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JOHN DAVID SKRENTNY

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Introduction

Affirmative Action: Some Advice for the Pundits

JOHN DAVID SKRENTNY

University of Pennsylvania

Although academic research on affirmative action is still only in its beginning stages, newspaper opinion pages and political magazines have been filled with arguments for and against the policy. Opinion leaders on the Left and the Right have not let the paucity of data and lack of dispassionate, systematic study stop them from forming strong views on the topic and trying to convince other Americans to think as they do. The result of this situation is the maintenance of various myths about affirmative action and the continued neglect of some of the policy's important political, institutional, and social dynamics.

This is not to suggest that both sides have it all wrong. Both sides have some correct arguments, some wrong, and much one cannot at this point judge one way or the other. This volume is intended to add much-needed knowledge and research to a debate known for its high levels of abstraction, cliché, and bitterness. Specifically, these articles challenge four myths that are repeated or implied continually in the popular debate over affirmative action, as well as in the nascent scholarly debate.

MYTH #1: THERE IS ONE AFFIRMATIVE ACTION

Students of affirmative action and national opinion makers must be attuned to the policy's great complexity. One all-encompassing definition of affirmative action is difficult to maintain because the policy has changed over time and has never been the same in different spheres of opportunity. Affirmative action in employment is not the same as that in higher education or professional school admissions, and neither of these is identical to that found in contract set-asides. Furthermore, as Lawrence Bobo shows in his contribution to this volume, public opinion varies with the different kinds of affirmative action mentioned in surveys, with Whites showing moderate support for some types.

The earliest uses of the term *affirmative action* in the context of civil rights enforcement can be characterized as lacking in clarity, careful planning, and

analysis. The term appeared in John F. Kennedy's Executive Order 10925, barring employment discrimination by government contractors. It appeared again in Title VII of the Civil Rights Act of 1964, which protected against employment discrimination by all employers of more than 100 persons (gradually increasing its reach to the current level of 15 employees). In 1965, the term was repeated in Lyndon Johnson's Executive Order 11246. In none of these instances was the term clearly spelled out. Employers were told not to discriminate; in Title VII, they were warned that those found to be discriminating could be ordered by the courts to take some affirmative action, and in the executive orders, they were told not to discriminate and also to take some affirmative action to ensure nondiscrimination. What did this mean?

As Hugh Davis Graham points out in his article in this volume, it meant some kind of "soft" affirmative action. The executive orders and Title VII vaguely list some activities that might be included, such as hiring employees and giving back pay. The wording here seems to suggest affirmative action aimed at identifiable individual victims of affirmative action, but the executive orders, which required affirmative action even before a contractor was officially found to have discriminated, could not have meant that. A Johnson administration document, dated January 1964, highlights the confused nature of the issue. It shows both naiveté and the sense that although affirmative action could mean many things, in 1964 it did not mean racial quotas, goals, or hiring timetables.

"Affirmative Action Commitment Under Executive Orders 10925 and 11114" (1984), which explained that affirmative action was a relatively new concept in contract management, was meant to "acquaint government contractors with this requirement." There was nothing in the provided definition that suggested race consciousness, later to be a major drag on affirmative action's political support:

Affirmative action means positive or firm or aggressive action as opposed to negative or infirm or passive action. Affirmative action encompasses the steps necessary to insure that a contractor puts into practice his stated policies of equal employment opportunity without regard to race, color, creed or national origin.

The document lists no fewer than 25 examples of affirmative action.

The simplistic quality of the suggestions reveals the situation of the early 1960s; that is, as Graham points out in his article, civil rights laws developed primarily to fight the brutal segregation and discrimination of the Jim Crow South. For instance, one suggestion for affirmative action is simply "publication and dissemination of written policy of equal employment opportunity"; another was "eliminate segregated wash-rooms, cafeterias, smoking areas, locker-rooms, drinking fountains, time clocks, pay-lines, contractor sponsored recreational programs, etc." Some of the stronger recommendations reveal both surprising differences with later beliefs about the nature of discrimination and awareness of the taboo nature of race consciousness and preferences. For example, number 9 allowed nonminority inclusion: "Seek, employ and develop minority group

personnel, *as well as others* [italics added], in white collar classifications to insure that the best talents and abilities of the nation's manpower resources are utilized most advantageously" ("Affirmative Action," 1984). Although use of employment tests on which Afro-Americans (Patterson, 1997)¹ performed poorly would later be seen as culturally biased and discriminatory, example number 18 suggested we "re-evaluate qualifications of lower eschelon minority employees to insure equal consideration for job progression based on standards and qualifications which should be no higher or no lower than those established for white employees" ("Affirmative Action," 1984).

Such were the early years. It was not long before a combination of forces (including urban race riots and the sense among civil rights administrators that stronger efforts were needed for signs that enforcement was accomplishing anything) led to changes. By 1969, the federal government defined affirmative action for government contractors as requiring good faith efforts to achieve predetermined racial hiring goals by certain time periods (Skrentny, 1996).

This definition did not stand still, and it did not necessarily apply to firms that were nongovernment contractors. As Erin Kelly and Frank Dobbin show in their contribution to this volume, firms were faced with great uncertainty as to what was required of compliance with civil rights laws and regulations, and the shifting political winds and changing occupants of the White House led to further complications. Similar to Graham's argument that affirmative action developed its own political constituency among national, state, and local lawmakers, Kelly and Dobbin show that affirmative action developed a constituency among personnel officers in large firms.

Just as affirmative action in employment took different forms over time, affirmative action across other spheres also shows a protean character, belying the simplified versions that populate public debates. Although employment affirmative action has the most flexibility, John Aubrey Douglass shows in his contribution to this volume that affirmative action in the University of California's student admissions system became a rationalized process, set in the context of preferences based on less controversial criteria, such as geographical origin in the state. In the area of contract set-asides, George La Noue and John C. Sullivan, as well as Graham, show an even more pronounced tendency to simply use quotas. Steven Teles's article shows that other nations with minority populations have their own ideas of discrimination and affirmative action.

MYTH #2: AFFIRMATIVE ACTION HAS ONE PURPOSE

The second myth is a corollary of the first. In debates on affirmative action, usually among arguments by critics, one frequently finds a sentence that begins, "Originally, affirmative action was meant to. . ." Usually the one purpose cited is that the policy was intended to be a temporary compensation for Afro-Americans for past discrimination. But as the above discussion and this volume show, there

were and are many affirmative actions, making it highly unlikely that there was ever any common rationale. Indeed, historical evidence shows many different understandings of what the policy was supposed to do.

Most Americans share with critics of the policy the idea that the originators were trying to compensate Afro-Americans for centuries of discrimination. There is much to support this belief. Title VII of the Civil Rights Act of 1964, as discussed above, allows for court-ordered affirmative action to compensate discrimination victims. There is also a much-cited speech, made by then President Lyndon Johnson at the 1965 commencement of Howard University, that was an eloquent justification of government-sponsored compensatory treatment. In an oft-quoted passage, Johnson said,

Freedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, do as you desire, choose the leaders you please.

You do not take a person who for years has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, "you are free to compete with all the others," and still justly believe you have been completely fair. (Cited in Rainwater & Yancey, 1967, p. 126)

Johnson certainly did utter these words, even adding that the next frontier was "equality as a fact and as a result" (Rainwater & Yancy, 1967, p. 126), but there is no evidence that he had in mind racial hiring goals, timetables, or quotas. The speech, written by Richard Goodwin and Daniel Patrick Moynihan, says not a word about affirmative action. It was much more in line with less controversial compensatory measures, such as the Headstart educational program and other general (monetary) aid packages (Davies, 1996).

The roots of support for affirmative action and the resistance to the policy are far more complex, as Thomas Sugrue's article in this issue points out. Sugrue sees tensions in New Deal liberalism of the 1940s as key to understanding affirmative action today. That liberalism, he argues, made federally guaranteed security a hallmark for working Americans—but New Deal laws tended to exclude Afro-Americans. Civil rights groups' efforts to equalize security led many onto the road to affirmative action, whereas the Euro-American working class often fiercely resisted any efforts that they saw as jeopardizing their own security.

As I have argued elsewhere (Skrentny 1994, 1996), whereas judges have often ordered specific firms or public institutions to enforce racial hiring goals as compensation for past discrimination, and some civil rights groups may have made compensation arguments, many of the original justifications for affirmative action were guided by administrative pragmatism. Civil rights enforcers needed an effective and efficient means of stopping present discrimination. Still others were attracted to the policy as a means to quell urban racial unrest. As both the La Noue and Sullivan article and the Graham article show, affirmative action in government contracts may sometimes appear to be a politically motivated policy, not unlike patronage politics of the old urban machines. Kelly

and Dobbin bring us the firms' perspective; many of them came to affirmative practices mainly by following each other, seeking some way of signaling compliance with the law. The policy's uncertain political future has threatened firms' affirmative action officers, and they responded by crafting a rationale for the policy that was not even hinted at in 1964: The diversity created by minority outreach and hiring would aid the corporate bottom line. In short, there was no one original intention of the advocates of affirmative action.

MYTH #3: AFFIRMATIVE ACTION IS A BLACK POLICY AND A BLACK/WHITE ISSUE

It may seem unnecessary to make the claim, but it must be stressed that although affirmative action always includes Afro-Americans and was developed to cope with their unique problems, it also includes many other groups. Students of the policy who wish to make broad claims about its efficacy or justice should go beyond many of today's opinion writers and show awareness of the policy's various beneficiaries—which include more than 70% of the nation's population. In varying contexts, Blacks, women of all races and ethnicities, Latinos, Asians (from East, Southeast, and South Asia), Pacific Islanders, Eskimos, Aleuts, American Indians, and Italians (in New York City) have been beneficiaries of affirmative action.

The myth that affirmative action is only for Afro-Americans is one that is usually found among writers on the Left who seek to defend affirmative action. Often falling for myths #1 and #2, that there is only one affirmative action and that it has one purpose (compensating Afro-Americans for past discrimination), they have no rebuttal to critiques of affirmative action that it is overinclusive. The critique of overinclusiveness takes two forms: Affirmative action is overinclusive because it allows recent immigrants to take part (an issue examined in the Graham article and Jennifer Lee's contribution), or it is overinclusive because it benefits groups that are actually above the average in various indexes of inequality, as the La Noue and Sullivan article documents.

Because the United States is a modern nation-state, one might assume that there is a rational or thoroughly debated reason for affirmative action's benefits going to some groups but not others. This, however, is not the case. A combination of political clout, or the ability to bring unfavorable publicity to government officials, and the cursory decisions of various government officials on who suffers from discrimination seem to be at the root of who can benefit and who cannot.

The history of affirmative action shows little interest in the logic and sociological basis of the categories (see the Graham and La Noue and Sullivan articles in this volume; Skrentny, in press). The obscure tale of one of the few affirmative action programs to be disallowed is instructive of the complexities of a policy that goes beyond Afro-Americans and women. Officials in the Office of Federal Contract Compliance in late 1971 decided that Catholics, Jews, and

persons of Eastern and Southern European ancestry should benefit from affirmative action. The proposed guidelines simply declared that “experience has indicated” that certain religious groups and national origin groups “continue to be excluded from executive, middle-management, and other job levels because of discrimination based on their religion and national origin.” If an “underutilization” of these groups could be seen in an employer’s workforce, the guidelines stated that the employer would be required to take steps to “remedy the underutilization” (*Discrimination*, 1971).

This effort at affirmative action for Euro-American people was killed by the Nixon administration, although Nixon was simultaneously seeking votes from these very groups, especially Catholics (Frymer & Skrentny, in press). The reason for the kiboshing? At least one corporation head, W. M. Bennett of the 3M Corporation (Letter from W. M. Bennett, 1972), as well as Jack Gleason of the Washington Consulting Group and Nixon officials, argued against the guidelines, stressing that trying to remedy underutilization of various religious groups would be both an invasion of privacy and a potential violation of the constitutional separation of church and state. In addition, the ethnic provisions raised red flags, inviting scrutiny that is rare in the development of affirmative action. A set of comments that circulated in the Nixon White House declared that “determination of national origin also poses identity problems,” and asked,

Is national origin determined by the place of one’s birth? The place of birth of one’s parents? If so, what governs the determination in the case of bi-national parents, the ethnic derivation of a surname? Or will employees and applicants be required or at least permitted to identify with an ethnic group? (“Discrimination,” 1971)

Current affirmative action was acceptable, the White House document maintained, because it was relatively simple, concerning itself with “*unchanging physical* attributes which are typically observable” (*Discrimination*, 1971). Similarly, Gleason stated that “physical characteristics such as being black, male, white, Oriental or female are permanent and not subject to change. Affirmative action in such areas can be accomplished and measured without undo complications or invasions of privacy” (“Letter to John Dean,” 1972). Gleason, of course, left out Latinos, a category so complex that members of the group can be of any race. Latinos, who have had no standard group name (in the late 1960s and early 1970s, government officials alternately referred to Spanish Americans, Spanish-surnamed Americans, Spanish-speaking Americans, Latinos, or simply Mexican Americans), typically exhibit high rates of intermarriage and have been split for decades as to whether or not they constitute a separate race. The issue of difficult categorizations and potentially changing identities seemed to exclude Euro-American ethnics in 1972 but not American Indians, whose numbers curiously doubled between 1950 and 1970 and continued to rise afterward (Eschbach 1993, 1995). Whether or not affirmative action for Euro-American ethnics, Jews, and Catholics was ever a good idea, it was not allowed to proceed,

although programs that were similarly problematic were allowed to proceed, to include groups far beyond Afro-Americans. The point here is not that affirmative action for immigrants is necessarily wrong (if affirmative action is the best tool to fight present discrimination, immigrants of any color may have compelling claims to protected status), but that much of the debate over affirmative action concentrates on abstract principle and leaves out the complex questions of who benefits and why.

Several of the articles in this volume go beyond affirmative action as a Black/White issue. Lawrence Bobo takes the unusual step in the growing area of public opinion research on affirmative action by looking at the views of Latinos and Asians in addition to Afro-Americans and Euro-Americans. He finds racial/ethnic differences in attitudes toward the policy that are not reducible to sociodemographic and ideological factors. The conclusion is important: Who you are predicts how you view the policy. Articles by Jennifer Lee, Graham, and La Noue and Sullivan all in varying ways address the impact of immigration on affirmative action. Lee's article explores the realities of racial hiring in urban America and finds the surprising paradox of both discrimination against Afro-Americans and a preference for Blacks—but not necessarily Americans. Steven Teles's article explores the unique experience of affirmative action in England, which includes Blacks, Indians, Pakistanis, and Bangladeshis. John Douglass explains the strange world of the University of California, where admissions officials used affirmative action to boost Afro-American and Latino enrollment in a student population in which statistics showed Euro-Americans were underrepresented.

MYTH #4: COLOR BLINDNESS AND PREFERENCE ARE THE ONLY OPTIONS IN DISCRIMINATION LAW

The most formulaic antiaffirmative action arguments argue that vigorous enforcement of Title VII is all that is needed, whereas those on the Left defending affirmative action preferences often fail to consider options or even the broad range of possible meanings of the term. The Teles and Bobo articles show other ways of approaching equal opportunity. By examining the failure to develop affirmative action in Britain, Teles shows that the British have sought to avoid positive discrimination (one type of affirmative action), but operating within these constraints, have found other possibilities that Americans rarely discuss, as they work hard to ensure that non-White Britons can compete fairly with Whites.

Bobo moves beyond the old debates by attacking the idea that resistance to affirmative action is either principled (affirmative action is a violation of individualism and merit) or simple racism. The results of his study are more optimistic. Not only do Euro-Americans and other groups support some types of affirmative action (the kinds practiced in Britain) (see also Hochschild, in

press), but views toward racial preferences are based on perceptions of lost opportunities as a result of affirmative action. These perceptions may prove more malleable than ideology or prejudice. Bobo's argument dovetails with that of Sugrue in this volume; they both stress personal assessments of economic well being as crucial to understanding the politics of the policy. Showing that race matters in views toward affirmative action, Bobo concludes with a claim new in the debate: "Affirmative action is about the place racial groups should occupy in American society" (p. 999).

Affirmative action faces an uncertain political and legal future in the late 1990s. Although this volume's contributors have their own views on the wisdom of the policy, as editor I have sought their expertise not in the service of defending or attacking the policy, but to inform the political and legal debate.

NOTE

1. I follow Orlando Patterson (1997) in using *Afro-American* and *Euro-American* instead of Black/African American and White. Patterson points out that scientists have long known that there is no biological basis in race and that the term African American obscures the distinctive sociology of American-born persons of African descent, as it groups them together with the growing numbers of immigrants from the African continent.

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