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The Inequality of Equity Both Past & Present



THE INEQUALITY OF EQUITY BOTH PAST & PRESENT

By: Jack Brewer, Javon Price, and Alexandra Campana

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With the inauguration of President Biden earlier this year, calls for policy prescriptions that emphasize “equity” have been elevated to prominence amongst liberal academics, bureaucrats, and policymakers alike ([The White House, 2021](#)). However, this rise marks a return, rather than a first introduction, to the political stage for proponents of equity-focused policies, who have a long and checkered history in the American political system. Unfortunately, the same faults that rung true with equity-centric policies in the past echo today with their recent resurgence. Equity-based solutions, while cloaked in rhetoric about uplifting particular demographics, often produce negative consequences for the individuals they purport to help, and have failed to narrow inequality ([Kuhn et al., 2019](#)). By contrast, policies such as welfare reform that emphasize equality and individual empowerment have made progress in breaking the intergenerational transmission of disadvantage ([Corman et al., 2021](#)). Only with an embrace of the uniquely American ideal of equality and a rejection of its inferior substitute—equity—can the United States truly progress as a nation where “all men are created equal.” in not only the eyes of the law, but under the promise of God.

DEFINING EQUITY VS. EQUALITY

Before analyzing their effects, it is necessary to have working definitions of equity and equality. Merriam Webster defines equality as “the quality or state of being equal,” with equal being described as “like in quality, nature, or status” ([Merriam Webster, 2021a](#)). By contrast, Merriam Webster defines equity as “fairness or justice in the way people are treated” ([Merriam Webster, 2021b](#)). At surface value, these definitions may suggest little reason for concern and appear to be noble aspirations. However, the Milken Institute of Public Health at George Washington University gives alternative definitions that are closer to reality as played out in policy: “Equality means each individual or group of people is given the same resources or opportunities. Equity...allocates the exact resources and opportunities needed to reach an equal outcome” ([Milken Institute](#)). In short, equality refers to sameness in opportunities; equity refers to sameness in outcomes enforced by an outside entity – in this case the government – regardless of individual choices.

To create policy based on equality, simply treat all people the same and open the same doors of opportunity for everybody, conferring equal moral value and dignity upon each individual instead of reducing them to faceless members of some group identity. It becomes exceedingly more difficult to create policy based on equity, where ill-defined and arbitrary notions of “fairness” and a barrage of group identifications enter the narrative. What qualifies as fair, and who gets to define it? What groups should be winners and which should be

losers? Whereas equality seeks to set uniform ground rules and create opportunities for all that level the playing field, equity pursues a false ideal of uniform outcomes that requires treating people unequally and concentrating power in the hands of the anointed few with the privilege of imposing their vision of fairness on the rest of society. The absence of a principled and accepted definition of equity to rely upon opens the door to self-serving policies cloaked in the veneer of fairness. By contrast, equality offers an objective and reliable standard that makes the principle of law the guiding star for realizing America's full promise and the ideals of "life, liberty, and the pursuit of happiness" encapsulated by the Declaration of Independence and endowed upon citizens of the United States by their Creator.

Equality and equity are not complementary notions; they are often directly at odds, with equity advocates admitting that "the route to achieving equity will not be accomplished through treating everyone equally" ([Milken Institute](#)). In ways rarely seen or admitted by modern equity advocates, history shows that equity policies pursued to achieve "fairness" often perpetuate inequality. More broadly, arguments based on the premise that different races require different treatment to achieve some social end have created instances of deep injustice that stain America's history. As an example, look no further than the rise of Jim Crow laws.

ABANDONMENT OF EQUAL TREATMENT AND THE RISE OF JIM CROW

Early founding documents emphasized the ideal of the public good and equality of all before the law. The authors of the Federalist Papers believed the most dangerous threat to the Republic was factionalism – the government being taken over by a "majority or minority of the whole" that would use the levers of power to unfairly advance their favored group. James Madison wrote in Federalist 10 of factionalism that "the instability, injustice, and confusion introduced into the public councils, have, in truth, been the mortal diseases under which popular governments everywhere have failed." Factional control and favored groups would undermine faith in popular government and lead to a breakdown of the Republic as had been the case in other democracies throughout history.

The Declaration of Independence rejected factionalism and proclaimed that "all men are created equal" and had the equal right to pursue "life, liberty, and the pursuit of happiness." These rights were proclaimed in universal terms so they could ultimately be accessible to all people. Abraham Lincoln noted that while the promise of universal equal treatment was not immediately fulfilled at the founding, it was placed in the documents to pave the way for future generations to achieve equality under the law:

"They simply meant to declare the right, so that the enforcement of it might follow as fast as circumstances would permit. They meant to set up a standard maxim for a free society, which should be familiar to all, and revered by all... consistently labored for, and even though never perfectly attained, constantly approximated and thereby continually spreading and deepening its influence and augmenting the happiness and value of life to all people of all colors everywhere."

After the Civil War, African Americans throughout the United States, but particularly the South, were freed from bondage and allowed to begin new chapters in their lives. The United States Congress, run by the Republican Party, introduced a trio of amendments aimed at bolstering equal rights to Black Americans. The 13th, 14th, and 15th amendments—ratified in 1865, 1868, and 1870, respectively—prohibited slavery, granted all Americans citizenship by birth, and banned the government from denying citizens the right to vote based on race,

color, or past servitude. These clarifications to the Constitution came to be known collectively as the Civil War Amendments. However, as a reaction to the new status of millions of Black Americans in the South, many state legislatures throughout the South, introduced a series of laws that inaugurated the era of Jim Crow.

Jim Crow laws were a combination of both state and local laws introduced to impose racial segregation on the massive Black populations scattered throughout the South. These laws were based upon the legal doctrine of “separate but equal” that undermined the very principle of equality that the 14th Amendment sought to enshrine, claiming that treating races differently regarding access to facilities, transportation, and employment opportunities was permissible as long as the differential treatment was “equal.” In reality, these efforts made the government and those who controlled it the arbiter of fairness and what was “equal” – which history has shown they were no more effective at than they are now.

It is important to remember that, at the time, advocates for this egregious series of laws couched their calls for Jim Crow laws in terms of “helping” and “protecting” all communities. Look no further than the majority opinion written by Supreme Court Justice Henry Billings Brown, in the landmark case *Plessy v. Ferguson*, that the state of Louisiana was in the right to enforce its Jim Crow laws—in the form of the Separate Car Act—on the basis of promoting “public peace and good order” ([Duignan, 2021](#)). Part and parcel to the advancement of these arguments was an acceptance of the idea that it was appropriate to treat people differently based on group identity.

EQUALITY’S COMEBACK

Justice Harlan’s dissent in *Plessy v. Ferguson* affirmed principles that became temporarily lost—namely, that “our Constitution is color-blind” and that the Civil War Amendments rightfully “obliterated the race line from our systems of governments, national and state, and placed our free institutions upon the broad and sure foundation of the equality of all men before the law” ([Plessy V. Ferguson, 163 U.S. 537, 1896](#)). While this jurisprudence went dormant for several decades, equality proponents began quietly fighting to reclaim the rightful place of equality in policymaking and to end the injustice and suffering from Jim Crow Laws. The landmark *Brown v. Board of Education* Supreme Court decision marked a resurgence for the language of equality by rejecting differential treatment arguments made by segregationists.

The Supreme Court was not able to single-handedly bring to an end the idea of differential treatment based on group identity. The *Brown v. Board of Education* decision was, however, a catalyst for brave and courageous sacrifices by a grand coalition of Americans throughout the country to protest for the rights of Black Americans. Reverend Doctor Martin Luther King, Jr. pursued a vision of equality of opportunity for all Americans that protected individual dignity and promoted freedom ([Bauer, 2013](#)). As he famously said in his “I Have a Dream Speech” speech, “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character” ([King Jr, 1963](#)).

EQUITY AND THE PUSH FOR EQUALITY OF OUTCOME OVER EQUALITY OF OPPORTUNITY

While the Civil Rights era marked the end of legal institutionalized discrimination, it did not represent a universal acceptance of individual equality as the guidepost for policymaking. In the last decade, equity proponents have advanced a vision centered around equality of outcomes, premised on the idea that the United States is an inherently bigoted nation whose legal, judicial, and governmental institutions are all designed to keep certain groups disadvantaged and oppressed ([Sawchuk, 2021](#)). With this baseless and dangerous mantra as their foundation, equity advocates further policies that categorize people into groups based on their “privilege” and institutionalize differential treatment in the name of closing outcome gaps. However, instead of improving opportunity, such policies often exacerbate outcomes, divide Americans, and perpetuate inequality. Below are a few examples of where these policies frequently go awry.

EQUITY-BASED HOUSING POLICIES

In economic statecraft, the divide between equity and equality is relatively clearer than in other fields. Pro-equality advocates promote broader economic opportunity as the foundation of the American Dream. This mindset catalyzes policies that support the American worker and their families with robust economic growth, realizing that a strong economy uplifts the entirety of a nation’s citizenry. Simultaneously, this approach defends against undue influence from foreign powers, pressures from powerful special interest groups, and a dangerously expansive government that creates the temptation among officials to enrich themselves and entrench their power at the expense of economic opportunity for the rest of the country.

Equity proponents, by contrast, are intent on pursuing a policy regime of artificial and forced sameness of economic outcomes despite scant evidence of success and bountiful examples of its failures. In some cases, the result can even be the opposite of the stated intentions. For example, consider the case of rent control, which refers to policies that artificially cap rental prices at below-market rates with the intent of making housing more equitable for struggling Americans. Unfortunately for advocates of such policies, the actual effects of rent control are dictated by the forces of supply and demand, not the mere intentions of politicians who pass such laws. As with many other equity-based policies, rent controls often create side-effects that harm populations they are designed to help. For example, in the short run, rent controls often incentivize property owners to convert their respective properties for other uses besides renting. Moreover, rent control reduces the incentive for landlords to renovate and maintain their properties by making it more difficult for them to recover the costs in increased compensation ([Polumbo, 2020](#)). Tenants of rent-controlled apartments rarely leave and are more likely to hoard such apartments even if they can afford rent at market prices. In the long term, rent control policies diminish the return on rental housing, making developers more likely to build commercial and luxury housing units—which are usually not subject to rent control laws ([Polumbo, 2020](#)). Thus, the ultimate consequences of this equity-based housing policy include a reduction in rental housing supply that creates more scarcity and drives up long-run rents, undermining the goal of the policy. A 2019 study in the American Economic Review concluded that “while rent controls [in San Francisco] prevent[ed] displacement of incumbent renters in the short run, the loss of rental housing supply likely drove up market rents in the long run, ultimately undermining the goals of the law” ([Diamond, McQuade & Qian, 2019](#)). Even worse, this scarcity opens the

door for rental units to be allocated based on the personal (and potentially bigoted) preferences of landlords ([Glaeser, 2003](#)). Gunnar Myrdal, often called the father of the Swedish welfare state, blasted rent controls as “the worst example of poor planning by governments lacking courage and vision” ([Williamson, 2018](#)).

A far better, evidence-based way to improve housing affordability is to create a more level playing field that promotes equal opportunity by removing excessive barriers to construction. [A study](#) by economists Kyle Herkenhoff, Lee Ohanian, and Nobel laureate Ed Prescott concludes that U.S. labor productivity—the basis for wages and consumer spending—would be over 12 percent higher if not for artificially high housing costs driven by onerous land use regulations (Herkenhoff et al., 2017). States like California are particularly prone to such self-inflicted policy wounds motivated by a misplaced fealty to equity as a guiding principle. Taking a step back, when the heavy hand of government attempts to ensure sameness of outcomes, it often hurts the same individuals it sets out to protect.

EQUITY & EQUALITY IN HEALTHCARE - THE RACE-NORMING EXAMPLE

The practice of race-norming offers another window into the pitfalls of equity-based policies. Race-norming, as a policy, came into effect during Jimmy Carter’s presidency. The Carter administration’s Department of Labor (DOL) claimed that the General Aptitude Test Battery (GATB)—used by many states’ employment agencies—unfairly measured Black applicants’ cognitive abilities. As a result, Carter’s DOL began to adjust the test scores of Black applicants so that their average score matched the average White applicant’s score ([Brewer, 2021](#)). To do this, senior officials in the Carter administration used a process called Heaton Norms. The Heaton Norms process stratifies data by a participant’s race first and subsequently requires a binary race identifier. This process, which served as the foundation for race-norming, rejected other contributing factors including socioeconomic status and level of education and simply focused on the applicant’s race.

Although race-norming as a federal practice was banned by 1991 ([Will, 1991](#)), its effects remain today. In particular, in 2016, after five years of intense litigation, the National Football League (NFL) reached a \$1 billion settlement amid claims that it knew and discarded its knowledge about the link between concussions and traumatic brain injuries. In accordance with the settlement, the NFL began to test retired players cognitive functioning to see if they would qualify and receive funds from that prodigious settlement. While testing potential recipients, the NFL as a private entity (not subject to the federal ban) began to use race-norming. The NFL’s legal team, responsible for administering the settlement, assumed that Black players began with lower cognitive abilities, and therefore lower scores, than that of their White counterparts ([Brewer, 2021](#)). This made it tremendously difficult for Black players to prove they had suffered any cognitive decline or impairment from playing a contact-intensive professional sport. In short, there was a massive disparity in the settlement allocations, with Black players being less likely to qualify than their White former teammates. As shown by the results of the NFL’s legal settlement adjudication, in healthcare—like in other industries—it becomes an often discriminatory task to pursue equity-based policies. Only through equality—and in this case, recognizing that one’s race does not determine their level of cognitive functioning—can we achieve equal opportunity and access for all.

EQUITY & EQUALITY IN EDUCATION

The push by the education establishment to place equity at the center of education policy has done untold harm to students, particularly those from disadvantaged backgrounds. Claims that school choice undermines equity by diverting resources from public schools has for years deprived families in failing schools the option to send their children elsewhere, where they may have a better chance at success. Contrary to the alarmist rhetoric of equity advocates, multiple studies reveal substantial test score improvements among Black students in response to private school choice programs. For example, a study of the School Choice Foundation voucher program in New York City found that test scores increased by about 6 percentage points. Among oversubscribed charter schools, the evidence is even stronger regarding the positive effects on test scores. Moreover, their effectiveness has been increasing over time as successful charter schools expand and poor performers exit. Looking beyond test scores, voucher programs and charter schools have been shown to improve the graduation rates of Black students and raise college enrollment rates ([CEA, 2020](#)). Contrary to the narrative about school choice harming disadvantaged racial groups, studies are increasingly finding the opposite to be true. In fact, during the 2017-18 school year, Black and Hispanic students comprised 26 and 33 percent of charter school enrollment, respectively, versus only 15 and 27 percent, respectively, of enrollment in traditional public schools ([NCES 2019](#)).

Equity advocates also encouraged private school closures deep into the COVID-19 crisis regardless of whether those schools had plans in place to ensure student safety ([George, Cox, Natanson, 2020](#)). According to them, it would have been better for all students to have their education stunted than for some to escape education bureaucrats forcing online school over in-person instruction, which is proven to be more effective. In the short run, studies have found that enrollment at districts with only online instruction fell relative to districts with in-person classes, especially among kindergartners and first-graders ([Dee & NBER, 2021](#)). In addition to harming educational progress in the short-term, school closures have impaired female labor force participation ([Alon et. all, 2021](#)). Unfortunately, the negative effects are likely to persist long into the future once the children who suffered disproportionately through the closures become adults and enter the workforce ([Fuchs-Schündeln et. all, 2020](#)). This damage to children as well as current and future livelihoods from following such an equity-centered mindset is particularly galling considering studies that find little increase in community transmission from schools ([Bravata, 2021](#)).

Moving beyond the K-12 classroom, equity-based admissions decisions that seek to premise acceptance to a particular college to a significant degree based on group identity can harm the educational outcomes of those these policies are supposed to help. For example, researchers have shown that proposition 209 in California—which banned the use of racial preferences in public college admissions—led to students enrolling in colleges that were a better fit, causing a significant increase in graduation rates ([Arcidiacono et. all, 2014](#)). These results and others from similar studies point out that it is a disservice to students to guide them into institutions where they are less likely to succeed and ultimately persist to graduation. Instead, enhancing equality of opportunity through a level playing field leads to better matches and higher success ([Arcidiacono, Aucejo, Hotz, 2016](#)).

EQUITY AND CRITICAL RACE THEORY

While the Supreme Court has upheld using racial considerations in university admissions policy despite discrimination concerns, Justice Clarence Thomas has consistently advocated for race-neutral equality under the Constitution. “The Constitution abhors classifications based on race,” he wrote in dissent, “not only because those classifications can harm favored races or are based on illegitimate motives, but also because every time the government places citizens on racial registers and the rise makes race relevant to the provision of Critical Race Theory burdens or benefits, it demeans us all.” *Grutter v. Bollinger*, 539 U.S. 306 (2003) (Thomas, J., dissenting).

The most egregious manifestation of the equity philosophy in education may be the increased spread of Critical Race Theory (CRT) education. The intellectual origins of CRT go back to the critical legal studies movement of the 1960s and 1970s that was a byproduct of Marxist critical theory ([Britannica, n.d.-a](#)). According to scholars who helped found the movement, “it [CRT] was born out of the realization by legal scholars, lawyers, and activists that many of the advances of the civil rights era had stopped and in some circumstances were being reversed” ([Demaske, 2009](#)). It was here that CRT began to combine various other theories, including critical legal studies, critical theory, feminist theory, postmodernism, and cultural studies that all took as their basic premise that racism is the fundamental element of American society. CRT rapidly expanded from the confines of American universities to several other fields, including k-12 education.

Gerard Baker of the Wall Street Journal—a man who was taught by a Marxist sympathizer as a university student studying economics—succinctly explained the dangers of this ideology when he wrote:

“[CRT]...is not some interesting interpretation of social and political history that we are free to examine, embrace, or discard. Its proponents do not seek to frame a critique of modern America to be tested alongside alternatives. They insist that a traditionally liberal approach to evaluation the merits of competing ideas is itself an outgrowth of an illegitimate system of oppression...[CRT] isn't really education at all...it is closer to pre-Enlightenment religious instruction: imparting of doctrinal truth with the practical aim of saving souls and reordering the world” ([Baker, 2021](#)).

Once a theory confined to America’s most elite institutions of higher learning, CRT has permeated other aspects of America society ([Rufo, 2021](#)). From the military, to corporate America, to school classrooms, CRT disciples can be found in almost every facet of American life ([Butcher & Gonzalez, 2020](#)). As a result, CRT increasingly serves as one of the go-to ideological foundations for those promoting equity-based programs ([Butcher & Gonzalez, 2020](#)). CRT proponents claim that CRT helps Black Americans, thus justifying equity-based policies based on race and ethnicity. By providing some ideological framework to the many equity-based policies, it has then allowed proponents to reorient the argument and rely on (false) claims supporting their rationale for policies based on *fair* outcomes for certain races. This is not to suggest equity-based policies before the prominence of CRT are somehow related to the theory, but rather that CRT is becoming one of the most prominent justifications for race-based policies throughout the United States.

In K-12 schools, CRT adherents use the impressionable minds of children to imprint the foundational elements of the theory at a young age. For example, in Cupertino, California, an elementary school required third graders to analyze their racial identities and then rank

themselves according to their “power and privilege” ([Rufo, 2021](#)). It is here that children of all races are taught that not only is the American legal system based on racism, but that every aspect of American society is based on racism. Children are taught to judge themselves and one another not by the content of their character, but the color of their skin; segregating people in society as “victims” and “oppressors” ([Sawchuk, 2021](#)). CRT practitioners suppose that core elements of the American republic—such as the First Amendment—can and do “preserve” racial inequalities and therefore must be revised or destroyed ([Demaske, 2009](#)). Furthermore, CRT surmises that the interests of minorities—with a particular focus on the relationship between Black and White Americans—are intrinsically subservient to that of White elites and that racial progress is only a result of White Americans self-interests ([Demaske, 2009](#)). Ultimately, CRT boils serious problems in American society down to one factor—race—and champions equity, rather than true equality, as the solution.

CONCLUSION

Throughout American history, the battle between equality and equity has defined the struggle toward realizing the founding promise of the United States. Since Reconstruction, policymakers, social theorists, and judges—alongside other important figures in American society—have attempted to introduce equity-based solutions to address problems concerning inequality. While the attempts following the Civil War were explicitly based in racism, contemporary attempts at equity-based solutions that emphasize group identity are couched in nobler terms but suffer from profound historical ignorance regarding the dangers of embracing differential treatment over an equality-based approach to policy. While this ignorance regarding the history of equity-based solutions may be careless, the consequences of this carelessness are nevertheless real and damaging for historically disadvantaged communities. As seen across a wide spectrum of policy areas, equity-based approaches often result in harmful effects for the very populations they were designed to protect under the guise of *fairness* and *deservingness*. Only through an embrace of equality-based solutions will the United States be able to continue the promise of its founding documents, like the Declaration of Independence and the U.S. Constitution.

Rather than dividing Americans into factions such as oppressed and oppressors, White and Black, and then proceeding to develop and carry out policies based on enforcing equal outcomes among these factions, policymakers should start from the assumption that our rights do not come from the color of one’s skin, but rather from the protections afforded to all citizens under the Constitution.

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