

AFFIRMATIVE

ACTION

A PHILOSOPHICAL INQUIRY

AND THE

UNIVERSITY

EDITED BY STEVEN M. CAHN

Affirmative Action and the University

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and the University
A Philosophical Inquiry

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Steven M. Cahn



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To the memory of Charles Frankel

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Affirmative Action and the University

Introduction

In 1965 President Lyndon Johnson issued Executive Order 11246, directing that “all Government contracting agencies . . . take affirmative action to ensure that applicants are employed . . . without regard to their race, creed, color, or national origin.” Two years later the order was amended to prohibit discrimination in employment because of sex.

The original order authorized the secretary of labor to “adopt such rules and regulations . . . as he deems necessary and appropriate” pursuant to the order’s purposes. In response to this mandate, the Department of Labor required all contractors to develop “an acceptable affirmative action program,” including “an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor’s good faith efforts must be directed to correct the deficiencies.” The term “minority groups” referred to “Blacks, Spanish-surnamed Americans, American Indians, and Orientals.” The concept of “underutilization” meant “having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.” “Goals” were not to be “rigid and inflexible quotas” but “targets reasonably attainable by means of applying every good faith effort to make all aspects of the entire affirmative action program work.”

Affirmative action is now an integral part of the appointment process at virtually every college and university in the United States. Announcements of available faculty or administrative positions routinely include statements such as this actual one: “[The University] is an equal opportunity, affirmative action employer which actively seeks and encourages nominations of, and expressions of interest from, mi-

nority and female candidates." Every search committee is expected to conduct its activities in accord with federal affirmative action guidelines, and typically compliance is monitored by a school's Office of Affirmative Action.

Each institution regularly updates its affirmative action plan, and progress in achieving goals is systematically reviewed by the Department of Labor. Failure to develop an acceptable plan or substantial deviation from it may result in loss of federal funding.

During the early years of its implementation, affirmative action was the subject of heated debate. Were goals and timetables merely disguised quotas? Were standards being lowered for favored applicants? Were discriminatory practices that judged individuals by irrelevant criteria such as race or sex ever to be ended by programs that differentiated among people on the basis of those same criteria?

Furthermore, assuming affirmative action to be justifiable, was it deserved equally by Blacks, Spanish-surnamed Americans, American Indians, Orientals, and women? Were the bases for the claims in each case the same? Should any other groups have been added to the list? Under what specific circumstances should a group be removed from the list?

As administrators and faculty members put affirmative action into practice, vehement disputes arose regarding a variety of procedural issues. For example, if a search committee failed to find a qualified candidate whose appointment would help fulfill the affirmative action plan, might it be appropriate to leave the position vacant until a more favorable outcome could be achieved? On the other hand, if a department had learned informally of the availability of a suitable candidate, should that appointment be made without any formal announcement or search? In addition, should these institutional policies be publicized.

To some, such questions were of fundamental importance. Others thought them pettifoggery. In either case passions ran high.

But within academia the temper of the times has changed. The torrent of articles for and against affirmative action has become a trickle. Consider, for example, that between 1973 and 1978 the highly regarded journal *Philosophy and Public Affairs*, which concentrates on philosophical discussions of substantive public issues, devoted approximately 10 percent of its pages to the affirmative action controversy. Since that time, however, the magazine has hardly mentioned the matter. Of the hundreds of academic conferences held each year through-

out the United States, many continue to focus on the most effective means of achieving the aims of affirmative action, but rarely does one concentrate on examining the aims themselves.

Lest it be supposed that this phenomenon results from consensus having been reached, consider an article I submitted several years ago to *The Chronicle of Higher Education*. The editors agreed to publish it but warned me to expect an intense reaction to its controversial subject. Having previously contributed columns to *The Chronicle* that produced many responses to me and to the newspaper, in this case I foresaw a deluge.

Here is the essay as it appeared:

COLLEGES SHOULD BE EXPLICIT

ABOUT WHO WILL BE CONSIDERED FOR JOBS

A fundamental principle of academic ethics is that the announcement of any available faculty or administrative position should make clear whatever special criteria the institution has established for choosing among applicants. Criteria not specified should not be used.

Today virtually every college or university advertising a position in *The Chronicle* describes itself as an "Equal Opportunity/Affirmative Action Employer," sometimes adding that it "welcomes and encourages applications from women and minority candidates" (and occasionally "Vietnam-era veterans" or "persons with disabilities"). While such phrases are always supposed to signify that the college or university does not engage in discrimination, sometimes the same words are also intended to convey the important message that the institution strongly prefers, or will give serious consideration only to, members of specific groups.

In fairness to all applicants, departments and schools should be explicit about such matters. If it has been agreed internally that membership in particular groups is to be given strong weight in the decision procedure, the announcement of the position should say so. And in instances in which an institution has decided to fill a position only if a qualified member of a particular group or groups can be found, this information, too, should be stated candidly.

Several university presidents, including those at the Univer-

sity of Wisconsin at Madison and Duke University, recently announced that they had committed their institutions to appointing (within a fixed time) a specific number of faculty members from certain groups. At Memphis State University, the administration's policy is to make available a faculty position for any department that finds a qualified black candidate. At Bucknell University, the Board of Trustees has created five new faculty positions designated specifically for black scholars. Search committees at those institutions are to make choices that will help achieve the stated objectives. Surely, then, job announcements from those schools should inform potential applicants of the special situations, so that people who are, and people who are not, members of the groups in question can decide whether to apply for the positions in light of full information about the conditions governing the searches.

Not everyone agrees about what the most effective and equitable actions are that colleges can take to remedy the pernicious effects of our society's past injustices. But whatever the criteria in effect for a faculty or administrative appointment, the faculty members and administrators who established them certainly consider them within ethical and legal bounds. They should not object, therefore, to stating them publicly, without ambiguity or equivocation. Doing so will help foster institutional goals while sustaining our profession's commitment to truth in advertising. (April 5, 1989)

Did the mail run in favor or opposed? Neither. I received but one piece of correspondence, that from a professor who wrote simply, "I appreciated your column in last week's *Chronicle*, and think I agree with its main argument." As for letters to the editor, not a single one appeared.

Had I found consensus? Hardly, for I was criticizing policies in force at hundreds of colleges and universities. On the basis of available evidence and my conversations with many colleagues around the country, I believe the explanation for the unusual silence surrounding the issue lies not in widespread agreement but in deep-seated, bitter disagreement, too painful to be exposed. Proponents and opponents of affirmative action have tacitly agreed to an uneasy truce in which those on both sides refrain from public debate while still whispering

in corners that their adversaries are at best intellectually misguided and at worst morally insensitive.

This situation is injurious to all, for as John Stuart Mill wrote in his classic *On Liberty*: "However unwillingly a person who has a strong opinion may admit the possibility that his opinion may be false, he ought to be moved by the consideration that, however true it may be, if it is not fully, frequently, and fearlessly discussed, it will be held as a dead dogma, not a living truth." Both those who support affirmative action and those who oppose it ought to rethink the bases for their opinions. In doing so they may not discover grounds to modify their views, but at least they will revitalize them.

To encourage such reexamination, I asked three prominent American social philosophers, Leslie P. Francis, Robert L. Simon, and Lawrence C. Becker, who hold divergent views about affirmative action, to write extended essays presenting their most recent thinking on the subject. These constitute Part I. I then sent their work to other distinguished philosophers of all variety of opinions on the subject who had accepted my invitation to comment. Their responses form Part II. No consensus was expected, and none emerged. The result, as planned, was a clash of reasoned judgments.

Mill argued that to avoid intellectual atrophy we need to have our beliefs questioned by those who disagree with us. He even maintained that "if opponents of all-important truths do not exist, it is indispensable to imagine them and supply them with the strongest arguments which the most skillful devil's advocate can conjure up." Those willing to test their ideas on affirmative action against such vigorous and informed challenge are provided herein with that opportunity.

PART I

After more than twenty-five years of affirmative action law in the United States, college and university faculties remain largely white and male. Nearly 90 percent of full-time faculty are white, 4 percent are Asian, 3 percent are African American, 2 percent are Hispanic, and 1 percent are Native American.¹ Just over 25 percent of faculty positions in higher education are held by women. Within these aggregate data are some significant variations by type of institution and by field. There are lower percentages of Hispanics at public Ph.D.-granting institutions, and lower percentages of Asian Americans at public junior colleges. Only 20 percent of the faculty at research universities are women, but nearly 40 percent of the faculty at public junior colleges are women. Fifteen percent of the faculty in engineering programs are Asian Americans, only 3 percent are women, and less than 1 percent are African Americans. Fifteen percent of the faculty in the natural sciences are women, whereas nearly 40 percent of the faculty in education are women.²

Within these data, there are also some highly significant recent trends. The situation of women has improved markedly in some fields but much less so in others. In some of the fields of most notable improvement, affirmative action has been taken very seriously; and it is thus likely that some of the improvement may be attributed to the success of the policy.³ For example, in law the percentage of full-time female faculty has grown from 10.6 percent in 1977 to 21.7 percent in 1987.⁴ The recent percentage of new law school appointments who are women has reached 40 percent.⁵ In political science, by the mid-1980s over 25 percent of new appointments went to women; even more telling, both the placement success rate of women and the percent-