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## *The State of Affirmative Action at the Threshold of a New Millennium*

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From admitting students to hiring faculty, administrators and staff to making tenure decisions, affirmative action has made an indelible imprint on the university environment. Over 30 years has passed since the implementation of Title VII in 1965 and questions, issues and challenges continue to be brought to the forefront. In an effort to respond to the most important questions, confront the most pressing issues and identify the most serious challenges, this book reviews the impact of affirmative action in higher education. This introductory chapter starts with a look at the origins of affirmative action. The following sections establish the context, reframe the arguments and highlight the myths. Finally, there is a brief overview of the subsequent chapters.

### Setting the Scene

Our job is to turn the American vision of a society in which no one has to suffer discrimination based on race into a living reality everywhere in our land. And that means we must secure to every American equal access to all parts of our public life—to the voting booth, to the schoolroom, to jobs, to housing, to all public facilities including lunch counters.

John F. Kennedy, July 10, 1960  
NAACP Rally, Los Angeles, California

That was 1960, the start of a decade that will be forever marked in history as the era of social conscience in America. Change seemed to be the hallmark of the 1960s and affected almost every facet of American life. A powerful feminist movement arose which challenged male domination. Women's political organizations gained force, insisting on equal pay for equal work and demanding an end to sex discrimination. The era also saw the birth of the environmental movement, which brought the issues of pollution and waste control to the American consciousness. The American public also began challenging the power of the seller and the consumerism movement launched efforts to secure truthful and clear disclosures about both products and services. At the same time, the civil rights movement was strongly beginning to confront the unjust treatment of blacks. The summers of 1963 and 1964 brought to the headlines the urban riots of our cities and the nation tuned in to the Los Angeles district of Watts, where the largest urban riot in America was reported.

In his collection of speeches and writings by John F. Kennedy, Theodore Sorenson (1988) notes that Kennedy "was shocked by the brutality endured by civil rights protesters across the nation and determined to enforce judicial orders admitting blacks to state institutions of higher learning. . . [and] launched in mid-1963 an unprecedented and comprehensive, regulatory, and educational drive to fundamentally change this country's course in black-white relations." Later that year, Kennedy was assassinated and the torch was passed to Lyndon Johnson, whose administration ushered in sweeping social change. Among the most notable was Title VII, which prohibits employment discrimination on the basis of race, color, religion, sex, or national origin. Affirmative action was born with the implementation of Title VII and then shaped by the passage of Executive Order 11246 (pertaining to discrimination by contractors), Executive Order 11375 (which included sex as a protected class), judicial decisions, and the passage of state laws.

On college campuses across the nation, the debate over affirmative action policies began with the implementation of Title VII. For some, the implementation of affirmative action programs was viewed as a catalyst which would play a significant role in diversifying our

institutions of higher learning. At the same time, opponents of affirmative action created illusions and misconceptions that something was occurring on college campuses that warranted organized resistance (Gittel, 1975).

Today, affirmative action is no less controversial. In fact, the fire has been fanned by fierce political grandstanding, setting the stage for increasingly intense debate in the years to come. But regardless of where individuals or institutions stand with regard to affirmative action, colleges and universities are legally bound to the specifications of Title VII and are required to ensure that their employment practices expand opportunities for people of color and women. In practice, institutions of higher learning have been at the forefront of expanding opportunities to minorities and women. Based on a recognition that educational excellence and diversity are mutually intertwined, many colleges and universities have voluntarily engaged in expanding equal opportunity admissions for students who historically have been excluded.

Numerous research studies have demonstrated that education continues to be the most powerful vehicle for achievement. As one public policy researcher stated, "Increasingly the dividing line between those who are moving ahead and those who are moving behind is the educational link. Those who get it have a chance. And those who don't get it don't have a chance" ("Redeeming the American Promise," 1995).

Our colleges and universities are at the heart of the social conscience of this nation—places where artificial barriers of race, religion, class, sex, sexual orientation, and language can be transcended and where we can inspire and develop leaders who will marshal a just society. Affirmative action provides the vehicle to create campuses which transcend past and present injustices. Clearly, those involved in higher education must do a better job of educating both the public and policymakers about the importance of an inclusive society, not only for the benefit of people of color, but for us all. Common sense tells us and research confirms that the economic and competitive edge of the nation depends on the availability of educational opportunities and gainful employment for every American.

*Defining Affirmative Action: Then and Now*

While President Kennedy was the first to use the term “affirmative action,” it was President Roosevelt in 1941 who issued an executive order barring defense contractors from discriminating against minorities. After the passage of Title VII, President Johnson issued Executive Order 11246 in 1965 which prohibits contractors from discriminating against any employee or applicant for employment and requires that contractors take affirmative action to ensure that applicants are employed and treated during their employment without regard to race, color, religion, or national origin. Two years later in 1967, President Johnson signed Executive Order 11375, which included sex as a protected class. The intent was—and still is—to boost the number of minority and women employees in employment settings that receive federal funding.

On a broader level, however, affirmative action describes those practices that attempt to correct past or present discrimination and prevent future occurrences of discrimination (Report of the Citizens’ Commission on Civil Rights, June 1984). Other definitions—variations on the theme—abound. In a 1960 speech, John F. Kennedy noted that affirmative action programs recognize that we are “one nation and we are all great people. Our origins may be different but our destiny is the same, our aspirations identical. There can be no artificial distinctions, no arbitrary barriers” (Sorenson, 1988). More recently, the Rev. Jesse Jackson referred to affirmative action as “a conservative remedy to generations of unfair practices that favored white men” (New York Times, June 4, 1995). Several weeks later, President Clinton spoke to the purpose and meaning of affirmative action in his response to Republican opponents:

Our search to find ways to move more quickly to equal opportunity led to the development of what we now call affirmative action. The purpose of affirmative action is to give our nation a way to finally address the systemic exclusion of individuals of talent, on the basis of their gender or race, from opportunities to develop, perform, achieve, and contribute. Affirmative Action is an effort to develop a systematic approach to open the doors of education, employment,

and business development opportunities to qualified individuals who happen to be members of groups that have experienced long-standing and persistent discrimination. . . ." (New York Times, July 20, 1995).

There are those who view affirmative action as America's response to a past which includes slavery, racism, and sexism. Others emphasize a future orientation, defining affirmative action as programs designed to ensure full participation by those who have been historically excluded from colleges, universities, and the work force (Wilson, 1995). Clearly, all of these definitions are more similar than different. And just as clearly, all leave substantial room for interpretation, debate, and political maneuvering.

### Reframing the Questions

As the arguments about affirmative action continue to escalate and passions run high, it is imperative to step back, review the fundamental issues, and take a hard look at the questions that underlie the current debate. In part, this involves challenging common assumptions about issues such as qualifications, admissions standards, and equal opportunity. And in part, reframing the questions requires stepping into the political arena to examine the nature of the misconceptions and fabrications which have begun to make inroads into the American consciousness.

For example, what does it mean to be qualified for employment or college admission? It is proposed by those seeking to eliminate affirmative action, i.e., Ward Connerly, University of California Regent, that we need a merit-based system of hiring, that we need to hire those who are qualified, and that everyone must compete equally. Clearly, qualifications for employment and even admissions are based on a set of standards. Who sets those standards and on what basis? Guinier (1995) notes that, in the United States, there is a universal fixed standard—a one-size-fits-all criterion that applicants for a position or for higher education admission must meet.

To illustrate her point, Guinier cites the victorious lawsuit brought by women against the New York City Police Department

which challenged the requirement that police officers be at least six feet tall. By winning the lawsuit, the doors to the police force were not only opened to women, but to Latino men, Asian-American men and even short white men. More importantly, it highlighted the arbitrary nature of a universal fixed standard. And did the removal of this standard affect the performance of the police department? According to Guinier, performance was enhanced as a result of the change. For example, female police officers were found to be outstanding in domestic violence and other family-related cases.

What about admissions standards? If admissions decisions were based exclusively on specific standardized exams such as the Scholastic Assessment Test (SAT) or the Law School Admissions Test (LSAT), would all applicants be on equal footing? Studies show that the SAT alone does not accurately predict success in college. The SAT has a range of error of at least 40 points, which means that someone who scored 900 one day could retake the test the following day and score anywhere from 860 to 940. If standardized test scores alone were the determining factor in admissions decisions, many students would be barred from their institutions of choice because they were nervous about taking the test, simply had an "off" day, or any of a number of human possibilities. Even more important is the fact that standardized test scores do not accurately measure how one will actually perform during the college years since they do not take into account such factors as motivation and ambition (Holmes, 1995).

A study at Harvard University demonstrates this last point (Guinier, 1995). Three graduating classes were asked to identify the qualities of a student who succeeds. Their definition of success was defined by income, professional satisfaction, and community involvement. The findings indicated that there was a high correlation between success and two criteria: low SAT scores and students who come from blue-collar backgrounds. The implications are clear: Those who are given an opportunity and who are "hungry" to succeed will do better in life than those who take higher education for granted.

Similarly, Guinier's LSAT study (1995) found that the test is both arbitrary and exclusionary. It is arbitrary because it does not correlate very well with performance in law school and exclusionary because LSAT scores correlate with parents' income. In other

words, applicants from middle-class backgrounds who can afford to go to the best public and private schools and who have access to preparatory exam classes are better prepared to excel on standardized exams like the SAT and LSAT, and are therefore more likely to be admitted.

In *Savage Inequalities: Children in America's Schools*, Jonathan Kozol noted that urban schools throughout the United States are typically unhappy places where segregation thrives and where filth and despair are evident and pervasive. He asked a simple and profound question: How can we allow so many of our children to attend educational institutions where no politician, board president, or businessperson would dream of working? How can standardized exams be objective when some schools offer preparatory courses and others lack basic texts and supportive learning environments? And what happens to the generations of students who attend the schools that Kozol described? Are they simply to be dismissed and discarded until the system is restructured to ensure equal opportunity?

Further, what does it mean to be equal? The debate over affirmative action speaks to the necessity of giving everyone an equal start and truly equal opportunity. Given the history of this country, have we even begun to do this? Has affirmative action rectified our inequalities? The founding fathers of this nation were men who believed in patriarchy and assumed privilege—privilege that assigned women the role of second-class citizens. And while African Americans have been in this country for 376 years, slavery—or something very close to it—existed for 246 of those years and cultural and constitutional subordination existed for another 100 of those years. It was not until 1965 that the voting rights and civil rights acts were implemented.

To adequately and accurately assess the impact of affirmative action over its brief 30-year history, it is essential to consider the facts. For example, while the median family incomes for African Americans and Latinos in 1993 were \$21,542 and \$23,654 respectively, white families averaged \$39,000. Moreover, African Americans experienced a slower median-income growth rate than whites from 1973 to 1989, and the median family income for Latinos actually declined between 1979 and 1989. The 1995 report of the Glass Ceiling Commission found that although white males



make up 43 percent of the work force, they hold 95 percent of the nation's senior-management positions (defined as vice president or above) (Harris and Merida, 1995; Phillip, 1995). In higher education, people of color represent 23 percent of the student enrollment and 12 percent of faculties (Carter and Wilson, 1995).

If affirmative action had been successful, wouldn't the numbers be higher? Wouldn't admissions and hiring patterns show marked improvement? To gain some perspective on the numbers, we need only to return to the schools that Kozol described in *Savage Inequalities*. As he went from one urban school to another—most of which were 95 to 99 percent non-white—he was surprised and dismayed to see that segregation had actually intensified and concluded that segregation was not a past injustice, but an ever-present state of affairs. Kozol's reaction to his school visits deserves note:

What seems unmistakable, but, oddly enough, is rarely said in public settings nowadays, is that the nation, for all practice and intent, has turned its back upon the moral implications, if not yet the legal implications, of the Brown decision. The struggle being waged today, where there is any struggle being waged at all, is closer to the one that was addressed in 1896 in *Plessy v. Ferguson*, in which the court accepted segregated institutions for black people, stipulating only that they must be equal to those open to white people. The dual society, at least in public education, seems in general to be unquestioned. (p. 4)

Kozol's observations are central to the current debate over affirmative action and illustrate how desperately this nation needs a systematic approach for producing real integration and inclusion in our classrooms, board rooms, newsrooms, and on our faculties. For this nation to be competitive and economically sound in the next century, we must bridge the gaps between Americans and learn to embrace those who think differently and whose experiences are profoundly different from our own. We will need to take advantage of all Americans and use their talents to rethink the ways we as a nation function.

Americans are concerned for their livelihoods. Some of those concerns are fueled by changing demographics. For example, it has



been predicted that by the year 2010, one of every three Americans will be a person of color. Women and people of color are entering the work force in larger numbers than ever before and, for the first time, many white men are feeling the competition and fear associated with loss of privilege and power. Reasons had to be found to explain these phenomena and a scapegoat was identified: Affirmative action has become the target of attack, the object to blame. This process has created untruths and misconceptions which political leaders have used to capture the public's attention and galvanize support to enhance their own careers. To better understand this process—and its consequences—it is essential to explore some of the most common myths which continue to enter and influence public discourse about affirmative action.

### Debunking the Myths

Affirmative action requires the establishment of quotas for hiring minorities and women.

This belief misconstrues the law. The intent of affirmative action in employment and admissions has always been to establish hiring and admissions goals for underrepresented groups. *Bakke v. Regents of the University of California* (1978) outlawed the use of quotas, but the court also established the need for colleges and universities to consider race as one factor that can be used to help achieve diversity in a student body.

In higher education, affirmative action requires the admission of minorities and women at the expense of white males.

This statement implies that the sole criterion for admission is a standardized test score. However, as was mentioned earlier, standardized tests alone are not adequate predictors of academic success. Further, no institution of higher education selects entering students solely on the basis of merit as defined by grades and test scores (Lennin, 1995). American colleges and universities seek to bring together a diverse group of people who can learn from each other, creating a microcosm

of the world they will enter as productive leaders and citizens (Burd, 1995). And in reviewing applicants for eligibility, admissions officers consider not only test scores, but past performance, leadership potential, activities, recommendations, and the outcome of interviews. As one admissions officer stated, "To say one person is more qualified for admission than another is tough to do" (Burd, 1995). So the question remains: What are the standards for determining who is qualified, and who sets those standards?

Affirmative action has produced reverse discrimination against white males.

The facts simply do not support this statement. A draft study conducted for the United States Department of Labor that analyzed discrimination cases handled by both district and appellate courts indicated that a high proportion of so-called reverse-discrimination cases are simply without merit. Moreover, the Equal Employment Opportunity Commission's reports indicate that out of the 91,183 discrimination complaints filed for fiscal year 1994, only 1.5 percent alleged that white men had been discriminated against because of their race (Harris and Merida, 1995). At a time when the American public is uncertain about employment and concerned because of corporate restructuring and the threat of massive layoffs, affirmative action has become a convenient object of contempt and a target of opportunity for conservative politicians seeking to dilute or dismantle many of the social programs ushered in during the 1960s.

Title VII alone is sufficient to address discrimination.

Diversity is essential to every facet of American society. Even the opponents of affirmative action would agree that hiring people with diverse experiences, outlooks, and opinions is important. But for many Americans, diversity is no more than an admirable concept, a politically correct term that can be applied in myriad ways. There may be a lot of talk about multiculturalism and diversity, but the fact remains that employers still tend to hire—and promote—people

who are like themselves. The fact that the senior management of Fortune 100 firms is 95 percent white illustrates, among many other things, corporate America's discomfort with the realities of diversity. Clearly, race still matters in employment. In their study of nearly 2,000 able-bodied men from several ethnic groups in Los Angeles, Johnson and Farrell (1995) found that those men with darker skin tones were more likely to be unemployed. As evidenced by the verdict in the O.J. Simpson case and the October 1995 Million Man March, the black-white gulf in America is widening and those in positions of power and privilege will be less likely to go out of their way to hire people of color unless they are required to do so (Lehman, 1995). Regrettably, what W.E.B. Du Bois stated in 1903 is still the case today: "The problem of the Twentieth Century is the problem of the color line" (DuBois, 1903).

Merit is the measure we should use  
for employment and admissions.

With respect to employment, the Glass Ceiling Commission found that the most significant barriers to the progress of women and minorities are the entrenched stereotypes and prejudices of white men. The report also pointed out that white men have insulated themselves within their own culture and continue to hire individuals who most closely fit their own personalities. One manager stated that, "What's most important is comfort, chemistry, relationships and collaborations" (Kilborn, 1995). If this is the case, where does merit come in?

As for admissions, when opponents of affirmative action speak to merit, they are speaking only of standardized tests. In addition to the arguments presented earlier, it must be noted that admissions decisions based purely on this definition of merit make determinations about students before they have had the opportunity to prove themselves. They are being judged on a measure that depends heavily on who their parents are, how much they earn and what kind of environment, both academic and personal, they come from (Lehman, 1995). Is this the definition of merit that proponents of this myth such as Steele, Dole, and Connerly seek?

Unqualified individuals are being hired and promoted for the sake of diversity and affirmative action.

Many business leaders recognize that a diverse work force gives them a competitive edge in the global marketplace. Increasingly, they also recognize that it is necessary to encourage people with diverse viewpoints to contribute innovative ideas and to contribute to solving the world's new challenges (Kilborn, 1995). A prime example of a company that acknowledges the power of diversity for corporate success is U.S. West Inc. This is a telecommunications company which was formed as a result of the breakup of A T & T in 1984 and employs thousands of employees. They have recognized that a diverse work force is crucial to the success of the company (Kilborn, 1985). As the chairman and CEO of U.S. West, Richard D. McCormick stated, "Diversity gives us strategic advantage" (Kilborn, 1985). At the same time, the leadership of U.S. West acknowledge that, if affirmative action were not in effect, the gains the company had made would not be as evident.

Employers under Title VII can use two permissible bases for the use of affirmative action in hiring. The first is to remedy a clear and convincing history of past discrimination by the employer and/or the union. The second is to cure a manifest imbalance in the employer's work force. Those who believe that affirmative action is used to hire unqualified individuals do not know the definition or comprehend the intent of affirmative action. They also don't comprehend the legal interpretations accepted by the courts. Neither anecdotal nor isolated incidents should be used to make blanket statements that affirmative action supports the hiring of those who do not meet the job specifications. If abuses or misinterpretation of affirmative action are in use by some, then these companies or individuals need to be educated as to the purpose and meaning of affirmative action rather than calling for the elimination of it (American Association of University Women, April 1995).

Affirmative action has hindered the progress of women and people of color.

Steele (1990) states that affirmative action programs actually hinder people of color and women by creating a sense that they were

hired not based on their strengths, but due to their gender or racial/ethnic background. The assumption is that if affirmative action programs were eliminated, the stigma would disappear. But that is clearly not the case. As Kweisi Mfume stated in *Black Issues in Higher Education*, "Any stigmas and negative stereotypes associated with race in this country existed long before affirmative action was ever thought of. They don't exist because of it, they exist in spite of it" (Mfume, 1995).

To illustrate Mfume's assertion it is important to review the studies by The Glass Ceiling Commission. They found in its studies that significant barriers exist for women and minorities in the work force. These barriers include, among others, entrenched stereotypes. Many of these white men who are in positions of authority and thus are able to hire for employment believe that black men are undisciplined and always late, women are not tough enough and are unwilling or unable to relocate, and Latino workers are foreign born, lazy, heavy drinkers, drug users, and don't want to work. White males cited in this report also believe that neither women nor minorities play golf. Furthermore, the report found that women and minority groups are not receiving the support or mentoring that majority men automatically receive from other majority men (Kilborn, 1995). It is clear that the elimination of affirmative action would not wipe out these stereotypes. In order to abolish these ingrained views this country needs to do a better job of educating for diversity. This report highlights that we are still confronting racist and sexist views among those in positions of power and, therefore, we are not yet prepared to eliminate affirmative action. What is hindering the progress of women and people of color are the beliefs found in this report by those in authority and not an action plan like affirmative action which was created to confront these views.

The *American Heritage Dictionary* offers as one of its definitions for the word *myth*, "A notion based more on tradition or convenience than on fact." The myths on affirmative action have been created because an explanation needs to be fabricated to explain the loss of power among white males. As Kilborn states (1995), "some white men are frightened and angry that people unlike them are vying for their jobs" (p. A14). The Glass Ceiling Report further goes on to cite that barriers exist "because of the perception of many white males

that as a group they are losing—losing the corporate game, losing control and losing opportunity” (Kilborn 1995, p. A22).

Secretary of Labor Robert Reich summarizes why these myths have emerged. “Angry white males are venting their frustrations at minorities and women when the real problem they face (along with everyone else) is an increasingly competitive global economy that has produced massive changes in the domestic economy and drastically altered the nature and demands of the job market” (Wilson, May 1995).

Educators, politicians and leaders need to present the facts and realities in order to eliminate these myths so that this nation can embrace a true democratic diverse society.

### *The Case for Affirmative Action*

This volume is a collaborative effort among colleagues trained in several disciplines to analyze the impact of affirmative action in higher education. The contributors present more detailed analyses of this complex dilemma from the perspective of their particular fields.

John Howard offers a historical perspective on affirmative action. He examines affirmative action in the larger context of the long struggle of people of color for equal rights. Robert Ethridge reviews the progress that has been made nationally and differentiates between federal and state-supported programs. Linda Flores and Alfred Slocum examine the most recent legal cases and their implications in this new political environment. Using applicable law, research, and observation, they document how these decisions are reactions to the loss of white male privilege. The impact on admissions is discussed by Sylvia Hurtado and Christine Navia. They address in depth the concerns raised about entrance requirements. Caroline Turner and Samuel L. Myers’ chapter on faculty underscores the slow progress which has been made in the hiring of faculty of color even with the implementation of affirmative action programs. Bonnie Busenberg and Daryl Smith highlight the need for women to continue to support affirmative action. They explore the current status of women in academia and emphasize why women need to continue to join in the battle with people of color to uphold affirmative action. Robert Rhoads addresses discrimination against

gays and lesbians on college campuses and suggests ways that institutions can create a more inclusive vision of affirmative action. Chapter Nine by Alfred Slocum addresses how white men have benefited from affirmative action. Citing legal cases and affirmative action programs, the authors document how many of those in the majority who are calling for the demise of affirmative action have actually been the beneficiaries of such programs. Finally, Albert Kauffman and Roger Gonzalez analyze the impact of the fifth circuit court's controversial Hopwood decision on higher education. They list the issues on appeal to the U.S. Supreme Court and outline the implications of the decision for colleges and universities.

There is no doubt that affirmative action has faced serious challenges in the last three decades. The Reagan and Bush administrations worked hard to shift the views of the courts on affirmative action and mounted an offensive campaign to abolish it as it was conceptualized (Winter, 1992). But there is also no doubt that diversity is here to stay, bringing with it continuing challenges to discrimination and demands from oppressed groups not covered under Title VII to be granted protected-class status. It is an opportune time to rethink and reevaluate affirmative action by faculty and practitioners in the field of higher education and to explore multiple answers to a single question: How can affirmative action be constructed for the 21st century to protect those individuals who have been discriminated against and excluded from our colleges and universities? The following chapters begin that process.

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