

Whistling for the Dog in Affirmative Action

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Reviewing Khiara Bridges, *The Deserving Poor, The Undeserving Poor and Class-Based Affirmative Action*, 66 **Emory L.J.** (forthcoming 2017), available at [SSRN](#).

The link between race and class inequality is a hot topic. The top two anti-establishment movements of the year are Black Lives Matter and Bernie Democrats, and the relationship between them is complicated. In addition, Donald Trump has built a campaign appealing to white middle- and working-class voters by blowing the racism dog whistle. Figuring out why those voters continue to support Trump despite (or because of) his racism is the question of the hour on my Facebook feed.

Which is why I was excited to see Khiara Bridges' latest paper on class-based affirmative action (from here on, I'll call it "class-based AA") pop up in my inbox. Far from the heat of the election, Bridges has written a wonderful article that explores the race-class divide among supporters of affirmative action. In this paper, Bridges argues that class-based AA enjoys widespread bipartisan support because its beneficiaries are white. More specifically, she argues that continuing support for class-based AA depends on differentiating between poor whites as people who deserve to benefit from class-based AA and undeserving poor people of color, who should not. Indeed, she concludes, support for class-based AA might well dry up if people of color were to become class-based AA's primary beneficiaries.

Bridges' argument is a dog-whistle sort of claim, in which class-based AA supporters speak in code but often are more overt about their racial assumptions. Bridges' argument is careful and nuanced. She develops a strong historical and empirical case against white supporters of class-based AA. In doing so, she refrains from the kinds of allegations of intentional racial conspiracy that made Michelle Alexander's book *The New Jim Crow* a best seller. Her approach is more "here's the evidence, sure looks fishy to me."

The argument proceeds in three parts. In the first part, Bridges notes a potential contradiction in some vocal conservative support for class-based AA. Given conservatives' lack of support for race-based affirmative action, one would not expect them to support class-based AA. After all, class-based AA is a form of wealth transfer that gives opportunity to the less qualified, who presumably will produce less wealth with the educational opportunity than a more qualified candidate. Conservatives are against anti-meritocratic wealth redistribution. And yet, here are Ward Connerly, Justices Scalia and Thomas, and Republicans in Texas all lining up behind class-based AA. How can we explain this contradiction?

In the second part of her article, Bridges builds a historical case to suggest that race and racism might be the answer to the contradiction. She has plenty to work with here. Others have written about Aid to Families with Dependent Children, and the way in which support for the social welfare program dried up when the program began to help more black unmarried mothers than white widowed mothers. The program was very popular when the public saw it as assisting white women who were poor through no fault of their own. Not so much when the beneficiary class shifted to black women, who were often single mothers via divorce and unmarried pregnancy.

Bridges draws on that history to suggest that the same dynamic might apply here, only in reverse. Conservatives who found recipients of race-based affirmative action to be undeserving now find the

beneficiaries of class-based AA (who will include many more whites) to be deserving. Supporters like Scalia, Thomas, and Ward Connerly often emphasize the lack of fault on the part of those candidates who would benefit from class-based AA. In contrast, these supporters presume that beneficiaries of race-based affirmative action are not deserving, either because they are not sufficiently disadvantaged economically or because their disadvantage might be traced to their “culture” and not to structural racism.

The third part of the article constitutes a critique of class-based AA. Here, Bridges’ main critique is that class-based AA reinforces racialized notions of deserving and undeserving. Specifically, she points out that class-based AA would likely become unpopular if the main beneficiaries of the program were to become poor people of color from families of divorce or unwed mothers, or from non-English-speaking families.

To make her case, she draws in part on the country’s not-so-distant experience with welfare reform. She highlights the rhetorical references of personal responsibility and welfare queens that accompanied the Clinton 1.0 Administration’s decision to “end welfare as we know it.” In a more contemporary example, she points to Chief Justice Roberts’ opinion in *NFIB v. Sebelius*, the recent ruling on the Affordable Care Act. In his opinion, Roberts openly begrudges Medicaid expansion to people who live significantly below the poverty line, arguing that the more narrowly defined beneficiary group from the earlier legislation (blind, disabled, and elderly poor) was the nation’s neediest. Bridges concludes from such history that, at least among conservatives, support for class-based AA would shrivel if people of color were to dominate the beneficiary class.

This article is fresh and provocative, and sure to be a hit. I particularly admire how careful Bridges is to ground her work in history and to refrain from overclaiming. I am also very happy that Bridges has taken up the question of racialized poverty at length (she has several other papers on the subject). I’ve long said that critical race theorists ought to spend more time closely investigating the structural link between class and race, rather than seeing class as just an additional identity category with which to analyze identity more generally.

I had two quarrels with Bridges’ piece, both of which spring from how much I like the work. First, although I thought she refrained from vulgar racial conspiracy theory, I thought she could have spent more time exploring people’s good-faith motives for supporting class-based AA. More pragmatic conservatives suggest class-based AA as a compromise or common-ground position; she could have given more time to that argument.

Likewise, I wasn’t satisfied with her discussion of the Scalia argument that race-based AA is unconstitutional because it presumes that people of color suffer from disadvantage, and class-based AA does not. Scalia isn’t alone on that position. Sheryll Cashin (an African-American former White House advisor on urban neighborhoods and the daughter of civil rights activists) has also used this argument to defend her “place and not race” argument to shift to geography as the centerpiece of AA. In my view, Bridges’ response to Cashin—that liberals might act in good faith but still be subconsciously influenced by race—doesn’t really settle the question and smacks a bit of false consciousness.

Second, I wanted a more complicated *structural* link between race and the deserving/undeserving binary. Here’s a story to illuminate what I mean. When white soldiers returned from World War I to take up their jobs at the plant from blacks who had “filled in,” some government officials reclassified those jobs from unskilled to skilled. It wasn’t just that those officials were biased. It was also (more) that whites had had more shop training than had their black counterparts. Officials relied on levels of training to define the notion of skilled, and of course, levels of training are now and were then structurally correlated to race.

In the same way that notions of skill were racialized, notions of the deserving and undeserving poor in class-based AA are constructed not just by crude racial bias but also by structural things like connection to the criminal justice system. It might have been productive to explore Ward Connerly's ideas about why criminals don't deserve to take advantage of the social safety net when they get out.

That said, I am more than happy to have had the chance to quarrel with Bridges on these points. I know she's also doing fabulous work on privacy and race, but I am looking forward to reading more work on race and class. I do wonder whether, owing to timing, this piece will be as celebrated as it should be. For the moment at least, class-based affirmative action won't be as much in the limelight now that the Court in *Fisher v. University of Texas at Austin* has upheld race-based affirmative action.

Even so, there's a presidential election and several Supreme Court nominations in our near future, so the issue could come roaring back sooner than we might hope. In any event, Khiara Bridges' insightful discussion is terrific and a much-needed addition to the growing Critical Race Theory body of work on racialized poverty.

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