

# ISSA Proceedings 1998 - Arguing Over Values: The Affirmative Action Debate And Public Ethics



## *1. Purpose and Rational*

It has long been recognized that public values are inculcated through the stories and myths revealed in public discourse (see, for example, Cassirer 1944 and Eliade 1963). One story, especially pervasive in western societies, is the “rags to riches” phenomenon.

According to this narrative, known in the United States as the American Dream, individuals could, through their own determination, skill, or happenstance, overcome the circumstances of their birth and achieve greatness. This myth was exemplified in the nineteenth century stories of Horatio Alger.

Until the 1960s, in the United States, this narrative, with rare exception, was limited to white males. The Civil Rights Act of 1964 through its prohibition of discrimination eliminated many structural barriers to equal participation. But the removal of discrimination alone would not enable all Americans to compete equally. Some individuals came to competition hobbled by years of racism. Thus, a policy of Affirmative Action evolved. Affirmative Action established the requirement that government, and those who do business with the government, act affirmatively to recruit and promote women and minorities in order to foster equal participation in the American Dream. For three decades Affirmative Action, in varying incarnations, was the law of the land and resulted in significant changes in employment demographics. It also led to a backlash principally among arch conservatives and white males who claimed to suffer from “reverse discrimination.”

In 1996, voters in the state of California overwhelmingly supported a state ballot initiative, Proposition 209, which abolished Affirmative Action in state employment and education. In California such propositions, if passed by a majority, become law. Somewhat surprisingly, one in four minority voters and one out of two woman cast their ballots to eliminate the very programs established for their benefit. Leaders in other states began similar initiatives and federal lawmakers moved to enact comparable national legislation. Other anti-Affirmative

Action activists continued to pursue judicial relief. Civil Rights leaders warned that elimination of preferences would significantly and adversely affect employment and educational opportunities for minorities.

This essay examines the remarkable and politically incendiary debate over Affirmative Action in the US. More specifically, representative anecdotes of the main public argumentation over the debate to abolish Affirmative Action will be analyzed to determine its nature and the implications it may have on race relations, public values, and notions of community. Such an inquiry is warranted for several reasons.

First, the Affirmative Action debate touches “the raw nerves of race, gender, and class - all of which are flash points of social debate and so emotionally charged that they beg for rational discussion and analysis” (Beckwith & Jones 1997: backflap).

Second, the public affirmation of legislation reveals public values. Anti-Affirmative Action argumentation began with reactionaries, was subsumed by conservatives and is now voiced by some liberals. Understanding the core values behind these shifting values reveal new conceptions of the “public” and “community” are therefore of interest to argument scholars in that they inform us as to how cultural narratives shape or fail to shape discourse in the public forum. Finally, while Affirmative Action may be a uniquely American program, how cultures cope with the diversity of their populace is an issue many nations must address. In Europe, in particular, many are struggling with issues of discrimination and segmentalism. Argumentation scholarship serves a useful public function if it can inform these debates through analog to what is transpiring in the US.

## *2. Competing Narratives*

One profitable approach to understanding the debate over Affirmative Action is to first explicate the competing stories told by the opposing advocates. Supporters of Affirmative Action inevitably characterize women and minorities as victims of discrimination.

Such discrimination is historical fact. Prior to the civil rights movement and enactment of the Civil Rights Act in 1964, blacks in America were systematically relegated to second-class citizenship.

Segregation was not only evident in “whites only” lunch counters and drinking fountains, it was legal. Shortly before signing the Voting Rights Act of 1965, President Lyndon Baines Johnson called the sweeping changes of the era the

beginning of freedom for all Americans to share “fully and equally in American society” (57). But Johnson argued that removing barriers to freedom was not enough. In a now famous passage, Johnson argued that to be fair, more needed to be done:

*“But freedom is not enough. You do not wipe away the scars of centuries by saying: Now you are free to go where you want, and do as you desire, and 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 that you have been completely fair.’ Thus it is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates. This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result (57).”*

For Johnson, equality required that society act affirmatively to level the playing field. Through enforcement of the Civil Rights Act and presidential Executive Order 11246 the Johnson administration required that those private contractors who did business with the federal government provide data as to the number of minorities in the work force contracted for employment. Employers were held accountable for disparities between the work force and the labor force regardless of the cause for these disparities. Thus, as Eastland (1996) argues, “the disparate impact approach made employers responsible for all that had happened to the shackled runners before they got to the starting line (47).”

The Affirmative Action policy instigated with Johnson was expanded under Presidents Nixon, Ford, Carter and even Reagan and Bush, though both of the latter two presidents opposed Affirmative Action. By 1996 Affirmative Action not only applied to blacks, but women and other racial and ethnic minorities. In order to achieve the goal of matching the percentage of women and minorities employed by a business or enrolled in a university with the numbers found in society, preferences for hiring and promotion were commonplace.

Sometimes this necessitated modifying hiring criteria, lowering standards, or taking into account the race, sex, or ethnicity of applicants. Governments utilized set-asides (guaranteeing a percentage of work for minorities and women only) and occasionally courts ordered quotas to achieve diversity in government

employment (e.g., police and fire departments).

The goal of such actions is a more diverse workplace and a reduction in poverty by those groups separated from the main stream by discrimination. Gains have clearly been made in the last 30 years, but supporters of Affirmative Action argue that there is much that remains to be accomplished. Edley (1996) presents the following evidence to document the racial disparities in economic conditions:

- black unemployment hovers at twice that among whites.
- the median annual income for black males working full-time is 30 percent less than for white males.
- while one in every seven white children under the age of six lives below the poverty level, one of every two black children does.
- according to the 1990 census, only 2.4 percent of the nation's businesses are owned by blacks.
- less than three percent of college graduates are unemployed, but whites are almost twice as likely as blacks to have a college degree.
- white males hold 97 percent of senior management positions in Fortune 1000 industrial and Fortune 500 service organizations.

Only 0.6 percent of senior management are African American; 0.3 percent are Asian and 0.4 percent are Hispanic - the median net worth of black households is only 8 percent of that of whites (42-44). Similar data is presented concerning the economic disparities of women.

Advocates of Affirmative Action also cite studies documenting the extent of discrimination in the current work place. Bergmann (1996) presents a study conducted by the Urban Institute in which pairs of men, one white and one black applied for entry level jobs chosen at random from the newspaper. Even though the pairs of men were matched in terms of physical size, education and claimed experience, and even though black job seekers were coached in mock interview sessions to act like the white person they were paired with, the Urban Institute found that the young white men were offered jobs 45 percent more often than the young black men. When the researchers paired whites with Hispanics fluent in English, the Anglos received 52 percent more job offers.

With this data in mind, the pro-Affirmative Action narrative becomes clear: women and minorities (victims) need protection and assistance from government (hero) lest they be discriminated against either intentionally or de facto by business and higher education (villains). Bergmann (1996) makes this contention

explicit:

*“Exhortation against discrimination, which can be ignored, has not inspired much progress, nor have expensive lawsuits against a handful of discriminators – these can take decades to work their way through the courts. Affirmative action provides a series of practical steps for dismantling discrimination: rounding out promising candidates, getting rid of artificial barriers, outflanking influential people who do not want to see change, shoehorning capable candidates into positions not previously held by people of their race or gender, and grooming the best of them for larger roles (9).”*

Of course, opponents of Affirmative Action tell a different story. When the Civil Rights Act and the Voting Rights Act were first proposed, the main opposition came from southern congress men. These men were seen as reactionaries stubbornly trying to preserve the segregationist south. As such they were largely marginalized.

One victory was in an explicit prohibition against the use of quotas to achieve integration. As the civil rights fights of the 1960s came to a close, Affirmative Action became a bipartisan effort. Richard Nixon oversaw a significant expansion of Affirmative Action. As did Ford and Carter. More importantly, explicit racism became unacceptable. Kinder and Sanders (1996) note that passionate defenses of segregation and deliberate appeals to racism that characterized campaign discourse in the south during the late 1950s were no longer publicly acceptable. In fact, there was little public opposition to Affirmative Action during the 1970s. This began to change with the election of Ronald Reagan.

One significant component of the Reagan revolution, as it came to be known, was the attitude that government was not the solution to the nation’s problems, government was the problem. Whereas supporters of Affirmative Action applauded government’s role of assuring redress for past discrimination and protection from current bigotry, opponents saw yet another instance of government intrusiveness. In addition, Affirmative Action itself had changed. While Johnson had originally presented Affirmative Action as a remedy for the consequences of slavery, the policy had been expanded to include women, Asians, Native Americans and Hispanics. Only white, non-Hispanic males were not covered by Affirmative Action. Yet, LaNoue (1993) calculated that during the 1970s the population of those eligible for Affirmative Action grew seven time faster than the population of those not so eligible, and more than five times faster

in the 1980s. As a result, in 1995, a year before Californians voted on the proposition to end preferences, 73 percent of the population fell within the protections of the policy (Eastland 1996).

The result of preferences being given to such a large percent of the population was a backlash among some white males. Stories of reverse discrimination circulated and some reached the courts. White males who scored higher on standardized tests, only to have their places taken by lower scoring minorities, sued for redress.

Alan Bakke, for example, sued the University of California at Berkeley med school for giving preference to an African American.

Similarly, standards for physically demanding jobs in law enforcement and fire fighting were softened to permit women to successfully compete. The emphasis on achieving "results" that mirrored societal representation also seemed more and more like quotas. It also had the unanticipated consequence of pitting women against minorities and minority against minority. In the case of Hopwood v Texas, a white woman was denied admission to the University of Texas' law school because the law school set aside 15 percent of its admissions for Hispanic students. And in California, U.C. Berkeley and UCLA refused to enroll Asian students in order to give preference to blacks and Hispanics because Asians were already disproportionately represented at those institutions.

The result of these changes was a preference policy that many Americans considered unfair. Pojman (1992, 188) indicates that *"Affirmative Action simply shifts injustice, setting blacks and women against young white males, especially ethnic and poor white males. It does little to rectify the goal of providing equal opportunity to all."* In their 1993 study, Sniderman and Piazza of Stanford and Berkeley contend that their data shows whites oppose Affirmative Action mainly because it violates *"convictions about fairness and fair play that make up the American Creed"* (in Eastland 1996, 157). They conclude that *"The principle of preferential treatment runs against the Creed. . . . It produces resentment and disaffection not because it assists blacks. . . but because it is judged to be unfair."*

Opponents of Affirmative Action further contend that this unfair policy is not warranted because minorities do not need protection from racism. Racism is a far less prevalent than it once was.

Sniderman and Piazza (1993) conclude that while prejudice had not disappeared, it *"no longer organizes and dominates the reactions of whites; it no longer leads*

large numbers of them to oppose public policies to assist blacks across-the-board” (in Eastland 1996, 157).

In fact, Wilson (1978) argues that economic class has more to do with black’s lack of opportunities than does outright racism. Statistical analyses documenting income differentials came under attack by Sowell (1984), “Often the very same raw data point to different conclusions at different levels of aggregation. For example, statistics have shown that black faculty members earn less than white faculty members, but as these data are broken down by field of specialization, by number of publications, by possession (or nonpossession) of a Ph.D. and by ranking of the institution that issued it, then the black-white income difference not only shrinks but disappears, and in some cases reverse - with black faculty earning more than white faculty with the same characteristics”(114). Even if racism was responsible for the economic travails of blacks, Wilson (1990) contends that Affirmative Action is ill-equipped to redress these economic difficulties because its greatest benefits go to those among the minority community who need them the least.

*“Minority individuals from the most advantaged families tend to be disproportionately represented among those of their racial group most qualified for preferred status, such as college admissions, higher-paying jobs, and promotions. Thus policies of preferential treatment are likely to improve further the socioeconomic positions of the more advantaged without adequately remedying the problems of the disadvantaged”*(157).

The story told by anti-Affirmative Action advocates is that preferences are unfair and unnecessary. But the story does not end there. Those who favor the elimination of Affirmative Action also contend that it is disadvantageous to those it purports to assist.

First, it stigmatizes minorities and women. These advocates claim that when we see a black doctor or a Hispanic lawyer we assume they achieved their status because of a policy of preference, not because of their ability. And worse, we assume that they are less able because they needed help to even start their careers (Edley 1996). This stigmatization is especially problematic because the individual is powerless to thwart it.

A second adverse consequence of Affirmative Action is the fostering of a victim mentality. Affirmative Action preferences exist because minorities and women have suffered in the past, or will suffer absent these policies. That makes them victims. There would be no need for such preferences, say those opposed to

preferences, if there were no victims. But Steele (1990) argues that the very act of identifying blacks as victims encourages them to exploit their own past victimage as a source of power and privilege:

*“In this way, Affirmative Action nurtures a victim-focused identity in blacks. The obvious irony here is that we become inadvertently invested in the very condition we are trying to overcome. Racial preferences send us the message that there is more power in our past suffering than our present achievements – none of which could bring us preference over others”* (137).

The victim-focus debilitates because it creates self-doubt and leads to scapegoating. Connerly (1996) contends that “We are saying to young black kids, if at first you don’t succeed, redefine success, because your failure must have been the result of culturally biased exams, the lack of role models, and a racist society. Our kids have come to believe that they cannot survive in a world without special consideration. Their competitive spirit has been weakened by this dependency on Affirmative Action” (67). The effect of this self-doubt is so pernicious that Steele considers advising his children to turn down preferential treatment, and Eastland celebrates a Hispanic fire fighter who turned down an Affirmative Action promotion.

The final way that Affirmative Action harms those it purports to protect, according to those opposed to this policy, is that it entrenches thinking in terms of race. Support for Affirmative Action is a belief that racial progress can be accomplished through the use of race-conscious policies. Supreme Court Justice Harry Blackmun made this assumption explicit in his opinion in *Regents of University of California v Bakke* (1978): “In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently” (xxv). To those who favor abolishing Affirmative Action this approach merely compounds the problem. The goal, argue these advocates, should be a color-blind society. This is the dream to which Martin Luther King spoke so eloquently: “I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.” In such a society equality would prevail and color would not matter. That is the purported goal of those who oppose Affirmative Action.

The importance of the appeal to equality is illustrated by the wording of the California proposition that ended Affirmative Action. Nowhere in the proposition



is Affirmative Action mentioned. Instead, Proposition 209 is called the California Civil Rights Initiative (CIRRI). Its wording is taken from the Civil Rights of 1964. The proposition states: Neither the State of California nor any of its political subdivisions or agents shall use race, color, ethnicity, or national origin as a criterion for either discriminating against, or granting preferential treatment to, any individual or group in the operation of the State's systems of public employment, public education or public contracting." Supporters of Affirmative Action challenged the wording of the proposition even before the election alleging that the failure to state that the proposition abolished Affirmative Action was misleading. The court did not agree.

From this examination of the arguments offered in opposition to Affirmative Action it is reasonable to conclude that the story being told depicts white males as the victims of the unfair, unwarranted, counterproductive policy promulgated by misguided (villains) liberals. The heroes of this tale are those who reject preferential treatment and those who campaign against it.

### *3. Audience Adherence*

California Proposition 209 passed with 54 percent of the vote. When broken down by race, ethnicity and gender we learn that 61 percent of males and 48 percent of females voted for the proposition. Twenty-six percent of blacks, 24 percent of Latinos, 39 percent of Asians, and 63 percent of whites favored this proposition.

Ladd (1995) analyzed survey data from 1985 to 1994. His findings indicate that Americans prefer hiring and admissions decisions be based on merit not on a preference to make up for past denials of opportunity. This data suggests that American voters are finding the arguments of the anti-Affirmative Action advocates more compelling. While we cannot be sure why this is the case, it appears this is not simply a case of citizens voting their own self-interest. Sizable numbers of women and minorities voted to end Affirmative Action, and studies by Kinder and Sanders (1996) lead them to conclude:

*"Self-interest turns out to be largely irrelevant to public opinion on matters of race. For the most part when faced with policy proposals on school desegregation or Affirmative Action, whites and blacks come to their views without calculating what's in it for them. . . . And this means self-interest cannot explain the huge differences we see between black and white Americans on matters of racial policy" (88-89).*

If the explanation lies, at least in part, on the narratives presented, we can identify several components of the anti-Affirmative Action argument that might

account for the .greater adherence.

First, these advocates successfully co-opted the hero of the Affirmative Action supporters. Martin Luther King is a powerful and revered figure in race relations. It is easy to see why tying their opposition to preferences to King's vision of a better, color-blind world rang true to many voters.

Second, those opposed to Affirmative Action invoked a powerful mythos - the color-blind world. From the Declaration of Independence which pronounced inalienable rights for all of us, through the formulation of the American Dream, Americans have always professed a belief in the equality of opportunity for all. That one group (or many groups) should receive preferential treatment runs counter to this core value. Especially when those asked to suffer had no direct part in the transgressions against women and/or minorities.

Third, opposition advocates more successfully combined examples and generalizations. The literature of those opposed to Affirmative Action is replete with cases of individuals who were passed over because of preferential treatment for women or minorities. These stories make the narrative more concrete and personal. There was a dearth examples of those who benefited from Affirmative Action. Perhaps this is an outgrowth of the stigmatization argument. Identification of one's self as the beneficiary of Affirmative Action is to call into question one's legitimacy. Nevertheless, the failure to personify the outcome of preferences has impaired the effectiveness of the pro-Affirmative Action narrative.

Finally, the movement from explicit segregationist and racist argument to what Himmelstein (1983) calls the use of racial code words permits the advocate and audience to share the latent message without needing to make it explicit. Himmelstein defines a racial code as "a word or phrase which communicates a well-understood but implicit meaning to part of a public audience while preserving for the speaker deniability of that meaning by reference to its denotative explicit meaning" (156).

In Himmelstein's study conservative white politicians in Mississippi during the 1970s needed the support of racially resentful white voters, but they also needed to avoid being labeled racists. The solution was the use of code words. References to "racial discord" or "federal intrusion" or "outside agitation" reminded southern white voters that the real issue before them was race. Others who have profitably studied the use of racial codes include Rose (1992), Howell & Warren (1992), and Page (1978).

In the current debate, those opposed to preferences studiously avoid racist language and stridently deny racist intent. Nevertheless, their language conveys the same racist overtones to one who looks for it as David Duke's or George Wallace's. For those who feel threatened by women and minorities in the workplace or university, racial codes permit the evoking of those attitudes without the explicit use of racist argument. Similarly, those who are made uneasy by the successes of women and minorities have their concerns legitimated and allayed. Their uneasiness is not the result of their own bigotry or racism, it is the stigma which attaches itself involuntarily to those who may have benefited from preferences. It cannot be bigotry or racism if the same feelings are manifested in the benefiting individual.

#### *4. Implications*

The preceding analysis yields several implications. First, the Affirmative Action debate as currently practiced could endanger the sense of community necessary for consensus (Habermas 1984).

The use of racial codes necessarily undercuts and is antithetical to ideal speaking situations (Habermas 1970). In the same vain, employing Affirmative Action as a wedge issue, dividing liberal and conservative voices, threatens shared conceptions of the public. On the other hand, perpetuating racial distinctions, even going so far as to use racial distinctions in the quest to overcome such distinctions, marginalizes disparate voices and may equally obviate consensus building.

Second, the appeal to a color-blind world, while intuitively appealing, miscasts the debate. Contemporary perspectives on culture do not envision a homogeneous culture where race, gender and ethnicity merge to one. Such an eventuality may be undesirable even if it were attainable. For who is capable of divorcing themselves from themselves? As Cose (1997) writes: "Race is an essential part of who we are (and how we see others) that is no more easily shed than unpleasant memories. Few of us would choose to be rendered raceless - suddenly without a tribe" (xxii).

Then where does that leave scholars of argumentation? Promoting talk. Ideal, consensus advancing, talk. We have reached the moment when conversation about race relations is more than appropriate. Argumentation scholars have a unique opportunity to foster such talk. We need free, explicit, explorative, continuing conversation about where we are, where we might be going, and how we might profitably get there.

Finally, we need to reconceptualize the notion of victim presented in the argumentative discourse of both those who favor Affirmative Action and those who do not. Currently, both camps speak in terms of a zero-sum game. If women and minorities win, white males lose. If white males win, women and minorities lose. Such a perspective is neither profitable, nor conducive to reaching consensus.

Instead we might profitably build on the jointness of our circumstances; our shared investment in the collective. Edley (1996) writes of the need for interest accommodation. From this perspective advocates search for common ground and community rather than employing “moral calculation, rights-based litigation, or raw majority power. . . Perhaps the majority can each give a little, rather than insisting that one has all the entitlement marbles and the other must bear all the costs. For example, in a situation where layoffs of last-hired workers may obliterate the gains from Affirmative Action, some commentators have suggested job-sharing or wage reduction schemes” (251). Similarly, since much of the dispute over Affirmative Action concerns disagreement between whether it is necessary to use preferences to achieve outcomes or whether it is more important to assure an equitable process, Edley argues that a first step may be to reach consensus on the “disadvantages still worked by the lingering poisons of racial caste” (257). Only through moving the policy debate from the contentious quasi-judicial model to one of mutually beneficial negotiation can we hope to resolve the competing tensions and achieve community.

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