

AFFIRMATIVE ACTION CAN'T BE MENDED

Walter E. Williams

For the last several decades, affirmative action has been the basic component of the civil rights agenda. But affirmative action, in the form of racial preferences, has worn out its political welcome. In Gallup Polls, between 1987 and 1990, people were asked if they agreed with the statement: "We should make every effort to improve the position of blacks and other minorities even if it means giving them preferential treatment." More than 70 percent of the respondents opposed preferential treatment while only 24 percent supported it. Among blacks, 66 percent opposed preferential treatment and 32 percent supported it (Lipset 1992: 66-69).

The rejection of racial preferences by the broad public and increasingly by the Supreme Court has been partially recognized by even supporters of affirmative action. While they have not forsaken their goals, they have begun to distance themselves from some of the language of affirmative action. Thus, many business, government, and university affirmative action offices have been renamed "equity offices." Racial preferences are increasingly referred to as "diversity multiculturalism." What is it about affirmative action that gives rise to its contentiousness?

For the most part, post-World War II America has supported civil rights for blacks. Indeed, if we stick to the uncorrupted concept of civil rights, we can safely say that the civil rights struggle for blacks is over and won. Civil rights properly refer to rights, held simultaneously among individuals, to be treated equally in the eyes of the law, make contracts, sue and be sued, give evidence, associate and travel freely, and vote. There was a time when blacks did not fully enjoy those rights. With the yeoman-like work of civil rights organizations and decent Americans, both black and white, who fought lengthy court,

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legislative, and street battles, civil rights have been successfully secured for blacks. No small part of that success was due to a morally compelling appeal to America's civil libertarian tradition of private property, rule of law, and limited government.

Today's corrupted vision of civil rights attacks that civil libertarian tradition. Principles of private property rights, rule of law, freedom of association, and limited government are greeted with contempt. As such, the agenda of today's civil rights organizations conceptually differs little from yesteryear's restrictions that were the targets of the earlier civil rights struggle. Yesteryear civil rights organizations fought *against* the use of race in hiring, access to public schools, and university admissions. Today, civil rights organizations fight *for* the use of race in hiring, access to public schools, and university admissions. Yesteryear, civil rights organizations fought *against* restricted association in the forms of racially segregated schools, libraries, and private organizations. Today, they fight *for* restricted associations. They use state power, not unlike the racists they fought, to enforce racial associations they deem desirable. They protest that blacks should be a certain percentage of a company's workforce or clientele, a certain percentage of a student body, and even a certain percentage of an advertiser's models.

Civil rights organizations, in their successful struggle against state-sanctioned segregation, have lost sight of what it means to be truly committed to liberty, especially the freedom of association. The true test of that commitment does not come when we allow people to be free to associate in ways we deem appropriate. The true test is when we allow people to form those voluntary associations we deem offensive. It is the same principle we apply to our commitment to free speech. What tests our commitment to free speech is our willingness to permit people the freedom to say things we find offensive.

Zero-Sum Games

The tragedy of America's civil rights movement is that it has substituted today's government-backed racial favoritism in the allocation of resources for yesterday's legal and extra-legal racial favoritism. In doing so, civil rights leaders fail to realize that government allocation of resources produces the kind of conflict that does not arise with market allocation of resources. Part of the reason is that any government allocation of resources, including racial preferential treatment, is a zero-sum game.

A zero-sum game is defined as any transaction where one person's gain necessarily results in another person's loss. The simplest example

of a zero-sum game is poker. A winner's gain is matched precisely by the losses of one or more persons. In this respect, the only essential difference between affirmative action and poker is that in poker participation is voluntary. Another difference is the loser is readily identifiable, a point to which I will return later.

The University of California, Berkeley's affirmative action program for blacks captures the essence of a zero-sum game. Blacks are admitted with considerably lower average SAT scores (952) than the typical white (1232) and Asian student (1254) (Sowell 1993: 144). Between UCLA and UC Berkeley, more than 2,000 white and Asian straight A students are turned away in order to provide spaces for black and Hispanic students (Lynch 1989: 163). The admissions gains by blacks are exactly matched by admissions losses by white and Asian students. Thus, any preferential treatment program results in a zero-sum game almost by definition.

More generally, government allocation of resources is a zero-sum game primarily because government has no resources of its very own. When government gives some citizens food stamps, crop subsidies, or disaster relief payments, the recipients of the largesse gain. Losers are identified by asking: where does government acquire the resources to confer the largesse? In order for government to give to some citizens, it must through intimidation, threats, and coercion take from other citizens. Those who lose the rights to their earnings, to finance government largesse, are the losers.

Government-mandated racial preferential treatment programs produce a similar result. When government creates a special advantage for one ethnic group, it necessarily comes at the expense of other ethnic groups for whom government simultaneously creates a special disadvantage in the form of reduced alternatives. If a college or employer has X amount of positions, and R of them have been set aside for blacks or some other group, that necessarily means there are $(X - R)$ fewer positions for which other ethnic groups might compete. At a time when there were restrictions against blacks, that operated in favor of whites, those restrictions translated into a reduced opportunity set for blacks. It is a zero-sum game independent of the race or ethnicity of the winners and losers.

Our courts have a blind-sided vision of the zero-sum game. They have upheld discriminatory racial preferences in hiring but have resisted discriminatory racial preferences in job layoffs. An example is the U.S. Supreme Court's ruling in *Wygant v. Jackson Board of Education* (1986), where a teacher union's collective-bargaining agreement protected black teachers from job layoffs in order to maintain

racial balance.¹ Subsequently, as a result of that agreement, the Jackson County School Board laid off white teachers having greater seniority while black teachers with less seniority were retained.

A lower court upheld the constitutionality of the collective bargaining agreement by finding that racial preferences in layoffs were a permissible means to remedy societal discrimination (*Wygant* 1982: 1195, 1201). White teachers petitioned the U.S. Supreme Court, claiming their constitutional rights under the Equal Protection clause were violated. The Court found in their favor. Justice Lewis F. Powell delivered the opinion saying, "While hiring goals impose a diffuse burden, only closing one of several opportunities, layoffs impose the entire burden of achieving racial equity on particular individuals, often resulting in serious disruption of their lives. The burden is too intrusive" (*Wygant* 1986: 283).

In *Wygant*, the Supreme Court recognized the illegitimacy of creating a special privilege for one citizen (a black teacher) that comes at the expense and disadvantage of another citizen (a white teacher).² However, the Court made a false distinction when it stated that "hiring goals impose a diffuse burden [while] . . . layoffs impose the entire burden . . . on particular individuals."

There is no conceptual distinction in the outcome of the zero-sum game whether it is played on the layoff or the hiring side of the labor market. If a company plans to lay off X amount of workers and decides that R of them will have their jobs protected because of race, that means the group of workers that may be laid off have $(X - R)$ fewer job retention opportunities. The diffuseness to which Justice Powell refers is not diffuseness at all. It is simply that the victims of hiring preferences are less visible than victims of layoff preferences as in the case of *Wygant*. The petitioners in *Wygant* were identifiable

¹Article XII of the collective bargaining agreement stated:

In the event that it becomes necessary to reduce the number of teachers through layoff from employment by the Board, teachers with the most seniority in the district shall be retained, except that at no time will there be a greater percentage of minority personnel laid off than the current percentage of minority personnel employed at the time of the layoff. In no event will the number given notice of possible layoff be greater than the number of positions to be eliminated. Each teacher so affected will be called back in reverse order for positions for which he is certificated maintaining the above minority balance.

²In a similar case, *Cunico v. Pueblo School District No. 60* (1990), the school district laid off a white social worker but did not lay off a more senior black social worker. The school district argued that it had to retain the black worker so as to maintain diversity on the workforce. That argument did not persuade the Tenth Circuit Court, which applied strict scrutiny and held the school district's actions as unconstitutional and ordered the rehiring of Connie Cunico.

people who could not be covered up as “society.” That differs from the cases of hiring and college admissions racial preferences where those who face a reduced opportunity set tend to be unidentifiable to the courts, other people, and even to themselves. Since they are invisible victims, the Supreme Court and others can blithely say racial hiring goals (and admission goals) impose a diffuse burden.

Tentative Victim Identification

In California, voters passed the California Civil Rights Initiative of 1996 (CCRI) that says: “The state shall not discriminate against, or grant preferential treatment to, any individual or group on the basis of race, sex, color, ethnicity, or national origin in the operation of public employment, public education, or public contracting.” Therefore, California public universities can no longer have preferential admission policies that include race as a factor in deciding whom to admit. As a result, the UCLA School of Law reported accepting only 21 black applicants for its fall 1997 class—a drop of 80 percent from the previous year, in which 108 black applicants were accepted. At the UC Berkeley Boalt Hall School of Law, only 14 of the 792 students accepted for the fall 1997 class are black, down from 75 the previous year. At the UCLA School of Law, white enrollment increased by 14 percent for the fall 1997 term and Asian enrollment rose by 7 percent. At UC Berkeley, enrollment of white law students increased by 12 percent and Asian law students increased by 18 percent (Weiss 1997).

For illustrative purposes, let us pretend that CCRI had not been adopted and the UCLA School of Law accepted 108 black students as it had in 1996 and UC Berkeley accepted 75. That being the case, 83 more blacks would be accepted to UCLA Law School for the 1997–98 academic year and 61 more blacks would be accepted to UC Berkeley’s Law School. Clearly, the preferential admissions program, at least in terms of being accepted to these law schools, benefits blacks. However, that benefit is not without costs. With preferential admission programs in place, both UCLA and UC Berkeley law schools would have had to turn away 144 white and Asian students, with higher academic credentials, in order to have room for black students.

In the case of UC Berkeley’s preferential admissions for blacks, those whites and Asians who have significantly higher SAT scores and grades than the admitted blacks are victims of reverse discrimination. However, in the eyes of the courts, others, and possibly themselves, they are invisible victims. In other words, no one can tell for sure who among those turned away would have gained entry to UC Berkeley were it not for the preferential treatment given to blacks.

The basic problem of zero-sum games (those of an involuntary nature) is that they are politically and socially unstable. In the case of UCLA and UC Berkeley, two of California's most prestigious universities, one would not expect parents to permanently tolerate seeing their children work hard to meet the university's admission standards only to be denied admission because of racial preference programs. Since the University of California is a taxpayer-subsidized system, one suspects that sooner or later parents and others would begin to register complaints and seek termination of racial preferences in admissions. That is precisely much of the political motivation behind Proposition 209.

Affirmative Action and Supply

An important focus of affirmative action is statistical underrepresentation of different racial and ethnic groups on college and university campuses. If the percentages of blacks and Mexican-Americans, for example, are not at a level deemed appropriate by a court, administrative agency, or university administrator, racial preference programs are instituted. The inference made from the underrepresentation argument is that, in the absence of racial discrimination, groups would be represented on college campuses in proportion to their numbers in the relevant population. In making that argument, little attention is paid to the supply issue—that is, to the pool of students available that meet the standards or qualifications of the university in question.

In 1985, fewer than 1,032 blacks scored 600 and above on the verbal portion of the SAT and 1,907 scored 600 and above on the quantitative portion of the examination. There are roughly 58 elite colleges and universities with student body average composite SAT scores of 1200 and above (Sowell 1993: 142). If blacks scoring 600 or higher on the quantitative portion of the SAT (assuming their performance on the verbal portion of the examination gave them a composite SAT score of 1200 or higher) were recruited to elite colleges and universities, there would be less than 33 black students available per university. At none of those universities would blacks be represented according to their numbers in the population.

There is no evidence that suggests that university admissions offices practice racial discrimination by turning away blacks with SAT scores of 1200 or higher. In reality, there are not enough blacks to be admitted to leading colleges and universities on the same terms as other students, such that their numbers in the campus population bear any resemblance to their numbers in the general population.

Attempts by affirmative action programs to increase the percent of blacks admitted to top schools, regardless of whether blacks match the academic characteristics of the general student body, often produce disastrous results. In order to meet affirmative action guidelines, leading colleges and universities recruit and admit black students whose academic qualifications are well below the norm for other students. For example, of the 317 black students admitted to UC Berkeley in 1985, all were admitted under affirmative action criteria rather than academic qualifications. Those students had an average SAT score of 952 compared to the national average of 900 among all students. However, their SAT scores were well below UC Berkeley's average of nearly 1200. More than 70 percent of the black students failed to graduate from UC Berkeley (Sowell 1993: 144).

Not far from UC Berkeley is San Jose State University, not one of the top-tier colleges, but nonetheless respectable. More than 70 percent of its black students fail to graduate. The black students who might have been successful at San Jose State University have been recruited to UC Berkeley and elsewhere where they have been made artificial failures. This pattern is one of the consequences of trying to use racial preferences to make a student body reflect the relative importance of different ethnic groups in the general population. There is a mismatch between black student qualifications and those of other students when the wrong students are recruited to the wrong universities.

There is no question that preferential admissions is unjust to both white and Asian students who may be qualified but are turned away to make room for less-qualified students in the "right" ethnic group. However, viewed from a solely black self-interest point of view, the question should be asked whether such affirmative action programs serve the best interests of blacks. Is there such an abundance of black students who score above the national average on the SAT, such as those admitted to UC Berkeley, that blacks as a group can afford to have those students turned into artificial failures in the name of diversity, multiculturalism, or racial justice? The affirmative action debate needs to go beyond simply an issue of whether blacks are benefited at the expense of whites. Whites and Asians who are turned away to accommodate blacks are still better off than the blacks who were admitted. After all, graduating from the university of one's second choice is preferable to flunking out of the university of one's first choice.

To the extent racial preferences in admission produce an academic mismatch of students, the critics of California's Proposition 209 may be unnecessarily alarmed, assuming their concern is with black students actually graduating from college. If black students, who score 952 on

the SAT, are not admitted to UC Berkeley, that does not mean that they cannot gain admittance to one of America's 3,000 other colleges. It means that they will gain admittance to some other college where their academic characteristics will be more similar to those of their peers. There will not be as much of an academic mismatch. To the extent this is true, we may see an *increase* in black graduation rates. Moreover, if black students find themselves *more similar to their white peers* in terms of college grades and graduation honors, they are less likely to feel academically isolated and harbor feelings of low self-esteem.

Affirmative Action and Justice

Aside from any other question, we might ask what case can be made for the morality or justice of turning away more highly credentialed white and Asian students so as to be able to admit more blacks? Clearly, blacks as a group have suffered past injustices, including discrimination in college and university admissions. However, that fact does not spontaneously yield sensible policy proposals for today. The fact is that a special privilege cannot be created for one person without creating a special disadvantage for another. In the case of preferential admissions at UCLA and UC Berkeley, a special privilege for black students translates into a special disadvantage for white and Asian students. Thus, we must ask what have those individual white and Asian students done to deserve punishment? Were they at all responsible for the injustices, either in the past or present, suffered by blacks? If, as so often is the case, the justification for preferential treatment is to redress past grievances, how just is it to have a policy where a black of today is helped by punishing a white of today for what a white of yesterday did to a black of yesterday? Such an idea becomes even more questionable in light of the fact that so many whites and Asians cannot trace the American part of their ancestry back as much as two or three generations.

Affirmative Action and Racial Resentment

In addition to the injustices that are a result of preferential treatment, such treatment has given rise to racial resentment where it otherwise might not exist. While few people support racial resentment and its manifestations, if one sees some of affirmative action's flagrant attacks on fairness and equality before the law, one can readily understand why resentment is on the rise.

In the summer of 1995, the Federal Aviation Administration (FAA) published a "diversity handbook" that said, "The merit promotion

process is but one means of filling vacancies, which need not be utilized if it will not promote your diversity goals." In that spirit, one FAA job announcement said, "Applicants who meet the qualification requirements . . . cannot be considered for this position. . . . Only those applicants who do not meet the Office of Personnel Management requirements . . . will be eligible to compete" (Roberts and Stratton 1995: 141).

According to a General Accounting Office report that evaluated complaints of discrimination by Asian-Americans, prestigious universities such as UCLA, UC Berkeley, MIT, and the University of Wisconsin have engaged in systematic discrimination in the failure to admit highly qualified Asian students in order to admit relatively unqualified black and Hispanic students (U.S. GAO 1995).

In Memphis, Tennessee, a white police officer ranked 59th out of 209 applicants for 75 available positions as police sergeant, but he did not get promoted. Black officers, with lower overall test scores than he, were moved ahead of him and promoted to sergeant. Over a two-year period, 43 candidates with lower scores were moved ahead of him and made sergeant (Eastland 1996: 1-2).

There is little need to recite the litany of racial preference instances that are clear violations of commonly agreed upon standards of justice and fair play. But the dangers of racial preferences go beyond matters of justice and fair play. They lead to increased group polarization ranging from political backlash to mob violence and civil war as seen in other countries. The difference between the United States and those countries is that racial preferences have not produced the same level of violence (Sowell 1990). However, they have produced polarization and resentment.

Affirmative action proponents cling to the notion that racial discrimination satisfactorily explains black/white socioeconomic differences. While every vestige of racial discrimination has not been eliminated in our society, current social discrimination cannot begin to explain all that affirmative action proponents purport it explains. Rather than focusing our attention on discrimination, a higher payoff can be realized by focusing on real factors such as fraudulent education, family disintegration, and hostile economic climates in black neighborhoods. Even if affirmative action was not a violation of justice and fair play, was not a zero-sum game, was not racially polarizing, it is a poor cover-up for the real work that needs to be done.

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DEFICITS, DEFENSE, AND INCOME REDISTRIBUTION

Carlos Seiglie

By now there is a substantial literature in economics pioneered by George Stigler (1971) and refined by Sam Peltzman (1976) and Gary Becker (1985) that analyzes the role the state plays in redistributing wealth across different groups in society. This transfer of wealth can be effectuated implicitly by government laws and regulations or by direct taxation and the redistribution of the revenues to different groups (Meltzer and Richard 1981). The key feature of models in this literature is that the redistribution is implicitly assumed to occur repeatedly across the same groups at a given moment in time but not between different groups over time. These static models of government behavior contrast with macroeconomic models that view government policy from a normative prospective and analyze it within a dynamic framework. For example, Robert Barro (1979) assumes that the state chooses a tax path subject to the constraint that individual taxpayers seek to maximize their intertemporal utility.

With notable exceptions, the public choice literature has not focused on the possibilities available to the state to transfer wealth intertemporally across groups, nor has the macroeconomics literature. The question of whether deficit financing of government expenditures has an impact on the real economy is a case in point. If deficits do affect real variables, then budget deficits can be used by government to redistribute wealth across different generations. Conversely, changes in institutional structures, laws, or regulations intended to transfer income across groups to increase political support may lead to income transfers across generations. This paper examines whether the enfranchisement of blacks in the United States, who have relatively low incomes, has led to increased use of debt to finance government spending.

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