Steven: Hello, and welcome to the Inequality Podcast. I'm your host, Steven Durlauf, the Director of the Stone Center for Research on Wealth Inequality and Mobility. Thanks for joining us. So hello everyone, and I'm delighted to welcome you to this edition of the Inequality Podcast. I'm Steven Durlauf, the Director of the Stone Center for Research on Wealth Inequality and Mobility, and it's a real pleasure to introduce Conrad Miller. Conrad is an associate professor at the Haas School at UC Berkeley and a research associate of the National Bureau of Economic Research. He is one of the leading figures in what I'm going to call the young generation of inequality scholars and has done foundational work on important dimensions of both racial and group inequality. His work spans labor economics and the economics of crime and has already become fundamental to contemporary understandings of inequality. I can also say as an anecdote: I first met Conrad when he was on the job market and visited me when I was on the faculty at the University of Wisconsin, and I don't want to embarrass him, but I can actually say it's the only time I ever walked out of a job talk and said that paper is not only really high quality, it's important for public policy. The reason for that is that it's not uncommon to say something is outstanding in terms of its construction, but the topics and the findings themselves were of first-order significance. So Conrad, thanks so much for taking the time to do this. Welcome.

Conrad: Thank you, Steven. Great to be here.

Steven: I thought we could start with your paper, "The Persistent Effect of Temporary Affirmative Action." Obviously, with the Supreme Court decision, which has banned affirmative action in higher education, everything is on the table in terms of policies that promote diversity and heterogeneity by race in education, and presumably, there will be subsequent decisions having to do with employment. That all said, it's natural to ask what the effects of such policies are. I thought it would be important to start with a description of the paper: both how you're able to measure the dynamic effects of affirmative action and what the findings were.

Conrad: Sure. So this is a paper looking at federal affirmative action regulation that applies to firms that have significant contracts with the federal government: federal contractors. What I was looking at is what happens to firms that first start contracting with the federal government. What happens to the demographic composition of their workforce? The idea of these regulations is that they are supposed to require federal contractors to make good faith efforts to have a diverse workforce, one that reflects the composition of the local qualified workforce. One question is whether these regulations indeed influence the composition of workers at these firms. The second piece I was interested in is: what happens to firms that contract with the government for some period, and so are subject to this regulation, and then after that period stop contracting with the government and so in a sense become deregulated? What I found in this paper, using data from the late 1970s to the early 2000s, is that when firms first become regulated, when they first start doing business with the federal government, you see that indeed the racial composition of their workforce changes in response to the regulation. The Black share of their workforce begins to increase year-over-year, and to some extent, the Hispanic share of their workforce is also increasing year-over-year. Probably the more surprising fact, though, was that for firms that stopped doing business with the federal government and so became deregulated, you actually see that the Black and Hispanic share of their workforce continues to increase following their deregulation. It's not immediately clear why a temporary regulation would have a persistent effect on what these firms are doing. You might have expected that prior to facing regulation, firms were hiring whoever they thought made sense for their workforce, and so you might expect them to revert back to whatever they were doing pre-regulation. But instead, what I found was that these firms appear to be continuing on whatever trajectory the affirmative action regulation put them on in the first place.

Steven: One of the reasons why I think this paper is so important is it demonstrated the importance of information and the consequences of segregation in desiccating information sets. The interpretation you developed in the paper is that firms had adverse priors with respect to African-Americans, and they had data as a result of the hiring, and those priors updated. That's an extremely important message for thinking about 21st-century disparities: these interventions created a wedge between priors and posteriors. Might you think about the consequences if you think about integration as a redistributive policy?

Conrad: Yes, I think what you're landing on is one potential interpretation for this persistence result. Part of the process of hiring, of screening, involves making some guess about how productive someone is based on their application, and there might be some statistical discrimination involved, where you say: well, this applicant is from this group; on average I think this group is less productive or less well matched for my job, and so I'm going to base some of my guess for how productive this person is based on their group identity. Often, we assume those guesses are correct on average, but there's also good reason to think there are many instances when they won't be correct on average, and so an affirmative action regulation might lead firms to update their beliefs about these groups of employees. I think another type of explanation here is that that model of hiring I described is much too static. Firms can do a lot of different things to change the set of people they're recruiting, to change how they're screening, how they're deciding who's a good fit and who isn't. Firms are not fixed in their hiring practices. One example: a firm, prior to any affirmative action regulation, tends to recruit applicants from some particular set of schools, or some other set of firms or some neighborhood. It might make perfect sense to hire from that limited set of pipelines because those pipelines are providing exactly the set of workers you need; opening up to other schools or other pipelines is costly in some way, and so in the absence of any intervention, there's no reason to pay that cost and recruit more broadly. But what could happen in response to affirmative action regulation is that firm might decide: well, if I need to recruit a more diverse set of applicants, one thing I can do beyond just changing the hiring standards I apply to different groups is I can recruit more broadly, or I can develop a pipeline through some other set of schools or some other set of neighborhoods. There are some costs associated with doing that, but that cost could be relatively fixed: once you've paid that cost as a way of complying with this regulation, even when I am no longer a contractor and no longer directly incentivized to have a particularly diverse workforce, I've already opened up those pipelines. It may be in my interest to continue using them, to continue those hiring practices.

Steven: That actually leads to a second paper of yours, "The Dynamics of Referral Hiring and Racial Inequality: Evidence from Brazil." The way I would make the segue is to say that a key message I took from the first paper is the role of what I'm going to call, in economic jargon, adverse priors with respect to certain groups, which update because of the generation of information. I think adverse priors is a very neutral way to say what a prejudice is. The second paper emphasizes the issue of the heterogeneity of information flows: the role of lineage and social networks in transferring information in labor markets. Could you tell us about the structure of that paper and the main findings?

Conrad: What we look at in Brazil is a stylized fact: if you look at a given set of firms, the racial composition of a firm's employees changes systematically the more hires that firm makes. If you look at the initial hires that the average firm makes in Brazil, the non-white share of their hires is about 40%, whereas once you look at about the 500th hire that one of these firms makes, the non-white share increases to about 46 or 47%. It turns out that pattern holds even if you control for things like occupation; these firms are operating in the same market, and so in a lot of ways the types of workers these firms are hiring are not changing: they have probably similar labor needs early versus late in the firm's life cycle, yet the racial composition of the people they're hiring is changing in this systematic way. What we were interested in is what explains that stylized fact. The first ingredient is that there are big racial differences in entrepreneurship in Brazil: most founders are white. The second ingredient is that it looks like the composition of a firm's workforce affects the composition of the hires that that firm makes in the future. One reason might simply be referral hiring: referral hires are typically drawn from incumbent employees at a firm, so if a firm is disproportionately white today, you would expect a disproportionate share of their referral hires in the future to also be white. But people have also documented other mechanisms that would generate similar patterns: it could be that managers for whatever reason tend to hire people from the same group, not necessarily because of social networks but maybe because they have a discriminatory preference for working with people from that group; or maybe they're better at screening people from their own group for reasons that are not about prejudice per se but just about ability to communicate, or language, or cultural differences; or it could also be that people are just more productive when working with people from the same group. Whatever story like that you want, you could get this implication where the composition of the workforce today affects the composition of people hired tomorrow. It turns out that stylized fact looks quite different if you compare firms with white founders versus non-white founders. Initially, these firms look quite different in the racial composition of their workforce: firms with non-white founders have early hires that are disproportionately non-white, and firms with white founders have initial hires that are disproportionately white. But what you see is that as those firms make more and more hires, the racial composition of their workforce actually tends to converge; after about 400 hires or so, the racial composition of these firms' next hire is close to uncorrelated with the race of their initial founder. I think that has potentially interesting implications for interpreting affirmative action-type interventions: the fact that firms over time are becoming more non-white in the absence of any intervention suggests that an intervention might speed along that process in a way that is less distortionary than you might have been concerned about to begin with.

Steven: One thing I take from both the affirmative action paper and the networks paper is that they are demonstrations of the importance of what I and some others call bottlenecks: certain configurations of social and family circumstances that make the conditional probabilities of upward mobility relatively unlikely. You have yet another example of a bottleneck, which is the issue of space. There was an old idea, the so-called spatial mismatch hypothesis, that argued the locations of jobs and the locations of people were sufficiently disparate that it could, by itself, produce Black-white inequality. You've actually helped to resuscitate that as an important mechanism in the paper "When Work Moves: Job Suburbanization and Black Employment." I was hoping you could talk about that paper.

Conrad: So this is a hypothesis dating back to John Kain in the late 1960s. This is during a period where you saw a lot of movement of work from the central cities of metropolitan areas to suburban areas, at the same time that most Black households were typically concentrated in the central city. So you have potentially jobs moving away from areas where Black households tend to be concentrated. What I did was treat the metropolitan area as my unit of observation, and I used the fact that from 1970 to about 2000, some metropolitan areas experienced more job suburbanization than others. The idea was: let's see whether areas that experience more job suburbanization also experience differential changes in racial inequality, in particular in employment rates, but also in earnings. What you see is that indeed when firms move to the suburbs, the Black share of their workforce changes. You also see, cross-sectionally, that for the same types of work, firms in the same metropolitan area that are located closer to the central city have more Black workers than firms located further away. And so at the firm level, this idea that job suburbanization potentially reduces Black employment seems to play out. I also try to find some exogenous source of variation in job suburbanization across metropolitan areas, building on prior work. I use the fact that metropolitan areas that were more exposed to the interstate highway system tend to experience more job suburbanization than metropolitan areas that are less exposed. From that variation, you see exactly the same pattern: for reasons that are outside of local labor market concerns, places that experience more job suburbanization due to interstate highway construction also see bigger relative decreases in Black employment rates. It is the case that there are people commuting from the central city to the suburbs during this period, but it does have friction associated with that, which seems to reduce Black employment in the aggregate.

Steven: And I also thought it was an important observation that, in talking about the location of jobs as partially delivering the effect, the other is the location of people: if you have increased racial residential segregation as a consequence of the highway system, the net effects in terms of labor market allocation become ambiguous. And so that again strikes me as a very interesting direction for future research. I thought we might turn to your work on gender discrimination, and perhaps draw a contrast in terms of thinking about gender versus race as foci of discrimination and inequality.

Conrad: Sure. This paper looks at a quite different context: gender inequality in Saudi Arabia. Saudi Arabia, like many countries in the Middle East and South Asia, has very low female labor force participation rates, and there's a lot of focus on supply-side factors, including gender norms. But what we were interested in is how much those social norms also affect the demand side. In Saudi Arabia, there are some clear reasons to think firms are also affected by these norms. As a firm in Saudi Arabia, if you wanted to operate a business and employ both men and women, at least informal social norms would play a significant role: there might be norms around how much interaction between men and women is socially permissible within that firm. So even if a firm wanted to hire both men and women, there might be some cost associated with doing that: you might need to have separate facilities for men and women; in some cases, separate floors for employees that are men and women. What we thought is that you could think of that as a fixed cost associated with employing both men and women, and in response to that fixed cost, what might happen is that a firm that, in the absence of those costs, would want to employ both men and women might instead decide to be completely gender segregated: to only hire men. What we found, consistent with this idea, is that you see basically many more firms with exactly zero women working there than you would expect by chance, given the occupational mix that the firm has. What you also see is that for firms that do hire both men and women, the composition of their workforce looks a lot more like what you would expect to happen by chance; if 15% of people in a particular position in that local labor market are women, roughly 15% of their workforce in that position are going to be women. During our period of study, Saudi Arabia introduced a program called Nitaqat, which was a generally neutral program but was intended to get more Saudi nationals working in the private sector: sort of an affirmative action policy for Saudi nationals relative to a workforce that was predominantly migrant workers. What you see in response is that firms now incentivized to hire more Saudis, if they were only hiring men to begin with, now actually find it makes more sense to pay that fixed cost and operate a workforce that has both men and women. If you only had to hire one person, maybe that fixed cost isn't worth paying, but if you have to hire 10, now maybe it is. Consistent with that type of story, what you see is that in response to the regulation, firms that are now incentivized to hire more Saudis are much more likely to integrate along gender lines and hire more women. You can actually see this in the aggregate: after the introduction of this policy, the female share of the workforce in the private sector more than doubled in a few years. So again, a firm can look very different depending on whether there's some sort of intervention or whether the firm has decided it is going to be in one regime versus the other.

Steven: So I was hoping the last thing we could talk about is your work in criminal justice on the equity-efficiency tradeoff in the context of police traffic stops. One of the important contributions you've made is to directly tackle the so-called equity-efficiency tradeoff, and I really wanted to hear about that work and what you found.

Conrad: Yes. So the context we were studying is traffic stops for things like speeding or other regulatory violations. In some percentage of those stops, police will search a car or the driver and passenger for some form of contraband, typically drugs or weapons, and what you see is big racial differences in the rates at which people are subject to these searches. In addition to those differences in search rates, you'll often see reports on how often those searches actually yield some kind of contraband: we often call this in the literature the hit rate. Typically, what you'll see is that the hit rate for Black and Hispanic motorists tends to be equal to or lower than the hit rate for white motorists. A common reading of that finding would be that there's something inequitable happening here: you're searching Black and Hispanic motorists more often, but those searches are not more likely to be successful. Another interpretation is more skeptical: this actually isn't enough information to determine whether there's any sort of discrimination or inefficient profiling occurring here, because what you really want to know is how productive is the marginal search. The search where you were just on the border of conducting or not: you weren't quite sure whether it's worth making the search, but this person is just suspicious enough that you're going to conduct it. You want to know how successful those searches are, because what a non-discriminatory police officer should be doing if they're trying to maximize the amount of contraband they find is setting the same threshold or criteria for motorists from different racial groups when deciding whether to search someone. What we did in this paper was tackle this idea directly. We used the fact that police officers vary quite a bit in how often they're searching people. We have data from the Texas Highway Patrol on every stop they're conducting, and it turns out that some state troopers search motorists in 1% of stops, some in 5%, some in 10% of stops. The idea is: if I compare someone who searches 5% of the time to someone who searches 10% of the time, and I compare how often they're finding contraband, I should be kind of identifying the set of people that the low-search-propensity trooper decided not to search, but the high-search-propensity trooper decided to search. That identifies a marginal group of motorists where whether they're searched or not, depends on who actually stops them. What you would expect is that troopers who search more often should find contraband less often, because if I'm searching more often, that must mean I'm searching people who are less suspicious than the people a low-searching person is searching. So you'd expect a decreasing relationship between how often your searches are successful and how often you're searching overall. Instead, what you see is that the relationship is basically flat. The troopers who search more often have roughly the same hit rate as those who search less often, and that's true whether you look at white motorists, Black motorists, or Hispanic motorists. What that means is that you could change how often you're searching one group of motorists versus another without actually affecting how successful your searches are on average. Troopers could search Black motorists less often, achieve the same hit rate, and they could search white motorists more often and achieve roughly the same hit rate. In that sense, there is no equity-efficiency tradeoff: you could have search rates that are more equitable while the overall amount of contraband you're finding is unchanged.

Steven: I think that's a very important finding. To be somewhat self-serving: in my own writings about racial profiling, I've argued that the key ethical issue is whether innocent people are treated the same regardless of race, and yours is a perfect demonstration that simply is not the case. If you could reallocate searches, by implication, that says the conditional probabilities of innocent people being searched are currently unequal, and you can equalize them with no efficiency costs. That speaks very much to the underlying key ethical issues. Conrad, thank you so much. This has been a wonderful conversation. And I have to say, I'm really delighted that you are on the advisory committee for the Stone Center. But most importantly, I'm very grateful you shared this wonderful research with us.

Conrad: Thank you, Steven. Great to be here.

Shane: The Inequality Podcast is a production of the Stone Center for Research on Wealth, Inequality and Mobility at the University of Chicago. It is hosted by Steven Durlauf, along with Damon Jones, Geoff Wodtke, and Ariel Kalil. This episode was recorded, sound engineered, and produced by Eric Geppert with support from Gerardo Espinal Franco. Thanks as well to the Center's Executive Director Grace Kolavo for all her support. Please consider liking, subscribing, and sharing this podcast among your friends, and send any questions or feedback to UCStoneCenter@gmail.com. That's all for now. Thanks for joining us.

Narrator: Just over one year ago, in the fall of 2022, the Supreme Court heard opening arguments for two cases that would prove incredibly consequential for the role of affirmative action in higher education. Students for Fair Admissions, a conservative non-profit advocacy organization, sued two elite universities, Harvard and the University of North Carolina, and alleged that their admission processes were unconstitutional and negatively impacted certain minority groups, namely Asian Americans. Much has been said about these court cases and their subsequent rulings, primarily on the legacy of affirmative action. In fact, Professor Durlauf recently shared the stage with Brown University economist Glenn Loury to discuss this topic. It's certainly a hot-button issue, but it's also highly nuanced. What precedent did the court overturn exactly? What is the legal basis for affirmative action? And how have past rulings affected affirmative action as it relates to hiring and employment? For this episode segment, I'll try to answer these questions as I dig into the legal history and background surrounding affirmative action.

Our journey starts in 1868, when the United States added the 14th Amendment to the Constitution. The second sentence of Section One has come to be known as the Equal Protection Clause and reads: "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws." This clause, in the 52 words that comprise it, would be used as the legal basis for many of the most important Supreme Court decisions, including those regarding discriminatory intent given to one's identity, such as race, gender, and sexual orientation.

With that foundational law in mind, let's jump forward almost 100 years to 1961, which marks the first use of the term "affirmative action." It appeared in Executive Order 10925 issued by President John F. Kennedy, which required government contractors to take "affirmative action to ensure that applicants are employed and that employees are treated fairly without regard to their race, creed, color, or national origin." Two years later, in a televised address, Kennedy urged Congress to enact legislation that would further outlaw discrimination. This inspired the Civil Rights Act of 1964, which was actually passed during Lyndon Johnson's administration. In it, Title VII specifically prohibits hiring discrimination based on race, color, religion, sex, or national origin. This act applied to both public and private sector employers with 25 or more employees, a number that was later lowered to 15 employees in the Equal Employment Opportunity Act of 1972.

But back in 1965, President Johnson issued Executive Order 11246, which required companies that received over $10,000 in government contracts to have a written formal affirmative action plan with goals and timetables to fully utilize women and minority employees. This is notable because it's the first implementation of an affirmative action program where we see a reference to numerical goals. These executive orders, congressional acts, and constitutional amendments collectively serve as the legal basis for affirmative action. However, as we'll see, the Supreme Court has most heavily relied on two things: the Equal Protection Clause and Title VII of the Civil Rights Act.

Now let's look at some important cases. We'll start with the role of affirmative action in hiring. The earliest notable case, Teamsters v. United States, came in 1977. The federal government had accused the Teamsters, a nationwide carrier of motor freight, of systematically discriminating against Black and Hispanic workers by allowing them to occupy only the lowest-paying positions while reserving higher-paying jobs for whites. The court sided with the government in a 7-2 decision, noting that the Teamsters had in fact discriminated against minority employees and had violated Title VII of the Civil Rights Act. The ruling also allowed these workers to be retroactively compensated for the mistreatment, even if they personally hadn't applied for the higher-paying positions.

Next came Connecticut v. Teal, argued in 1982. A Connecticut state agency had required conditionally promoted supervisors to pass a written test as one requirement before being awarded permanent status. Black employees failed this test at higher rates than whites, and some of them, including Winnie Teal, sued the state. As their defense, the agency argued that they had an affirmative action program in place and that the results of the multi-step promotion process actually benefited more Black applicants than white applicants. However, the court was not convinced. They ruled that discriminatory components of an otherwise positive program still violated Title VII, supported by the fact that the court determined the test was arbitrary and not related to skills required of a supervisor.

To wrap up employment coverage, we'll look at two contrasting cases. The first, Metro Broadcasting v. Federal Communications Commission, centered around minority preference policies that the FCC had adopted. An important distinction: these policies weren't about hiring per se; instead, they established a preference for minority-owned radio or television stations when offering licensing bids. A white radio station owner felt that the policy discriminated against him. In a narrow 5-4 ruling, the court sided with the FCC. The policy was allowed because it provided appropriate remedies for past discrimination. The court also established that policies like these needed to pass what is called intermediate scrutiny, meaning they had to show that they furthered an important government interest.

In 1995, the court overturned this ruling in Adarand Constructors v. Peña. This case dealt with government subcontractors. Under Department of Transportation policy, contractors were provided financial incentives if they subcontracted with firms operated by "socially and economically disadvantaged individuals," namely Black, Hispanic, Asian, and Native Americans. A subcontractor not deemed a minority firm sued the government, and the court sided with the subcontractor. The equally narrow 5-4 decision declared that race alone was insufficient to determine whether a beneficiary of a policy was socially or economically disadvantaged. The court also said that all future race-based classifications had to be judged under strict scrutiny, not intermediate scrutiny: affirmative action policies had to achieve a compelling state interest, and had to achieve that interest in a narrowly applicable way that employed the least restrictive means.

With that all in mind, let's shift our attention to higher education. We'll need to look back at 1978, one year after the Teamsters case. Allan Bakke was an impressive figure by any measure. He attained a 3.5 GPA in his undergraduate studies, served four years in the Marine Corps, then served as a NASA engineer. Nonetheless, when he applied to medical schools, he was repeatedly turned down. One of those schools was the University of California, Davis, which had established a racial quota setting a specific number of seats each year for students who declared themselves to be disadvantaged, whose applications would be reviewed by a special committee. This was done to address the inequality of public schools that left minority students much less prepared for elite institutions like UC Davis. However, Bakke felt that the program deprived him of a chance at admission despite his relatively high test scores. The surprising 8-1 decision from the Supreme Court effectively split the baby. They ruled that UC Davis's use of racial quotas was illegal and violated the Equal Protection Clause, and they also forced the school to admit Bakke as a student. However, they ruled that affirmative action programs in general were acceptable as long as strict quotas were absent. And that is roughly how things stayed for the next 25 years.

And then there was Grutter v. Bollinger. The University of Michigan's law school had implemented its own affirmative action program that gave applicants belonging to certain minority groups a plus factor in their admission. A white applicant, Barbara Grutter, sued the school and claimed that the policy violated the Equal Protection Clause. Here, the court sided with the University of Michigan. They ruled that the law school's policy passed strict scrutiny and furthered a compelling state interest. Furthermore, they deemed the admissions process to be narrowly tailored since it focused on the individual applicant, not a group of applicants, and did not diminish the chances of other non-minority students. Although this case upheld precedent, it also introduced new concepts that would go on to influence future judicial rulings. One of these was over what constituted a compelling state interest. Was it the interest of righting the wrongs of past discrimination and allowing minorities greater access to higher education? Not exactly. The actual interest, so argued the court, was increasing the diversity of the student body. A more diverse student body led to a wider breadth of ideas and viewpoints that would benefit all students and ultimately make for a better society. This may seem like hair-splitting, but it would become an important distinction. Justice O'Connor's words would become famous: "We take the law school at its word that it would like nothing better than to find a race-neutral admissions formula and will terminate its race-conscious admissions program as soon as practicable. It has been 25 years since Justice Powell first suggested approval of the use of race to further an interest in race to student body diversity in the context of education. We expect that 25 years from now, the use of racial preferences will no longer be necessary to further the interest that we approve today."

So that brings us back to 2022, almost 20 years after Grutter. Harvard and the University of North Carolina both had affirmative action programs that they believed were narrowly tailored and adhered to prior court rulings. Students for Fair Admissions argued that the schools effectively established quotas, even if those quotas didn't technically exist. The suit focused on their observation that Asian American students' admission rates remained roughly the same year over year and were dragged down by lower-than-average scores on personality ratings, despite having above-average scores in other categories like testing, extracurriculars, and high school grades. The highly anticipated ruling, which fell squarely along the 6-3 conservative-liberal ideological split of the court, overturned both Bakke and Grutter. The court deemed that race-based affirmative action policies violated the Equal Protection Clause and could no longer be instituted in admissions processes. Chief Justice Roberts, who read the majority opinion, did leave open one opportunity: students can still write about personal experiences of past racial discrimination, "so long as that discussion is concretely tied to a quality of character or unique ability that the particular applicant can contribute to the university." The diversity earned by admitting such students must be able to benefit the university as a whole.

And so after all that, this is where things currently stand with affirmative action. While it's still legal with regard to hiring, there will likely be attempts by other groups to challenge this in court as well. Dr. Miller's research, though, might offer some optimism for whichever way things shake out: federal legislation promoting greater diversity in the workforce may actually serve as an impetus for companies to continue seeking out greater pools of candidates, even if that legislation happens to go away or be overturned.

This transcript has been prepared with the assistance of AI.