

Collision Course

The Strange Convergence
of Affirmative Action
and Immigration Policy
in America



Hugh Davis Graham

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For Holter and Janet

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Contents

<i>Preface and Acknowledgments</i>	ix
1 Introduction	1
2 Civil Rights Reform in the 1960s	13
3 Immigration Reform in the 1960s	35
4 Origins and Development of Race-Conscious Affirmative Action	65
5 The Return of Mass Immigration	93
6 The Strange Convergence of Affirmative Action and Immigration Policy	131
7 Conclusion	165
<i>Notes</i>	201
<i>Index</i>	229

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Preface and Acknowledgments

This book reconstructs the development of American national policy concerning civil rights and immigration issues over the entire twentieth century. My own expertise concentrates only on the second half of that century, and it emphasizes civil rights more than immigration policy. For the period prior to World War II, I rely chiefly on the secondary literature, and throughout the pages that follow I have limited citations to the main published sources. This includes, where possible, useful web sites on the Internet for many of the organizations in civil society seeking to influence policy outcomes. The bibliography is captured in the footnotes, not listed separately. This lightens the burden and clutter of research citation in the book. But it obscures the contributions to the book's analysis of years of archival research, most of it in the presidential libraries. Uncited in the pages that follow are tens of thousands of documents examined in the presidential libraries in the past twenty years.

My guides in this long, rewarding, and occasionally exhausting process of exploration were the unfailingly helpful archivists at the presidential libraries. For research on civil rights policy, this includes the full run of libraries covering the years 1961–1989—the Kennedy, Johnson, Nixon (a presidential papers project in the National Archives, not a presidential library), Ford, Carter, and Reagan libraries. Research in the Carter and Reagan libraries covered immigration as well as civil rights policy. For assistance in this research, I am especially grateful for the assistance of supervising archivists David Alsobrook and Martin I. Elzy at the Carter Library and Dennis Daellenbach at the Reagan Library.

Writing this book was delayed in the late 1990s by illness. The delay provided one advantage by permitting inclusion of the policy controversies surrounding the 2000 census and the substantive findings drawn from the census surveys. For patient support during this period, including generous financial assistance, I am indebted to a number of academic officers at Vanderbilt University. They include, in the College of Arts and Science, deans V. Jacque Voegeli, Madeleine M. Goodman, Ettore F. Infante, and John H. Venable. They also include deans Russell G. Hamilton and Peter

W. Reed in the Graduate School and History department chairmen Simon Collier and Marshall C. Eakin. For graduate research assistance I am pleased to thank Craig A. Kaplowitz at Vanderbilt and Christina Ziegler at the University of California, Santa Barbara. Throughout the research and writing the support at Vanderbilt of William S. Longwell and his staff in the Microcomputing Lab was generous, patient, and essential.

Hugh Davis Graham
Santa Barbara, California
July 2001

Introduction

In the early 1990s, against a backdrop of economic recession and rising job insecurity in the United States, controversy over affirmative action and immigration policy intensified. For the first time since the two issues emerged in the 1970s, they were connected in the public eye. Especially in California, where shrinking defense contracts and heavy immigration from Latin America and Asia increased economic anxiety, opponents of affirmative action preferences and high levels of immigration linked their arguments. Native-born Americans unfairly suffered rising unemployment, these critics claimed, because by hiring immigrants, employers bought cheap and docile labor while satisfying minority hiring requirements imposed by the government.¹

In 1994, California voters passed Proposition 187, an initiative written to deny access by illegal immigrants to public schools, welfare assistance, and other public benefits. That same year, support for Proposition 187 helped California's Republican governor, Pete Wilson, win reelection. In 1995, the University of California regents, encouraged by Governor Wilson, an ex officio regent, prohibited affirmative action preferences in university admissions, employment, and contracts. In 1996, President Bill Clinton signed a bill stripping significant welfare and health benefits from unnaturalized immigrants, and California voters passed Proposition 209, the California Civil Rights Initiative (CCRI), banning affirmative action preferences by state and local governments. In 1998, voters in Washington state passed a similar initiative barring minority preferences by government agencies.

Also in 1998, California voters passed Proposition 227, which terminated the state's massive program of bilingual education and replaced it with English immersion as the standard instructional model. Backers of

Proposition 227 charged that bilingual education in California, overwhelmingly a Spanish-language program, isolated Hispanic students from the mainstream curriculum, replaced rigorous instruction in the basics with a curriculum keyed to boosting Latino self-esteem, worsened student test scores and dropout rates, and won jobs for thousands of Spanish-speaking teachers and aides who were otherwise unqualified for certification. The native-language instruction required in bilingual education programs, seen nationally by Latino political leaders as a key affirmative action remedy, was defended by teachers' unions and school administrators. Polls showed that Proposition 227 was supported by Republicans, whites, Asians, and older voters and was opposed by Latinos and blacks.²

News reports and press releases from groups opposing affirmative action in the 1990s featured stories of immigrants, legal as well as illegal, winning jobs through affirmative action preferences. It was indefensible, critics contended, to grant preferences on the basis of ancestry to recently arrived immigrants as a remedy to compensate for historic discrimination in the United States. News stories of immigrants winning affirmative action benefits periodically revealed bizarre examples. According to these reports, the Fanjul brothers in Miami, for example, multimillionaire businessmen with major minority business set-aside contracts in Florida, fled Castro's revolution in 1960, yet retained their Cuban citizenship for tax-avoidance purposes. The Rodriguez brothers, immigrants from Portugal and owners of three large construction and paving companies in the Washington, D.C., area, won 60 percent of the district's minority set-aside contracts between 1986 and 1990. A black businessman in Cincinnati, suing to prevent Governor George V. Voinovich from opening Ohio's minority contract set-aside program to Asian Indians, won a decertification order from the attorney general but lost in federal court. Federal Judge Tommy L. Thompson ruled that Asian Indians as "Orientals" were due the same privileges as blacks under federal affirmative action regulations. At the University of Michigan, the faculty senate discovered that large percentages of minority faculty recruited under the university's affirmative action program were foreign-born. University of Michigan faculty records showed that 18.8 percent of black faculty and 23.3 percent of Hispanic faculty were not U.S. natives. For Michigan faculty of Asian/Pacific Islander ancestry, 56 percent of them immigrants, affirmative action had become an engine of overseas recruitment.³

Supporters of affirmative action feared the newly conjoined opposition of antipreference groups and immigration restrictionists. According to Ricky Gaull Silverman, vice chairman of the Equal Employment Opportunity Commission (EEOC), immigrant participation in affirmative action "is

the ultimate nightmare of affirmative action. It is its Achilles heel."⁴ Lawrence H. Fuchs, former board member of the Mexican American Legal Defense and Education Fund (MALDEF), wrote in the *Washington Post* in 1995 that immigrant inclusion in affirmative action programs "is an historical accident for which there is no possible justification."⁵ Defenders of affirmative action generally avoided the topic of immigrant participation. The Clinton administration's comprehensive review and defense of affirmative action programs, produced by a presidential task force in 1995, nowhere mentioned immigration or immigrant participation.⁶ President Clinton's Dialogue on Race Commission, appointed in 1997 and chaired by historian John Hope Franklin, concentrated on black/white relations and criticized what Franklin called "imagined conflicts between African Americans and the Latino and Asian communities."⁷

Similarly, the major studies of immigration published during the 1990s avoided discussing affirmative action. *The New Americans*, a study of the effects of immigration on American life released in 1997 by the National Research Council, an arm of the National Academy of Sciences, addressed controversial social issues such as job displacement, residential segregation, racial identification, crime, illegal immigration, and interethnic tensions, but did not mention immigrant participation in affirmative action programs.⁸ The U.S. Commission on Immigration Reform, in its fall 1997 final report, was equally silent on affirmative action. *Immigration in a Changing Economy*, a widely praised study of the California experience released in 1997 by RAND, discussed the benefits of affirmative action programs for African Americans but not for immigrants.⁹

Why, in the face of growing controversy during the 1990s over affirmative action for immigrants, have studies of immigration been silent on affirmative action and studies of affirmative action similarly silent on immigration? One reason is segregation of the evidence. Although mountains of statistical data have been published to document trends in both policy areas, almost no connection is made between them. Analysts wanting to chart immigrant use of affirmative action programs can find abundant documentation describing beneficiaries by race, gender, national origin, age, education, and many other attributes. But the documents generally do not include information on country of birth or citizenship status. The "rights revolution" that spun out of the 1960s protected individuals and members of racial and ethnic groups and rarely stipulated a citizenship requirement. The American constitutional tradition, generally strengthened by the federal courts since the 1960s, required equal protection for persons under government jurisdiction, not citizens of the United States per se. The Civil Rights Act of 1964 required confidentiality in records kept by the EEOC

and employers. The Immigration Reform and Control Act of 1986 prohibited employers from seeking national origin or citizenship status from job applicants.

A second reason for the lack of connection between immigration and affirmative action data is the desire of government officials and organizations representing minority groups to avoid the divisive issue. The civil rights coalition, supporting both affirmative action and liberal immigration policies but anxious not to connect them, has benefited from the difficulty experienced by opponents in identifying immigrants in affirmative action programs. Fearing that controversy over immigrants enjoying affirmative action preferences over native-born Americans would split the coalition and endanger the programs, civil rights organizations have avoided the topic. Elected officials who have supported the programs and government agencies administering them have followed the same strategy.

The Liberal Coalition and the Politics of Affirmative Action and Immigration

On both issues, the liberal coalition in Congress has been represented by the Leadership Conference for Civil Rights, an umbrella lobby speaking for more than 160 organizations, among them the American Federation of Labor-Congress of Industrial Organizations (AFL-CIO), the National Association for the Advancement of Colored People (NAACP), feminist and Latino rights groups, and liberal religious organizations. Widely respected for its lobbying acumen, the Leadership Conference effectively supported the Johnson administration in passing the civil rights legislation of the mid-1960s, including the immigration reform of 1965. In the Reagan and Bush administrations, the Leadership Conference defended affirmative action programs and, especially in Reagan's second term, after the economy strengthened and the Democrats recaptured the Senate, won expanded affirmative action requirements in the large federal procurement budgets for defense and transportation. Although the Leadership Conference's liberal constituencies generally also opposed immigration restriction efforts, the immigration expansion coalition was skewed toward Latino groups, such as the National Council of La Raza and the Mexican American Legal Defense and Education Fund (MALDEF), working closely with the Hispanic Congressional Caucus. The expansionist coalition's lobbying was coordinated in the 1980s and 1990s by the National Immigration Forum, an umbrella group funded substantially by the Ford Foundation and modeled on the Leadership Conference.

Before 1960, the nation's leading African-American organizations (such as the NAACP) and labor organizations (such as the AFL-CIO) supported equal individual rights but opposed large-scale immigration as threatening to native American wage levels and job security. After 1970, however, these positions softened, partly because the growth of affirmative action programs with minority preferences broadened the coalition base for protected classes. Increasingly during the 1980s and 1990s, the civil rights and immigration expansionist coalitions meshed their coalition lobbying. The leading immigrant restrictionist organization, the Federation of American Immigration Reform (FAIR), was disappointed by weak support from black and labor organizations, even though FAIR's restrictionist argument emphasized the economic harm that mass immigration brought to low-wage workers.

Seeking to protect immigrants, illegal as well as legal, the liberal coalition successfully lobbied for language in immigration statutes (particularly the immigration amendments of 1986 and 1990) that prohibited employers from discriminating against potential hires on the basis of national origin or citizenship. The liberal coalition also backed provisions in the Immigration Reform and Control Act of 1986 (IRCA) providing amnesty for what would prove to be 3 million illegal immigrants who could document lengthy residence, and creating a weak system of employment eligibility identification that was easily evaded by illegal immigrants.¹⁰

Legislative leaders and political scientists have long valued the role of such interest-group lobbying in the process of bargaining and compromise that has built the complex American regulatory state. Journalists, however, refer to networks of knowledgeable insiders "inside the beltway" who shape regulatory regimes that bewilder American voters. The disconnection between these two worlds helps explain why public opinion on many major issues of public policy leans in one direction while policy heads in another. Examples include gun control, abortion rights, immigration restriction, and race-conscious remedies in civil rights (affirmative action). On these issues, citizen majorities in opinion polls persistently favored the first three and opposed the fourth, while legislative leaders, heavily lobbied by intensely committed organized interests, generally made policies in the opposite direction.

This is an old story in American political life, the story of interest groups winning benefits through insider deals not understood by the unorganized taxpayers. It is rational, self-interested political behavior, given our system of government, which thrives on bargains struck between organized interests seeking benefits, elected officials seeking campaign funds and votes, and government agencies seeking expanded programs and budgets. Journalists in the

1950s began calling these mutual back-scratching arrangements "iron triangles." They were originally forged in the century following the Civil War by economic interests (shippers, farmers, cattle and lumber combines, airlines) seeking government benefits (canals and dams, irrigation subsidies, public land grazing and timber rights, prime passenger routes) from congressional committees and the agencies they fund and oversee. Iron triangles were produced by insider deal making between lobbyists and senior congressmen in closed markup sessions and conference committees. They were lawful but had the smell of pork, of tax dollars used to benefit special interests, usually at the expense of unorganized consumers. Understandably, groups benefiting from these arrangements have disliked the glare of publicity.¹¹

In the 1960s, iron triangle bargaining spread to new constituencies and new government programs were created to serve them. Organizations representing racial and ethnic minorities, feminists, consumers, and environmentalists mobilized in social movements and demanded new laws and government programs to protect their interests.¹² In the breakthrough civil rights legislation of the 1960s, the governing principle was equal individual rights. Discrimination on account of race, religion, and national origin was prohibited on a nationwide basis. By 1980, however, controversy arose over the spread of affirmative action programs requiring minority preferences in employment, college admissions, and government contracts. Despite the success of a national conservative movement led by Republican Ronald Reagan, affirmative action programs continued to expand. By the 1990s, controversy over affirmative action preferences included immigration policy. Yet the contradictory political pattern seen since the late 1960s persisted. On the one hand, public opinion polls and voter initiatives showed substantial American majorities opposing minority preference policies and supporting restricted immigration. On the other hand, public policy on civil rights and immigration seemed remarkably immune from the rising discontents of public opinion.¹³

For example, on civil rights policy the Reagan administration called for deregulation and an end to government policies favoring one racial or ethnic group over another. Yet during the Reagan-Bush years, Congress expanded minority contract set-asides in federal procurement, strengthened affirmative-action regulation in higher education, and for the first time (in 1991), required a "disparate impact" standard of proportional minority representation in employment.¹⁴ In immigration policy, the immigration expansionists emerged the legislative victor in both the Immigration Reform and Control Act of 1986 and the immigration amendments of 1990.¹⁵ Despite the partisan reversals of the post-1968 pattern that produced a Democratic president after 1992 and a Republican Congress after 1994, the elected branches in Washington continued largely the same affir-

mative action and immigration policies. The Republican Congress declined, despite extensive hearings in both chambers, to advance a bill curbing affirmative action preferences. In 1998, the Republican-controlled Congress quietly attached to an appropriation bill a minority contract set-aside requirement of 10 percent of the entire federal procurement budget. This congressional earmarking by racial and ethnic ancestry, totaling an unprecedented \$117 billion, projected an expanding federal program of affirmative action into the twenty-first century. Yet it passed largely unnoticed in the American media.¹⁶

The Unintended Consequences of Reform

How can we account for this strange story of American policymaking, which produced such startling contradictions between the intended and unintended consequences of reform? Legislation passed in the 1960s to end a notorious and highly elaborated system of racial preference in the South did so with gratifying finality. But in the process of implementation in the 1970s, the civil rights reform movement extended nationwide another system of preferences based on ancestral, cultural, and bloodline distinctions among citizens. Parallel liberal reforms in immigration policy, passed to end national origin preferences but not appreciably to change the character or volume of immigration to America, led instead to massive immigration from Latin America and Asia.

The elected branches in the liberal breakthrough of 1964-65 passed three great civil rights laws: the Civil Rights Act of 1964, the Voting Rights Act of 1965, and the Immigration and Naturalization Act of 1965. All were based on the principle of nondiscrimination by race or national origin. In the years immediately following, the three laws were widely hailed for achieving their intended consequences. The Civil Rights Act broke the back of Jim Crow segregation in the South. The Voting Rights Act, by guaranteeing equal access to the voting booth, buried the racist demagoguery so long characteristic of white supremacy in the South, and built black voting strength (and, in the Southwest, Latino electoral power as well) that commanded courtship by politicians. The Immigration and Naturalization Act ended a long-standing policy, so repugnant to liberal values and so embarrassing in cold war competition, of immigration quotas by national origin preference. The spirit of the triumphant reforms of 1964-65 was captured by the image of a color-blind Constitution, where racial and ethnic origin was at long last ruled irrelevant to public policy.¹⁷

Then came the unintended consequences of reform. Government agencies and federal courts approved affirmative action policies, based ironically

on the nondiscrimination laws of 1964-65, that imposed preferences, justified to compensate for past discrimination and designed to win proportional representation for minority groups in education, jobs, and government contracts. Similarly, in immigration policy, the reforms of 1965, intended to purge national origin quotas but not to expand immigration or to change its character, produced instead a flood of new arrivals that by the mid-1990s exceeded 30 million people, more than three-quarters of them arriving not from Europe but from Latin America and Asia. Despite the purging of racial and ethnic preferences by the 1964-65 laws, the ancestry of most immigrants in the 1990s entitled them to status as presumptive victims of historic discrimination in the United States. As members of protected classes, they enjoyed priority over most native-born Americans under affirmative action regulations.¹⁸

Congress in the 1960s never intended to create such a system. And it is doubtful that any Congress (or White House) today, in the 21st century, would build such a system anew and defend it before voters. So how did the intended consequences of the 1960s produce the unintended consequences of today? Something happened in the American political system that scrambled traditional political alignments and greatly weakened the connection between public opinion and the policymaking process.¹⁹

In the pages that follow I argue that a sea change in American political life occurred in the late 1960s that fundamentally changed the dynamics of political competition. The three-way election of 1968 ushered in a new American political order of divided government. It led not to a new majority party controlling both elected branches of government in Washington, as had commonly occurred in previous party realignments in American history. What emerged instead was a system of split partisan government in Washington, with one party dominating the presidency and the other controlling Congress (the single-term Carter administration was the exception proving the rule). One goal of this book is to explore how the new political order of divided partisan government affected the direction of civil rights and immigration policy. I argue that the unintended consequences of the 1960s reforms were shaped and accelerated by a fractious new system of divided authority that was sought by voters yet confused the electorate. It increased the capacity of organized interest groups to win expanded benefits from the regulatory state, and weakened the connection in policymaking between public preferences and government behavior. American voters were increasingly puzzled and dissatisfied by their national government. They were frustrated when majority opinion on major issues, such as abortion rights and gun control on the left, or color-blind rights enforcement and immigration restriction on the right, was ignored or short-circuited in government policy.

Telling the Story

The story of the origin and convergence of affirmative action and immigration policy is told in five narrative chapters, beginning with chapter 2. It describes the passage of the great civil rights laws of the 1960s. It includes an analysis of the chief target of civil rights reform, the biracial caste system of segregation in the South. Called the "Jim Crow" system from roots in antebellum minstrelsy, segregation was in part a product of conservative reformers before World War I in the southern states whose white supremacy regimes constituted an elaborate system of racial preference. The centerpiece of chapter 2 is the breakthrough legislation of 1964-65. The chapter also includes discussion of the original Kennedy-Johnson model of affirmative action, asking in what ways it was similar to and in what ways it differed from the nondiscrimination policies of 1964-65 and the race-conscious remedies of "hard" affirmative action developed in the 1970s.

Chapter 3 shifts to immigration policy. As in the chapter on civil rights, it reaches back to reconstruct the development of the system the reformers were attacking. The target in this case was the national origins quota system constructed by Congress in the 1920s. Immigration reform leaders in the Kennedy and Johnson administrations and in Congress were supported by the same liberal coalition backing civil rights reform. Both sets of reform rested on liberalism's core doctrines of nondiscrimination and equal individual rights. But there were important differences as well. Whereas civil rights reform was driven by a mass-based social movement and was characterized by intense controversy, polarized voting blocs, regional tension, and high media visibility, immigration reform was primarily an inside-the-beltway effort, engineered by policy elites largely in the absence of public demand or controversy.

Chapter 4 returns to civil rights policy and examines the puzzle of unintended consequences. Implementation in the 1970s of the nondiscrimination laws of the 1960s led to compensatory preferences for minorities (or "reverse discrimination," in the 1970s language of affirmative action critics). Beginning in 1969 with the Nixon administration, the nondiscrimination provisions were transformed into affirmative action programs benefiting an expanding array of protected class groups. African-Americans, the chief beneficiaries of both the intended reforms of 1964-65 and the minority preference programs of the 1970s, were joined as claimants by mobilizing constituencies representing feminists, Hispanics, the disabled, American Indians, and to a lesser extent the aged, Asians, and gays and lesbians. Paralleling this was an effective mobilization by environmentalists and advocates of consumer rights and worker safety. This was America's postwar "rights revolution." It was led, as in the 1950s and 1960s, by

the black civil rights mobilization, but it generally enjoyed broad support from the liberal coalition. In the 1970s the left wing of the Democratic Party rallied to support race-conscious affirmative action policies that the liberal coalition had disavowed in the 1960s. This split the Democrats' New Deal coalition, alienating liberals faithful to equal individual rights and European ethnic workers resentful of minority preferences. As a consequence, the conservative Republican movement under the leadership of Ronald Reagan captured the presidency.²⁰

Chapter 5 addresses unintended consequences in immigration policy. It describes the surprising growth in the 1970s and 1980s of immigration to America, both in numbers and in new patterns of national origin. Despite repeated pledges, and by all evidence despite sincere beliefs, by immigration reform leaders that the 1965 legislation would not significantly change the number or origin of immigrants, the 1965 law led to a tidal wave of immigration that coincided with economic distress during the 1970s. Polls showed rising public demand for Congress to restrict immigration and prohibit hiring undocumented workers. Congress passed a compromise immigration control law in 1986 with an employer sanctions program that failed and an amnesty provision for 3 million illegal immigrants that increased chain immigration. In the 1990s immigration exceeded 1 million annually and populist protests against immigrant job competition reshaped politics in high-immigration states, especially California.²¹

Chapter 6 describes the convergence of affirmative action and immigration policy. Convergence was unlikely and unanticipated, given the common 1960s grounding of both civil rights and immigration reforms in liberal nondiscrimination doctrine. But the preconditions for convergence were inadvertently set when early equal employment laws led government bureaucrats to design forms to identify who was a minority and where minorities were employed. From this emerged a color-coded minority identification scheme that made no distinction between native and immigrant workers. As a consequence, when immigration surged so dramatically from Latin America and Asia, immigrants increasingly competed with native workers, displacing black low-wage workers and unsettling the liberal coalition.

Collision Course

The title of this book, *Collision Course*, has a deterministic ring. It brings to mind an image of ships converging in the fog or of the *Titanic* heading for a disastrous rendezvous with an iceberg. But this book is not about a collision of catastrophic portent. And it is certainly not about inevitabilities.

The converging path of affirmative action and immigration policy in America, widely noticed in the economic recession of the early 1990s but little noticed before then, produced significant public agitation, especially in western states suffering from declining defense expenditures. The political and social collision of the 1990s, though eased by the end of the decade, sharpened questions about immigration and raised new questions about affirmative action that revealed deep fault lines in its policy logic.

The immigration debate of the 1990s, which followed restrictionist setbacks in the immigration laws of 1986 and 1990, sharpened both quantitative and qualitative questions. Why does American policy permit such a massive inflow of illegal entries? Why does policy for legal entry admit such huge numbers of poorly educated immigrants, ill suited for the knowledge-based economy of the future and requiring heavy social service expenditures? Why does U.S. policy allow immigration flows to be determined externally, and therefore arbitrarily, by kinship ties rather than internally by national needs? Why does the United States lack a modern, computer-based worker identification system, common to most other developed countries?

To these challenges by restrictionists, raised chiefly by FAIR, which led the drive behind the Simpson-Mazzoli bill in the 1980s, were added a green argument—that overpopulation and urban congestion were worsened by mass immigration, overburdening America's carrying capacity and accelerating destruction of the environment. Politically, however, these arguments proved less persuasive than the appeal of cheap labor and the Statue of Liberty tradition. As the economy rebounded in the 1990s, immigrants replenished an aging workforce, unemployment fell to thirty-year lows, the restrictionist drive weakened, and populist agitation over immigration subsided.

The intensified debate prompted by converging immigration and affirmative action issues had a more profound impact on the affirmative action controversy. News stories featuring Hispanic immigrants benefiting from minority contract set-aside programs, or featuring immigrants from Asia boosting minority employment statistics in university science and engineering faculties, raised questions about why these groups were privileged over native nonminority Americans. Why did immigrants qualify for affirmative action benefits at all? These questions led ineluctibly to others: Why were all Hispanics in the U.S. accorded protected-class status irrespective of income and education? Why were all affluent and privileged black Americans, a group that had grown substantially since the 1960s, given affirmative action benefits when impoverished white Americans were not? Why were Indonesian Americans, a recent and prosperous group with no history of oppression in the United States, given Small Business Administration grants and minority set-aside contracts under the federal government's 8(a) affirmative action

program while Jews, with a long history of discrimination in America, were excluded? Why were women, who also had a long history of discrimination in America but who mirrored the general distribution of the population by socioeconomic class, accorded protected-class status as a group irrespective of wealth?

These were hard but important questions, searching the history and interrogating the logic of affirmative action, seeking a coherent rationale consistent with social justice. But the answers were difficult to find. When the census year 2000 turned the nation's calendars to a new century and a new millenium, a new generation of Americans, children of a mobile, racially and ethnically mixed society, challenged the very heart of the color-coded classification system upon which the entire system of affirmative action rested.

As the twenty-first century arrived, mass immigration, continuing unabated, and minority preference policies, weakened in the 1990s by federal court rulings and state referenda but still entrenched in the industrial economy and in government and academic institutions, were targets likely to be attacked again in the wake of the next economic downturn. We don't know whether or when this might occur. Our present task is to understand how the American political system, operating under significantly altered dynamics since the late 1960s, bent the parallel but largely unconnected trajectories of two liberal reforms of the 1960s toward a converging path that produced such unintended consequences.

Proponents of affirmative action, under attack during the Reagan presidency, drew strength from the immigration coalition and blunted most conservative reforms. Then the affirmative action coalition rallied in turn to help immigration expansionists neutralize the strong restrictionist reform drive of the 1980s. By the end of the 1990s, however, mass immigration from Latin America and Asia had undermined affirmative action's original, black-centered rationale. It did this by bringing to America more than 25 million immigrants whose national origins automatically qualified them as official minorities eligible for affirmative action benefits. This extraordinary development—affirmative action eligibility for millions of immigrants, illegal as well as legal—seemed constitutionally unavoidable in the reasoning of the federal courts. Yet politically and philosophically, it found almost no defenders in the ranks of American opinion leaders. By the early years of the new century, immigration expansion seemed secure but affirmative action was in retreat. How and why did these events occur, and with what consequences? Finding some answers to these questions is the goal of this book.

Civil Rights Reform in the 1960s

The story of civil rights reform in the 1960s should begin not with the reformers and their legislation but with their chief target, the Jim Crow system in the South. In their lifetimes they had watched segregation expand and harden its defenses against external attack. Foremost among their weapons was a liberal belief in equal individual rights and a vision of a color-blind Constitution. Since its founding in 1909 in an environment of national racial violence and southern apartheid, the NAACP had pressed relentlessly for a simple, radical remedy, lethal to Jim Crow, so that racial classifications would play no legitimate role in American public policy. Experience with segregation convinced liberals that racial designations by government, like the legal institution of slavery itself, were inherently pernicious and expansionist.¹

The story of segregation's origins and development has been told in scores of books, some of them widely read, especially historian C. Vann Woodward's *The Strange Career of Jim Crow*.² For purposes of this study, however, two aspects of the story of segregation, as prelude to and target for the reforms of the 1960s, have not been well told or widely understood. One is the story of intended consequences, the story of segregation not only as white racist oppression, as a brutal assertion of racial hegemony of southern whites over blacks, but also as a story of conservative reform turned sour. It is a story of a new wave of race-conscious government policies, adopted between 1895 and 1915, whose intentions included not only the subordination of blacks but also the benign reformist goals of ending mob lynching, purging southern political life of corruption and violence, and educating the children of the freed men.

The second story is one of unintended consequences. Its inadvertent victims are southern whites themselves, trapped ironically in a political sys-

tem designed to maintain white supremacy. It was a system loaded against the region's have-nots of both races. The South's racial caste system indisputably punished black southerners physically and traumatized them psychologically. But the creed of white supremacy also brutalized whites psychologically. Like an occupying army, southern whites were corrupted by the power and status derived from racial hegemony. North Carolina journalist Wilbur Cash, in his great cri de coeur of 1941, *The Mind of the South*, described a "proto-Dorian code" that bound poor whites in a brotherhood of solidarity with elite whites, a pact that reified whiteness and elevated the status of ignorant and impoverished whites over all blacks.³ In 1942, a national poll showed only 2 percent of southern whites (compared with 40 percent of nonsouthern whites) agreeing with the statement that "white students and Negro students should go to the same schools." Only 21 percent of southern whites (compared with 47 percent of nonsouthern whites) agreed that "Negroes are as intelligent as white people."⁴ By maintaining duplicate, poorly funded school systems in each state, the tax-poor South firmly anchored itself in the bottom tier of national rankings on school achievement for white as well as for black children.

Racial Segregation as a Conservative Reform

Conservative political leaders in the South in the 1890s, most of them Democrats and many of them later active in the southern Progressive movement, feared the violence, social turmoil, and populist insurgency that was rampant in the depressed region. There is no disputing that the construction of Jim Crow, separating the races in the turn-of-the-century South, was chiefly an act of racial subordination. But in the hands of the conservative political leaders who dominated state politics, segregation, though primarily a method of social control, was also a method of social amelioration. To stabilize a system of cheap and docile farm labor in the South, conservative landowners and their merchant-banker-lawyer allies needed to dampen racial violence and provide blacks with a minimum stakehold to anchor them to the system. To achieve this, they moved to protect black citizens from violence and to provide on a segregated basis social services that either were not previously available or were spotty and uncertain. Specifically the Jim Crow reformers, by disfranchising most African-Americans and large numbers of poor whites as well, sought to purge the South of widespread vote buying and electoral fraud and to shrink the electorate to a safe core of middle-class white voters interested in clean government, low taxes, and minimal social services. The reformers, as pro-

business "New South" enthusiasts, and as both southern Progressives and segregationists, sought to end the contagion of lynching that depressed industrial investment in the South and mocked the region's civic claims to Christian virtue. Most positively, in common with Booker T. Washington, the reformers sought to guarantee a minimal standard of education to African-American citizens and to provide for the first time some systematic access to minimal social welfare services, such as hospitals and homes for the blind, deaf, and dumb.⁵

In *The Strange Career of Jim Crow*, Woodward emphasized the timing of Jim Crow's arrival, as documented by the spread of state and local segregation laws, initially by ordinances in the 1890s segregating passenger trains and steamboats. This first wave of Jim Crow laws in transportation—the type unsuccessfully challenged by Homer Plessy in the U.S. Supreme Court's landmark *Plessy v. Ferguson* decision of 1896, which upheld "separate but equal" schools—coincided with the explosion of racial lynching in the South. Lynching deaths doubled from 96 in 1890 to 184 in 1891, and averaged 154 a year until falling back below 100 in 1902. According to the statistics recorded by Tuskegee Institute, 1,689 lynchings were recorded in the South between 1891 and 1901. Of these, 452, or 27 percent, of the victims were white, a testimonial to the strength of the region's vigilante tradition irrespective of the race question. However, 73 percent of the victims were black. Typically, half of the black victims were accused of murder, a quarter were accused of rape, and a tenth were accused of theft. The alleged murder or rape of whites often produced a community auto-da-fé, accompanied by grotesque mutilation (often sexual) and burning of the victim's body. Especially in the rural and small-town South, racial lynchings provided a form of mass recreation, a spontaneous ritual of the church of White Supremacy.⁶ Mississippi, the state with the highest proportion of African-Americans (almost 60 percent in 1900), was the most racially lethal as well. Between 1882 and 1930, 500 of Mississippi's 545 lynching victims were black. In 1910 a black man in Mississippi, Nelse Patton, was accused of cutting a white woman's throat, and he was lynched by a mob led by one of the state's United States senators, W. V. Sullivan. "I led the mob which lynched Nelse Patton and I'm proud of it," Sullivan boasted to newspaper reporters. "I directed every movement of the mob. I wanted him lynched. I saw his body dangling from a tree this morning and I'm glad of it. I aroused the mob and directed them to storm the jail. I had my revolver but did not use it. I gave it to a deputy sheriff and told him to shoot Patton and shoot to kill. I suppose the bullets from my gun were some of those that killed the Negro."⁷ No charges were brought against any person for participating in the lynching.