be necessary to develop a bipartisan government institution, such as a federal commission. The current federal agency, the Equal Employment Opportunity Commission (EEOC), established under the 1964 Civil Rights Act,⁸⁶⁾ has a limited mandate to administer and enforce civil rights laws against workplace discrimination.⁸⁷⁾ The proposed commission should have a more extensive mandate: including periodic investigations of the status of economic disparity; development of policies and implementation of measures to facilitate educational attainment for minorities and meet the immediate needs of distressed minority families; and collaboration with state and local governments to provide longer-term support for minority families with the aim to provide a nurturing and stable family environment for the children. These remedies will require close cooperation and coordination with state and local governments, minority communities, as well as the relevant private sector; thus, the proposed commission should ensure that these constituents are represented in the development of relevant policies and implementation measures. The proposed legal and institutional reform will represent a major paradigm shift by which active government engagement with minorities will be at the core of national efforts to improve the economic status for minorities and to bring this nation closer to the fulfillment of the promise of the civil rights movement.

V. Conclusion

The civil rights movement, the objective of which was to protect the equity

86) 42 U.S.C. §§ 2000e 1-5.

87) See *Overview*, U.S. Equal Emp. Opportunity Comm'n., <https://www.eeoc.gov/overview> [<https://perma.cc/4SY3-827P>] (providing an overview and explaining the authority of the EEOC).

and dignity of all people, has led the United States to an improved nation that secures equal political rights without legal discrimination among races. The achievement of this noble objective required the intervention of the federal government in the form of legislation at the federal level and enforcement of the laws by the federal government. The objective was not achieved by the voluntary cooperation of the state and local governments. Indeed, some resisted such interventions by the federal government, viewing them as interfering with the traditional freedom enjoyed by state and local communities. The legislative, judicial, and administrative interventions at the federal level were necessary to achieve this political justice across the nation because some state and local governments did not support the civil rights movement and instead attempted to oppress it by using state and local laws that were inconsistent with political justice to all.

An analogy may also be drawn in the promotion of economic justice, without which American society cannot fully meet the objective of the civil rights movement. The protection of the equity and dignity of all people is not limited to political terms. America cannot achieve economic equality with the present racial economic disparity that put minorities in the United States under the poverty line. Decades of effort to prohibit racial discrimination in employment and to promote minority employment has largely failed to bridge racial economic disparity. Just as the achievement of equal political rights required intervention by the federal government, the realization of economic justice also requires support and coordination from the federal government. To that end, this paper proposes legal and institutional reform that will mandate the federal government to facilitate economic development for minorities. The proposal is not to undermine traditional state sovereignty and local autonomy. On the contrary, it is to reinforce them by providing means to achieve economic development that is otherwise not feasible under the constraints of state and local government budgets. The proposed role for the federal government is not an alien concept in many other successful developed countries in which the national government plays a more active role in economic development. There were also times when the federal government took a more active role in the economy.⁸⁸⁾ The proposed role for the federal government will be

consistent with the objective of the civil rights movement and will be necessary to bring economic justice for all.

The proposed extensive government engagement with racial economic disparity has never been tried, at least not to the extent that is suggested in this paper. As with everything else in life, there will be successes and failures with government-led development initiatives, and a better question is whether government support will create enough winners to achieve economic development for minorities, and minimize the adverse outcome of bureaucracy. The neoliberal approaches limiting government “intervention” have failed to promote economic development for minorities. Thus, there is a need for a new paradigm, a new legal and institutional approach that promotes coordination among federal, state, and local governments and cooperation between the private and public sectors. Effective political leadership as well as the will of minorities to overcome poverty and dependency will be the core elements of success. Given the racial economic disparity, there is a call for a new phase of the civil rights movement to achieve economic equality through the promotion of economic development, as advocated by Dr. King in his last days.

88) *See supra* note 4, for a discussion of the federal economic initiatives in the preceding periods.

〈한글초록〉

미국에서 인종 간 경제적 격차와 법

이용식

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1950년대 미국에서 민권운동이 시작된 지 60년이 지났으나 모든 사람들의 평등과 존엄을 이루려던 민권운동의 목표는 미국 사회에서 아직 완전히 실현되지 않았다. 그간 민권운동이 인종 간, 성별 간, 민족 간의 평등을 구현하는데 있어서 많은 공헌을 했으나 인종 간의 심각한 경제적 격차는 계속 존재하고 있다. 민권운동의 지도자 마틴 루터 킹 목사는 “이제 우리의 투쟁은 진정한 평등을 이루는데 있다. 바로 경제적 평등이다.”고 선언했으나 그 목표는 아직도 이루어지지 않고 있다. 점증하는 인종 간 경제적 불평등은 미국사회에서 심각한 사회적, 경제적, 정치적 문제를 야기하며 미국사회를 민권운동의 이상에서 점차 멀어지게 하고 있다. 미국에서 인종 간 소득 및 부의 격차와 같은 구조적인 경제문제는 국가를 분열시키는 불평등을 심화시켰고, 이 문제들을 다루는 패러다임의 근본적인 변화가 필요하다. 인종 간 경제적 격차는 더 이상 개인의 노력과 자립을 통해서 극복될 수 없으므로 미 연방정부는 주정부와 지방정부 그리고 민간부문과의 긴밀한 협력과 조정을 통해 소수인종들의 경제적 발전을 돕는 방식으로 인종 간 경제적 격차 문제를 다루어야 한다. 미국이 민권운동의 목표들을 달성하기 위해 먼저 인종 간 경제적 격차를 줄이는 경제적 개발을 이루어야 한다.

주제어(key words): 민권운동, 인종 간 경제적 격차, 경제개발, 아시아계 미국인들의 경험, 법과 개발.

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