

# Professor argues for 'postracial remedies' to address American racial disparities in constitutional way

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For many people, Barack Obama's election to the nation's highest office proved that race is no longer a barrier to the American Dream—that we are living in a "postracial" society. The Supreme Court's equal protection jurisprudence seems to support this position. However, evidence suggests that lingering racial bias persists in police relations, education, incarceration, employment and other aspects of everyday life. A University of Kansas law professor has co-authored an article calling for "postracial remedies" as a means to fight these disparities in a politically feasible, constitutional way.

The Supreme Court has limited the availability of remedies for racial inequality by blocking race-specific measures such as [affirmative action](#), rejecting constitutional claims based on "disparate impact" and ruling that the Constitution does not prohibit private acts of discrimination. Given these legal precedents, coupled with the fact that racial harmony has not become reality, Richard Levy and Derrick Darby propose "pragmatic solutions for the economic, social and structural problems that disproportionately burden African-Americans without treating people differently because of their race."

"We are hopeful that creating a rising tide to lift all boats can go a long way toward mitigating racial disparities in America," they wrote.

Levy, the J.B. Smith Distinguished Professor of Constitutional Law at

KU, and Darby, professor of philosophy at the University of Michigan, began their collaboration when Darby, who was then a faculty member in KU's philosophy department, served an intra-university professorship in the [law school](#), and the two co-taught a seminar on socioeconomic rights that require government support, such as a right to education. The two collaborated on an article shortly thereafter and continued to discuss various issues of mutual interest.

"Over the course of our discussions, Derrick would often talk about postracialism and how it's come to dominate our political landscape," Levy said. "I drew the connection to legal doctrine, particularly to the Supreme Court's equal protection jurisprudence."

Levy and Darby have presented their study at the University of Chicago Law School, Stanford University and the KU School of Law. They don't agree that the days of slavery, Jim Crow laws and overt racism are completely in the past. Instead, they recognize that race-specific solutions face significant political and legal barriers. While the left wing of the [political landscape](#) argues reparations and affirmative action are necessary to compensate for past discrimination and the opposing side argues enough time has passed for African-Americans to "solve their own problems," Levy and Darby contend there are countless good reasons to address racial disparities, regardless of blame or political persuasion.

The authors argue that it is more effective to target the socioeconomic issues underlying racial disparities on the theory that solving these broader problems will also reduce racial inequality. For example, enhancing investments in public education or offering free college tuition could help counter educational disparities for many people.

Solutions should not come from litigation first, they argue, but through policy, voluntary changes, elections and political work.

"We think the big advantage of this approach is, instead of creating a zero-sum game, it invites bridge building and solutions that are much more likely to withstand legal challenges," Levy said.

Implementing changes at the local level will help identify approaches that can be followed elsewhere. On the national stage, political divisiveness impedes progress. But at the community level, people are often more concerned with solving problems than with ideology, Levy said.

The article cites improving relationships between police forces and minority communities as an example. This goal is more likely to be achieved by asking, "How can we avoid becoming the next Ferguson, Missouri?" than through a confrontation that accuses both sides of being racist.

"As the current presidential election season makes clear, the nation is deeply polarized about many matters, including issues of race. We disagree about whether race still matters, whether discrimination is still a major factor in perpetuating inequality, and over what role, if any, society should play in addressing such matters," Darby said. "Our research calls attention to the philosophical, psychological and constitutional obstacles to addressing [racial disparities](#) using remedies that focus on race. And we argue that remedies which are sensitive to the problems of race, but that are not race specific, are a promising way forward for dealing with [racial inequality](#) in view of these obstacles."

The authors make clear that pursuing postracial remedies does not require accepting a postracial narrative, nor abandonment of advocacy to combat discrimination.

"We do not suggest that advocates of racial justice should be silent about" ongoing discrimination, implicit biases or systemic barriers, Levy

and Darby wrote. "We do, however, suggest that there may be practical advantages to addressing them without the use of race-specific remedies, which are both politically and legally unrealistic at the moment."

Although the United States is clearly not a postracial nation, Levy and Darby argue that postracial remedies are "sorely needed in our deeply polarized society smitten by the belief that race and racism are no longer significant barriers to living the American Dream."

Provided by University of Kansas

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