

The Biden Administration's Pursuit of Unequal Treatment

THE ISSUE

- The Biden Administration is advancing a divisive agenda that seeks to treat individual Americans unequally by pursuing a redefined “equity.” In its new use, equity (which used to mean *equal treatment of individuals*) has been corrupted to mean *unequal treatment* in order to obtain *equal outcomes* as measured among racial, ethnic, and gender-oriented groups, and other identity categories. This approach leads to an *unequal* application of the law.
- The Biden Administration deems “equality” to be unfair, because it does not produce the desired goal of *equal outcomes* among categories based on race, sex, ethnicity, or sexual preference. The new “equity,” which preaches differential treatment according to membership in these categories, is seen as fair because it strives to produce equal outcomes.

BACKGROUND

- In November 2020, Vice President Kamala Harris Tweeted, “There’s a big difference between equality and equity. Equality suggests, ‘everyone should get the same amount.’” Equity, on the other hand, she says, is “about giving people the resources and the support they need, so that everyone can be on equal footing, and then compete on equal footing. Equitable treatment means we all end up in the same place.”
- Vice President Harris’s corrupt understanding of equity is backed up by an academic discipline—known as critical race theory—that has become highly influential in the new Administration. One of the best-known

practitioners of critical race theory in America today is author and Boston University professor Ibram X. Kendi, who states that “racial equity is when two or more racial groups are standing on a relatively equal footing.”

- President Joe Biden has signed a flurry of executive orders (EOs) signaling that “equity,” in this new understanding, will be his top priority for domestic and even foreign policy. On his first day in office, President Biden signed the “Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government.” Its effect will be the universal application of the “disparate impact” doctrine. The disparate impact doctrine posits that an entirely neutral policy that does not discriminate on its face, that is not intended to discriminate, and that does not actually treat individuals differently based on their race, somehow constitutes illegal racial discrimination if it has a “disproportionate” statistical effect among different racial and ethnic groups.
- This new EO includes the term “equity” 21 times, while not including the term “equality” even once. Also, neither the President nor members of his Administration use the term “equality” anymore, and when they do use it accidentally, they publicly correct themselves.
- The officially disadvantaged categories according to which outcomes will be judged are, per the EO, “underserved communities... such as Black, Latino, and Indigenous and Native American persons, Asian Americans and Pacific Islanders and other persons of color.”

- Another Biden EO describes overlapping discrimination on the basis of gender identity, sexual orientation, and race, citing “transgender Black Americans.” It claims to advance equal treatment, but ignores the significant disadvantages to girls and women when the law treats biological boys and men as if they were biological girls and women.

WHY SUCH POLICIES HARM ALL AMERICANS

- Using equity as the standard will mean violating the Constitution and existing law. The Constitution demands equal treatment. The 14th Amendment, for one, guarantees “equal protection under the law.” Titles VI and VII of the Civil Rights Act of 1964 prohibit discrimination based on race, color, religion, sex, or national origin.
 - The misuse of equity also violates cherished principles that continue to have a strong psychic hold on the minds of many Americans, such as the foundational principle that “all men are created equal.” To breach these principles is, therefore, highly divisive.
 - Because success and failure will be measured not by individual outcome, but according to the numerical representation of official categories, the policy enforces a caste system that is alien to the American ethos. A Chilean-origin neurosurgeon will be counted as a member of a marginalized group, in need of greater government resources than a white life-long waitress in Pensacola. Social disadvantage, the new policy effectively holds, is determined at birth, and cannot be shaken by success and achievement.
- Despite the superficial appeal of “fighting racism,” these policies will do little to alleviate poverty and inequality. As scholars such as Ron Haskins, Robert Rector, Isabel Sawhill, and others have demonstrated, the real drivers of American poverty—for all racial groups—are the so-called background variables of family structure, educational attainment, and workforce participation.
 - Under the disparate impact doctrine, any policy that leads to unequal outcomes as measured by category is illegal, no matter how impartially applied or how nondiscriminatory its nature. The disparate impact doctrine, therefore, leads policymakers to seek color-conscious policies in the search of achieving numerically proportional outcomes. This produces policies that are unfair and wasteful.
 - To achieve such numerical proportionalism requires coercion, which the proponents of equity openly support. As Professor Kendi has written: “The only remedy to racist discrimination is antiracist discrimination. The only remedy to past discrimination is present discrimination. The only remedy to present discrimination is future discrimination.”

Americans need Washington to protect equality as defined by the Founding Fathers so that everyone, regardless of background or ethnicity, has the chance to achieve the American dream.