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ABSTRACT

Motivational bases for affirmative action programs, particularly as these programs pertain to postsecondary education, are considered. "Motivational bases" refers to the basic incentives that are invoked in order to gain public support for affirmative action programs. Three types of motivational bases are addressed: those associated with reasons of morality, those associated with legality, and those associated with utility. The effectiveness of these motivational bases in generating popular support and the accomplishment of its ultimate goal of equal educational and employment opportunity is criticized. Background information on affirmative action is also reviewed. There are essentially four ethical principles that may be used to determine the morality of affirmative action: the principle of simple justice, the principle of compensatory justice, the principle of distributive justice, and the principle of formal equality. A chief merit of legality as a motivational basis for affirmative action is that it emphasizes that affirmative action is the official policy of the nation (or state, or city). It also lays stress on the power of federal (or state, or local) enforcement behind this policy. Utility focuses on the effectiveness of a program or policy as a means to an end, rather than on the intrinsic qualities of the program or policy itself. Advantages and disadvantages of the three approaches are analyzed, and it is argued that the utility perspective appears to have fewer disabilities and more strengths than the other two. (SW)

A CRITIQUE OF MOTIVATIONAL BASES FOR AFFIRMATIVE ACTION PROGRAMS IN POSTSECONDARY EDUCATION

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This paper focuses on motivational bases for affirmative action programs, particularly as these programs pertain to postsecondary education. I wish to emphasize at the outset that the paper does not attempt to evaluate the merits of affirmative action as such, but only to critique the motivational bases for it. By motivational bases, I mean the basic incentives which are invoked in order to gain public support for affirmative action programs. These bases might be thought of as the fundamental rationales which are used to stimulate acceptance of the concept and practice of affirmative action.

For purposes of analysis, I have divided these bases into three generic types: 1) those associated with reasons of morality (e.g., affirmative action is "good" or "right"), 2) those associated with reasons of legality (e.g., affirmative action is "lawful" or "legitimate") and 3) those associated with reasons of utility (e.g., affirmative action is "expedient" or "useful").

The specific task of this paper will be to critique the effectiveness of these motivational bases. That is, this paper will try to answer the question, "How well does each one of these motivational bases generate popular support for the successful pursuit of affirmative action and the accomplishment of its ultimate goal which is equal educational and employment opportunity?" In answering this question, the paper will take a theoretical rather than empirical approach.

Before beginning the critique, a review of some background information on affirmative action will be of value. Among other things, it will serve to indicate the meaning of the term "affirmative action."

Programs to promote affirmative action have had a relatively brief history. Franklin D. Roosevelt issued an executive order in 1941 prohibiting discrimination based on race, creed, color or national origin in government and defense industries. This was followed by several other passive non-discrimination orders in the Roosevelt, Truman and Eisenhower administrations. In 1961, John F. Kennedy issued Executive Order 10925, the first executive order requiring government contractors to "take affirmative action to

ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin" (sec. 301(1), emphasis added). Lyndon B. Johnson issued Executive Order 11246 in 1965 which gave more effective implementation to federal affirmative action policy and delegated enforcement responsibility to the Secretary of Labor. In 1971, the Department of Labor issued Revised Order No. 4 which defined an affirmative action program as follows:

> An affirmative action program is a set of specific and result-oriented procedures to which a contractor commits himself [sic] to apply every good faith effort. The objective of those procedures plus such efforts is equal employment opportunity. Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate. An acceptable affirmative action program must include 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 and thus to increase materially the utilization of minorities and women, at all levels and in all segments of his [sic] work force where deficiencies exist. (§ 60-2.10)

Executive Order 11246 was not applied to postsecondary educational institutions until 1971. At that time, the Department of Health, Education and Welfare was designated as the compliance agency for these institutions. In 1972, HEW issued the Higher Education Guidelines for implementing Executive Order 11246. These Guidelines required postsecondary institutions

> to do more than ensure employment neutrality with regard to race, color, religion, sex and national origin. As the phrase implies, affirmative action requires the employer to make additional efforts to recruit, employ, and promote qualified members of groups formerly excluded, even if that exclusion cannot be traced to

particular discriminatory actions on the part of the employer. The premise of the affirmative action concept of the Executive Order is that unless positive action is taken to overcome the effects of systemic institutional forms of exclusion and discrimination a benign neutrality in employment practices will tend to perpetuate the status quo ante indefinitely. (p.3)

Besides the programs which have been mandated by the executive branch of government, the courts have ordered various forms of affirmative action as a remedy throughout the 1960s and 70s after findings of illegal discrimination.

Morality as a Motivational Basis

Morality is the first motivational basis for affirmative action which will be considered. Etymologically defined, morality means that which is customary. This meaning is indicative of the fact that what is correct from the moral standpoint often depends upon group usage.

Apart from appeal to religious revelation, morality usually looks to philosophical ethics for its theoretical determination. There are essentially four ethical principles which may be used to determine the morality of affirmative action. The first is the principle of simple justice. This principle dictates that one should give to another that which is her or his due. While there is little dispute over the principle itself, when it comes to the question of affirmative action there is a great deal of disagreement in American society over what is actually due and to whom it should be given. The second principle is the principle of compensatory justice. This dictates that an equitable compensation is owed parties who have suffered injury in the past. According to this principle, a case could be made, on the one side, that since black people have been victimized for three hundred and fifty years in America by slavery and institutional racism, they should be entitled to the benefits of affirmative action on the basis of compensatory justice. On the other side, however, a

case could be made that the present rights of the white majority may not be violated in order to redress past injustice, since it was not the members of the present majority who caused the injustice. The third principle is the principle of distributive justice. This states that the distribution of goods or opportunities in society should take place in a way that tends to eliminate present inequities. According to this principle, a case could be made, on the one side, that affirmative action would provide a mechanism for the more equitable distribution of opportunity in society. On the other side, the case could be made that such a mechanism, based as it is simply on a racial classification (or a sexual or ethnic classification - depending on the particular affirmative action program), is completely irrelevant. That is, the sole fact of what race (or sex, or ethnic group) a person belongs to should never be made a relevant consideration in employment matters, even if that consideration is supposedly "benign." The fourth principle is the principle of formal equality. This states that equals should be treated equally and unequals should be treated unequally. According to this principle, a case could be made, on the one side, that a neutral, non-preferential opportunity program would be equitable only if everyone were in a relatively similar situation, but since everyone is not so situated affirmative action is justified. On the other side, a case could be made that, granted that everyone is not similarly situated, the way to remedy this is to focus on the needs of individuals rather than to structure programs for whole racial (or sexual, or ethnic) groups.

As can be seen above, the principles of philosophical ethics on which moral claims are built, are open to conflicting interpretations. This is true primarily because of two fundamental human dilemmas. The first is the dilemma of the one and the many. In social terms, this dilemma raises the problem of the individual's place in society. Does the individual have a unique discrete identity or is she or he to be defined basically in reference to a group? To put the question another way, does the

individual give meaning to the group or does the group give meaning to the individual? A reply that there is some truth in both of these possibilities does not fully solve the dilemma. The second dilemma is the dilemma of the absolute and the relative. In social terms, this dilemma raises the question of whether reality, truth and value are of a fixed and unchanging character or whether they are of a transient and variable character. To put the question another way, are there objectively existing right answers, or is what is right a matter of subjective circumstance?

The truth of either side of the two foregoing dilemmas cannot be proved - at least it cannot be proved to the satisfaction of the opposing view. Questions of morality are difficult to resolve when they involve only individuals, and are all the more difficult when they involve groups and are extended over generations. When there is the further complication of fundamentally different outlooks on reality, then the probability is quite high that the moral problem in question will remain irresolvably moot. Thus, the choice of a moral basis as the motivation for an affirmative action program is not likely to attract the kind of broad-based concensus which is needed to support such a program, since the question of whether this is the "right" or "good" thing to do will be perennially controversial. The truth of this latter statement may be gauged by the fact that no sooner is one "reverse discrimination" suit resolved in a court than another one is introduced for hearing.

Legality as a Motivational Basis

Legality is the second motivational basis for affirmative action to be considered. Legality is defined as adherence or conformity to law, with law being defined as a rule or order of conduct set up by community authority.

Perhaps the chief merit of legality as a motivational basis for affirmative action is that it emphasizes that affirmative action is the official policy of the nation (or state, or city),

It also lays stress on the power of federal (or state, or local) enforcement behind this policy. A number of empirical studies (e.g., Adams & Jones, 1980; Bell, Waren, & Yergler, 1975; Benokraitis & Feagin, 1978; Loeb, Ferber, & Lowry, 1978; Steele & Green, 1976) have shown, however, that government regulation of affirmative action programs in the field of postsecondary education has been less than successful. One problem of government-regulated affirmative action programs is that these programs utilize a simplistic systems-analysis approach. They mandate that a work force analysis be made periodically and that goals and timetables be established. A great deal of record-keeping is thus necessitated, but only a "good faith" effort is required rather than a showing of substantial results. In postsecondary education, many deans and department chairpersons know that they can get by, under the law, with a minimum of effort. It is not that these people consciously wish to discriminate. Indeed, my experience as an university affirmative action officer has indicated that, in my university at least, administrators were in every case apparently well-intentioned. But they, like nature, abhor a vacuum. They want to fill a position as soon as possible, worrying that either superior candidates might not be available later, or that a freeze might be placed on hiring, or that the position might be transferred to another department, or that some other unforeseen circumstance might prevent them from filling the post.

Another problem of basing motivational support for affirmative action on grounds of legality is that these grounds are liable to shift. Consider that it was less than one hundred and fifty years ago that Chief Justice Roger Brooke Taney wrote in Dred Scott v. Sandford [sic] (1857) that black people, whether slave or free, were so far inferior to whites that they had no rights which whites were bound to respect. It was less than one hundred years ago - and after the Fourteenth Amendment was passed - that the Supreme Court stated in its decision in Plessy v. Ferguson (1896):

> We consider the underlying fallacy of the plaintiff's

argument to consist in the assumption that the enforced separation of the two races stamps the colored race with a badge of inferiority. If this be so, it is not by reason of anything found in the act, but solely because the colored race chooses to put that construction on it.... Legislation is powerless to eradicate racial instincts or to abolish distinctions based upon physical differences, and the attempt to do so can only result in accentuating the difficulties of the present situation. (Plessy v. Ferguson [in Noll & Kelly, 1970, pp. 270-271])

While it is doubtful that our law will revert to such racist interpretations, it is well to remember that law is not immutable. In the 1960s and 70s, as indicated above, affirmative action was aggressively pursued by the government. More recently, however, there have been signs that this official legal support is weakening. This can be seen most clearly in the judicial area in the recent relatively conservative decision of the Supreme Court in the Bakke case (Regents of the University of California v. Bakke, 1978). In this case, the Court held that race may be one of a number of factors in admissions decisions, but it may not be the controlling factor. It can also be seen in the executive area in the Reagan administration's policy of eliminating anything connected with affirmative action which is interpreted as involving "quotas."

The more basic difficulty with law as a motivational basis is that it is simply not able to serve as a sufficient rationale, in itself, for a social policy like affirmative action. Law is meant to serve as a codification and basis for adjudication of policy which is already valued for some reason. Dewey affirmed this point in 1897, saying that "All reforms which rest simply upon the enactment of law, or the threatening of certain penalties, or upon changes in mechanical or outward arrangements, are transitory and futile" (Dewey [in Noll & Kelly, 1970, p. 242]). Wittgenstein (1922) has said: "There must indeed be some kind of ethical reward and ethical punishment, but they must reside in the action itself" (no. 6.422). This judgment applies beyond the

specifically moral sphere. In other words, affirmative action cannot effectively be based on external incentives (e.g., getting or keeping government contracts) or on fear (e.g., avoidance of court suits), but rather on the understanding that affirmative action is to the benefit of the postsecondary institution as well as to the benefit of all of the individuals associated with the institution.

Utility as a Motivational Basis

Utility is the third motivational basis for affirmative action to be considered. Utility may be defined as usefulness, measured in terms of results or consequences. Utility thus focuses on the effectiveness of a program or policy as a means to an end, rather than on the intrinsic qualities of the program or policy itself. This basis for affirmative action cannot be critiqued in an abstract isolated fashion apart from some specified end for which it serves as a means, for, in the utilitarian perspective, the means must always be justified by the end. Therefore, the following scenario is offered to illustrate how affirmative action might be motivated by a utilitarian basis.

It is generally acknowledged that most postsecondary institutions will face the possibility of a serious decline in enrollment in the next two decades. Indeed, the American Association of Collegiate Registrars and Admissions Officers and the College Entrance Examination Board (1980) have reported that postsecondary education is already a buyer's market. Not so widely recognized is the fact that, when the demographic changes which are now climbing the educational ladder reach the postsecondary rung, some significant changes may occur in the composition of the postsecondary population. Kerr (1978) has forecasted that, "it is quite possible that a greater proportion of minority group members will, in the near future, attend college than of the white majority" (p. 3). This forecast is supported by a recent Carnegie Council on Policy Studies in Higher Education report (1980). The report, after affirming that "under the conditions of the next two decades,

consumer sovereignty may well prevail largely undisputed in most institutions" (p. 29), goes on to predict that more white women, more blacks and more Hispanics will be attending college, despite a general decline in enrollment. Speaking of blacks in particular, the report states:

> We expect that their attendance rates will equal those of whites. They already exceed those for whites within the same income ranges. We expect attendance rates for blacks in the top half of the overall income range to exceed those for whites in the top half of the overall income range, but we expect attendance rates for blacks in the bottom half of the overall income range to remain below those for whites in that half of the overall income range. Some parts of the black community are moving ahead faster than others. Blacks, also, are becoming a higher proportion of all youths. (pp. 42-43)

Given these demographic changes, it seems probable that postsecondary education will become a buyer's market for minority students. In this event, postsecondary institutions will most likely become more concerned with minority student recruitment and minority student retention since these factors will become important in maintaining enrollment as the volume of the traditional majority clientele begins to decline. In other words, considerations of utility will naturally incline postsecondary institutions to recruit and retain minority students. But in order to recruit and retain minority students in the time of a buyer's market, postsecondary institutions will need to address the problems of making postsecondary institutions more socially, culturally, economically and politically attractive to minority students. One element involved in these problems is the parvitude of numbers of minority staff presently employed in most postsecondary institutions. Without more representative numbers of minorities on staff, a number of difficulties may well ensue: 1) minority students will suffer from lack of role models; 2) counseling for minority students by sympathetic minority faculty will be more difficult to find; 3) the breaking of

stereotypes will be hampered; 4) opportunities for the growth of minority students' self-respect will be diminished; 5) the promotion of intercultural and interracial understanding and cooperation will be inhibited; 6) teaching and research concerns which might benefit from a minority perspective will be less adequately pursued; 7) the provision of a source for future minority faculty will be endangered; 8) postsecondary institutions will be seen as hypocritical in that they will not appear to practice the affirmative action policy which they proclaim; and 9) other social, economic and political considerations of a longer range, less specific, less predictable, but none the less real character, will be affected.

To avoid these difficulties, an appeal might be made to institutional and individual self-interest in order to motivate affirmative action and increase the number of minority staff. Majority faculty and administrators, who might otherwise regard affirmative action programs as improper intervention in the traditional process of autonomous peer selection, might be led to understand that if more minorities are not appointed and if the attendant difficulties described above occur, then growth and even survival of some postsecondary units or programs in an institution - and consequently, continued employment of the present majority personnel within those units or programs - will be threatened because of loss of minority enrollment. Where moral or legal reasons may not provide sufficient motivation to increase minority staff, these utilitarian considerations, based on the awareness that what is in the interest of institutional stability is eventually in the interest of the majority individual's job security, may provide such motivation. It should be noted that these considerations are not entirely of the extrinsic incentive variety. They stress, instead, the realization that the interests of the majority and the minority are confluent. I am not suggesting here that moral or legal motivations should be completely abandoned, however. Such motivations are necessary, but I do not believe that they are sufficient.

The utilitarian motivation in the previous scenario would not

seem to injure equity considerations in the hiring process. Search committees have been known to report that minority faculty candidates do not meet the criterion of being "best qualified" for the position. However, if a postsecondary institution is in need of minority faculty for previously-described reasons of utility, then a candidate's minority status could be one significant and valid factor to be weighed along with such other factors as educational background, teaching, research and service experience in deciding who is "best qualified." Utilitarian preference for minorities could be served in this case without unfair discrimination against majority candidates by simply allowing extra consideration for race (or sex, or ethnicity). The Bakke (Regents of the University of California v. Bakke, 1978) and the Weber (United Steelworkers of America, AFL-CIO-CLC v. Weber et al., 1979) decisions provide precedent for this approach. Justice Lewis Powell's controlling opinion in the Bakke case makes mention of a legitimate state interest in an ethnically diverse student body and suggests how an admissions program might be structured to provide for this kind of diversity without violating the Fourteenth Amendment. On the basis of the considerations mentioned in the above utilitarian scenario, it would seem that a state interest in an ethnically diverse faculty would be seen by the Court as equally legitimate. Likewise, Justice William Brennan's majority opinion in the Weber case holds that Title VII's prohibition of racial discrimination does not condemn all private, voluntary, race-conscious affirmative action plans. Employers are free, according to the Weber decision, to take race-conscious steps to eliminate manifest racial imbalances in traditionally segregated job categories. In this regard, postsecondary faculty positions could be viewed as traditionally segregated job categories. Thus, such an approach as suggested in the scenario would seem not only to give promise of being effective, but also able to withstand legal challenge.

The utilitarian motivation illustrated in the scenario would also seem to overcome the objections of Sowell (1975) that minorities can be hurt and that racism can be perpetuated by making it

appear that minority progress is simply the result of government-mandated affirmative action. However, if minorities are seen as necessary to employ from a viewpoint of enlightened self-interest, then their presence on staff should be viewed as no more gratuitous than the presence of other essential employees. The same reasoning would seem to defeat the objections of Cohen (1977) who fears that affirmative action will pit one racial group against another, "focusing attention to race, creating anxiety and agitation about race in all the wrong contexts, exciting envy, ill-will, and widespread resentment of unfair penalties and undeserved rewards" (p. 40).

It may be that the particular utilitarian arguments which I have offered by way of example in the above scenario will not prove convincing. However, the scenario is meant simply to illustrate the type or kind of argument which I believe has the best chance of underpinning an effective affirmative action effort. It may be that other examples of the utilitarian argument would prove more convincing, e.g., the avoidance of violence which will most likely result if the oppressive non-pluralistic structuring of society is not changed.

The principle disadvantage of utility as a motivation for affirmative action is that it is two-edged. If it should appear at some time to the majority that increasing the number of minority staff is not in the majority's best interest, then the efficiency of this motivation would be lost. To prevent this, an awareness might be developed that what is in the minority's interest is eventually in the majority's interest, e.g., that increasing the number of minority students and minority staff is good for everybody in postsecondary education - minority and majority alike.

Conclusion

The above critique of morality, legality and utility as motivational bases for affirmative action has indicated that none of the three is entirely free from disability. Still,

utility seems to have fewer disabilities and more strengths than the other two. Historically, this seems confirmed by the fact that no significant majority has ever yielded ground to a minority unless it was perceived to be in the majority's own best interest to do so. This is to say that no matter how moral people's rhetoric might be, no matter how law-abiding they might believe that their tradition is, and no matter how sincerely they might feel that they are committed to liberal ideals, when it comes to the point of action, most people will usually respond in a self-interested manner. Therefore, unless an utilitarian motivational basis for affirmative action is more widely adopted, I fear that the status quo will not change.

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