

THE PROMISE OF OPPORTUNITY

Alan Jenkins

Opportunity is one of America's most deeply held values, and one of our most precious national assets. Throughout our history, Americans have been stirred by the vision of a society in which everyone gets a fair shake regardless of origins or ancestry. That ideal has inspired social movements and political breakthroughs. Universal public education developed our national genius and propelled millions out of poverty. Emancipation, Reconstruction, and women's suffrage acknowledged the equality and voice of all our people.


In the 20th century, the New Deal's assurance of basic economic security put the nation back on a stable economic footing even as it enabled millions of Americans to move from destitution to economic participation. The Civil Rights revolution led to legal safeguards that protected all Americans while integrating more millions into our economic engine and social fabric. It would be wrong to idealize the past; obviously, we have never fully realized the opportunity ideal. Nor have we fully overcome the legacies of discrimination and exclusion. Nevertheless, in fits and starts over two centuries, this country was moving in a direction that gave hope to most Americans, including those who needed hope the most.

In recent decades, however, our opportunity advance has largely stalled. The traditional stepping stones—a decent job at a living wage, affordable housing and health care, quality schools and a college education—have become more elusive and less secure. The 45.7 million Americans without health insurance, and the many more who are underinsured, grapple daily with threats to their physical, family, and economic security. Americans working full time at the minimum wage cannot afford adequate market-rate rental housing in virtually any local housing market. One in every hundred adult males are warehoused in jails or prisons, generally with little rehabilitation during their incarceration and daunting obstacles to economic and political participation after release.

In today's America, family resources and background are an increasingly accurate guide to lifelong achievement. Economic origins matter more than we would like to imagine, and more, sadly, than they did in our parents' and grandparents' time. But race, national origin, and gender also matter independently of class. Even with income and educational differences taken into account, for example, African-Americans and Latinos are less likely than other Americans to have regular and accessible health care. Irrespective of insurance status, people of color are less likely to receive necessary medical procedures, and more likely to receive undesirable forms of treatment, such as limb amputations for diabetes.

Opportunity is not only declining but, by many measures, becoming more unequal. In the criminal justice arena, state incarceration rates have gone up dramatically; the prison population has become more racially imbalanced at the same time. Juvenile justice outcomes are badly skewed. Young people of color are more likely to be placed in secure juvenile facilities, while white youths stand a better chance of being sent to private facilities or diverted from the juvenile system altogether. In 2006, three young people of color were in custody for every one white youth – and not because of differences in the severity of their offenses. (Two-thirds of all young people in custody were incarcerated for a nonviolent crime.) The same dynamics govern access to quality public schools, reputable banks and lenders, and even grocery stores and other sources of affordable, healthy food.

Research shows that these trends are due not to some change in the nature or drive of the American people, but to disinvestment in policies and systems that keep the doors to opportunity open. From the late 1940s until the 1970s, our country backed up its belief in opportunity with major policy initiatives, like the G.I. Bill, the Higher Education Act, the 1964 Civil Rights Act and the Equal Pay Act. These policies worked. They help explain why the postwar decades were a time of rising prosperity and opportunity for Americans across the board, and a time when millions of women, people of color, and immigrants entered the economic, political, and social mainstream.



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What's been in short supply since then isn't discipline or effort - it's national commitment. Opportunity doesn't just happen, in other words. It takes bold leadership, innovative ideas, public investment, and shared as well as individual effort.

Americans are ready for a new opportunity agenda - one that moves us all forward while continuing to address the structural barriers faced by people of color, women, and others. The pillars of such a policy agenda are easy to identify: health and health care, jobs and business, housing and lending, education, and criminal justice. But a 21st century approach needs to reflect 21st century realities: globalization, migration, new technology, and an increasingly diverse population have to be transformed from challenges into strengths. We need to proactively address subtle modern forms of racial, ethnic, class, and gender bias. New policies must ensure more equitable investment in place—in neighborhoods and regions, not just cities and states—as an instrument of more broadly shared prosperity.

Expanding opportunity for this and future generations is crucial to our nation's success, and must be a core responsibility of each presidential administration. It's a mission that should permeate nearly everything government does, rather than being relegated to a discrete set of "opportunity programs." Energy policies, infrastructure policies, economic policies, health care policies, and criminal justice policies, among others, should all pass through the opportunity filter. Though the breadth and equality of opportunity in our nation is currently threatened, we have it in our power to reinvent its promise for a new century.

AUTHOR

ALAN JENKINS is Executive Director of The Opportunity Agenda, a communications, research, and advocacy organization with the mission of building the national will to expand opportunity in America. He is co-editor, with Brian Smedley, of *All Things Being Equal: Instigating Opportunity in an Inequitable Time*. His previous positions include Assistant to the Solicitor General, U.S. Department of Justice; Director of Human Rights at the Ford Foundation; Associate Counsel to the NAACP Legal Defense and Educational Fund; and Law Clerk to Supreme Court Justice Harry A. Blackmun.

OPPORTUNITY IDEAS

STARTING POINTS

One immediate step that a new administration should take is to make the expansion of opportunity an important and explicit consideration in the funding of state and local programs. The federal government distributes billions of dollars to state, municipal, and private institutions for medical services, highway construction, public housing, and law enforcement, among other activities. Each of these appropriations holds the potential to expand or equalize opportunity, or to perpetuate or worsen existing patterns of inequality.

A patchwork of federal statutes and regulations already offer the skeleton of a system that directs federal funding toward the expansion of opportunity. That skeleton includes, for example, provisions of the Hill Burton and Medicaid acts, various regulations of Title VI of the Civil Rights Act of 1964, and the Uniform Relocation Act. Broadly, these policies were designed to protect against overt discrimination and provide some support for marginalized communities when affected by federal legislation. But with few exceptions, those provisions have not been enforced by the relevant

regulatory agencies. And there has never been a coordinated federal monitoring or enforcement strategy that spans their overlapping provisions and prioritizes opportunity. Regulations have been enforced defensively and in isolation, if at all. The federal courts, moreover, have systematically stripped Americans of the right to enforce these provisions through litigation. And there are, in any event, gaps in the coverage afforded by existing legislation.

The Executive Branch has the authority on Day One to implement a coordinated system for implementation and enforcement of those safeguards, as well as placing other conditions on the distribution and receipt of federal funds that expand opportunity. Either an interagency task force or a lead agency should be designated for the coordination of opportunity expansion across federally funded programs, potentially through the Department of Justice. Whatever formulation is adopted, the entity will need staffing, resources, investigative and enforcement authority adequate to implement its responsibilities.

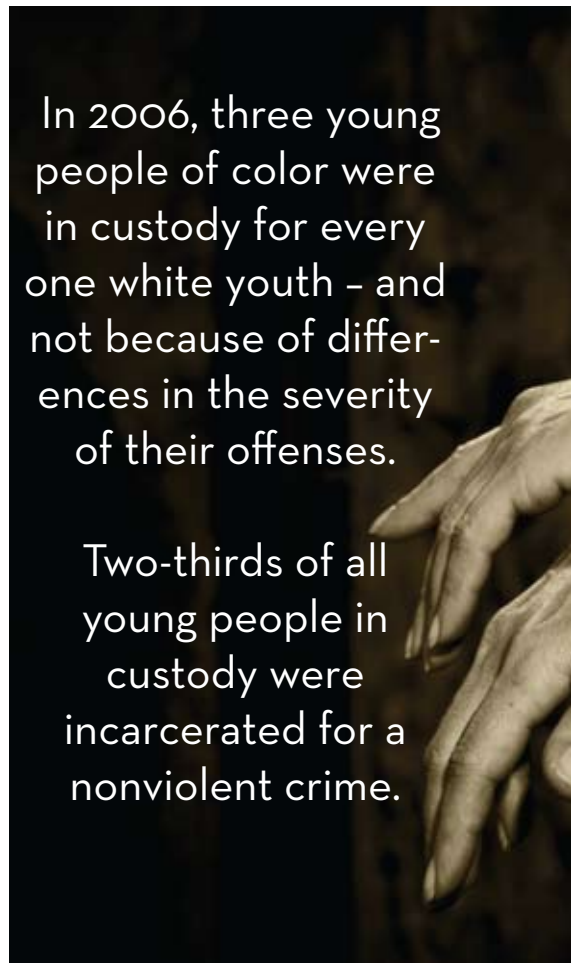
IMPACT STATEMENTS

Agency leaders should work together to develop uniform guidelines for Opportunity Impact Statements (OIS) as a standard part of the disbursement process. As with the environmental impact statements currently required under the National Environmental Policy Act, the relevant agency would require the submission of information and collect and analyze relevant data to determine the positive and negative impacts of the proposed federally funded project. Here, however, the inquiry would focus on the ways in which the project would expand or constrict opportunity in affected geographic areas and whether the project would promote equal opportunity or deepen patterns of inequality.

While the measures of opportunity would differ in different circumstances, the inquiry would typically include whether the project would create or eliminate jobs, expand or constrict access to health care services, schools, and nutritious food stores, foster or extinguish affordable housing and small business development. At the same time, the OIS would assess the equity of the project's burdens and benefits, such as whether it would serve a diversity

of underserved populations, create jobs accessible to the affected regions, serve diverse linguistic and cultural communities, balance necessary health and safety burdens fairly across neighborhoods, and foster integration over segregation. As in the case of environmental impact statements, the OIS process will require public comment and participation, sometimes including public hearings.

Both independently and through the input of affected in-



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dividuals and groups, the relevant agencies would assess the existence and viability of alternative approaches with a more positive impact on opportunity. Where needed, agencies would provide technical assistance to states, municipalities, and other putative fund recipients, strengthening their capacity to develop projects that expand opportunity, and to comply with the Opportunity Impact Statement process.

OPPORTUNITY APPLIED

What would this process mean in the context of specific federally-funded projects in areas like health care or criminal justice? In the health care context, consider state-level agency decisions regarding the placement and certification of hospitals, as well as the allocation of health care resources and services. In every state, such agencies are the recipient of federal funds through the Medicaid program and, typically, through myriad other federal health programs. In a new administration, federal disbursement of such funds by the Department of Health and Human Services should be dependent upon submission and consideration of Opportunity Impact Statements showing how pending hospital certifications and related decisions will impact affected communities, in terms of availability and adequacy of access, services, jobs and economic development. Affected community members and groups would be afforded the chance to provide input on each of these dimensions. HHS would conduct a thorough analysis of relevant data, and the funding applicant would have an opportunity to make its own case. Particularly relevant would be the applicant's showing

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of explicit and accessible mechanisms for ensuring opportunity.

In the criminal justice context, the U.S. Justice Department's Office of Justice Programs currently supports a range of juvenile justice and adult corrections programs. In a new Administration, renewed support for such programs should be contingent upon an OIS process that demonstrates the use of proven rehabilitative methods such as drug and alcohol treatment, drug courts, educational and supervised release programs. It should require explicit safeguards against racially disparate treatment in charging, sentencing, and detention. And it should inquire whether young people in the system are being housed with adults or under circumstances appropriate to their age. Here again, technical assistance is critical.

Each of these functions is well within the role and capacity of federal agencies, each of which is already responsible for ensuring

compliance with civil rights and other restrictions on federal funding. Every agency has administrative discretion in the method of fulfilling its mission. And many have significant experience in providing guidance and technical assistance to fund applicants and regulated entities. The federal government's authority under the Spending Clause of the Constitution, moreover, extends beyond its ordinary regulatory power, affording the Executive greater leeway in enforcing national policy. At the same time, states and localities have the option of declining federal funds, and, thereby, avoiding many of these requirements, if they find them too burdensome. Ultimately, it is the responsibility of the federal government to ensure that its investments expand opportunity, and the choice of state and local entities whether to seek those investments.

