

Affirmative Action, The Academy and Compromised Standards: Does Affirmative Action Lower Standards in University Hiring, Tenure and Promotion?

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Abstract

The literature opposed to affirmative action in hiring, granting tenure and promotion in the university claims that it lowers standards. However, anecdotal evidence suggests that in the decades prior to the institutionalization of affirmative action in the Academy, hiring, tenure and promotion standards were quite lax—resembling an “old boys network.” With the advent of affirmative action and the access of the academic market to candidates of both genders and diverse racial groups, came an institutionalization of specified—and therefore higher—standards for hiring and tenure of faculty. Thus, affirmative action has not had a negative impact on standards; ironically, it has led to the creation of standards. Therefore, because of affirmative action, all candidates today (even those that directly benefit from affirmative action) meet higher standards for hiring and assigning tenure than existed in the pre-affirmative action period. The purpose of this study is to test that hypothesis using email surveys of Emeriti faculty of the College of Arts and Sciences at a large Midwestern University.

Affirmative Action and the Academy: Have standards been lowered?

The literature opposed to affirmative action in hiring, granting tenure and promotion in the university claims that it lowers standards. However, anecdotal evidence suggests that in the decades prior to the institutionalization of affirmative action in the Academy, hiring, tenure and promotion standards were quite lax—resembling an “old boy’s network.” With the advent of affirmative action and the access of the academic market to candidates of both genders and diverse racial groups, came an institutionalization of specified—and therefore higher—standards for hiring and tenure of faculty. Thus, affirmative action has not had a negative impact on standards; ironically, it has led to the creation of standards. Therefore, because of affirmative action, all candidates today (even those that directly benefit from affirmative action) meet higher standards for hiring and assigning tenure than existed in the pre-affirmative action period. The purpose of this study is to test that hypothesis using email surveys of Emeriti faculty of the College of Arts and Sciences at a large Midwestern University.

Literature Review

“Affirmative action” is a name that has been applied to a set of policies generated by Title VII of the Civil Rights Act of 1964 and by a series of executive orders issued by President Lyndon Johnson.¹ In the 1970s, with the peak expansion of the US higher education system, a moral and

¹ Robert L. Simon, “Affirmative Action and the University: Faculty Appointment and Preferential Treatment.” In Steven M. Cahn, ed., *Affirmative Action and the University: A Philosophical Inquiry*. Philadelphia: Temple University Press, 1993.

legal movement to make universities more inclusive was instituted.² By 1972, a number of important actions supporting diversity had taken place. According to Helen S. Astin and Mary Beth Snyder,

Nineteen seventy-two will be remembered as an important year in the development of affirmative action programs for women in education: Title VII of the Civil Rights Act was extended to include all educational institutions; the Equal Pay Act of 1963 was extended to cover executive, administrative, and professional employment; Title IX of the Educational Amendments of 1972 was enacted prohibiting sex discrimination in education; and HEW issued guidelines to higher education for the implementation of the Executive Order 11246. The intent of this and other legislation was to increase the representation of women and minorities in educational institutions.³

Affirmative action as a policy initiative is politically controversial; it has spawned a significant amount of scholarship from both opponents and proponents.⁴ In its least controversial sense, affirmative action in the university refers to a set of positive procedural requirements that employers or admissions officers must meet to ensure that their pool of candidates is representative of some larger body, such as the overall pool of qualified personnel in the region. These requirements may include open advertising of positions as well as attempts to inform members of groups that are underrepresented in the applicant pool of the opportunities available to them.⁵ This *procedural* form of affirmative action has been relatively uncontroversial. However, other affirmative action policies in the university have been less accepted.

Affirmative action is now an integral part of the appointment process at virtually every college and university in the United States.⁶ Announcements of available faculty positions routinely include statements such as “[The University] is an equal opportunity, affirmative action employer which actively seeks and encourages nominations of, and expressions of interest from, minority and female candidates.”⁷ 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.⁸ Moreover, affirmative action has also been employed in most universities in tenure standards, in order to “require that departments and schools pay attention to possible existing discriminatory barriers or biases,” and “demand that they take corrective action where necessary.”⁹ While almost no one believes that these are not laudable goals, many critics of the policy believe that it lowers standards, or makes them subjective in practice. Robert Simon argues that

² Jeffrey F. Milem, and Helen S. Astin. “The Changing Composition of the Faculty: What Does it Really Mean for Diversity?” *Change* Vol. 25 Issue 2, pg 21,1993.

³ Helen S. Astin and Mary Beth Snyder, “Affirmative Action 1972-1982: A Decade of Response,” *Change*, Vol 14, No. 5, pgs. 26-31. Quoted in Simon.

⁴ See Appendix 3 Elizabeth Anderson’s website, Race Gender, and Affirmative Action is an outstanding resource for affirmative action arguments and resources.(www.-personal.umich.edu/~eanderson)

⁵ Simon, pgs. 49-50.

⁶ Steven M. Cahn, “Introduction,” In Steven M. Cahn, ed., Affirmative Action and the University: A Philosophical Inquiry. Philadelphia: Temple University Press, 1993.

⁷ In Steven M. Cahn, “Introduction,” in Cahn, ed., 1993, pg. 1-2.

⁸ Steven M. Cahn, “Introduction.” In Cahn, ed., 1993, pg. 2.

⁹ Richard T. DeGeorge, “Affirmative Action and Tenure Decisions,” in Cahn, 1993.

Preference by race or sex also raises special concerns where the appointment of faculty is concerned because many would argue that the criteria for making meritocratic distinctions, particularly scholarship and teaching ability, are relatively noncontroversial and often allow clear distinctions to be made in the qualifications of candidates for faculty positions. Thus, it is often argued that the evaluation of candidates for a faculty position at an academic institution of excellence normally can be expected to yield supportable qualitative differences in the way they are ranked.¹⁰

While many proponents of affirmative action have made the argument that the existing hiring and tenure standards at universities are already subjective and distorted by “the prejudices and cultural assumptions of the white males who have defined these standards for many years,” or whether “those hired according to prevailing standards really are best qualified in the true sense,”¹¹ they have failed to note the lack of existence of standards prior to the institutionalization of affirmative action in the university. The authors of this study have found no existing literature that expounds on the standards for hiring and assignment of tenure in the university prior to the institutionalization of affirmative action. Anecdotal evidence, however, leads us to believe that before 1972, there were few uniform existing standards for these tasks. In fact, it appears that before the institutionalization of affirmative action, there existed an old boys network in hiring and tenure at the university; actual standards did not come into existence until the academic market opened up to women and minorities. This study seeks to test this hypothesis.

Design and Procedure

Subjects were recruited from departmental records of Emeriti faculty in the College of Arts and Sciences at a Midwestern university; we randomly selected approximately 96 to survey (depending on contact information availability). We included both male and female subjects. It is important to reveal that there is no relationship between subjects and researchers, except that both have a relationship to the College of Arts and Sciences. The study was conducted by email surveys. The time required of the subjects to fill out the forms was between 5 and 15 minutes. All participants received the same set of instructions and questions, as illustrated in Appendix 1 and 2.

Analysis

Out of the 96 surveys sent out through e-mail, 10 responded. Nine of the ten that responded were male, and one female responded. Approximately ten questions were asked of the participants.¹² Of those who responded, three of the participants were hired by the university in the late 1950’s, and seven were hired during the years of 1961 to 1965. All of those in the sample had already obtained their PhD before they were accepted to teach at the university. Three of the participants had no publications when they were hired; the other 7 had publications.

¹⁰ Simon in Cahn 1993.

¹¹ Richard J. Arneson, “Preferential Treatment Versus Meritocratic Rights,” in Cahn 1993.

¹² See Appendix 2.

When asked about the hiring process, majority of those stated that they did not go through the rigors of the modern hiring process. Most seemed to have been invited to teach in the department, and subsequently, were hired on as full-time faculty. A respondent explained:

I met the chairman of the Department of History in September 1964 at a conference at the Department of State in Washington, D.C. I had recently completed my Ph.D. in Russian history. He invited me to come to Bloomington to interview for an administrative position with the Committee. He said that overtime I might work into a position in the Department of History. I came to (the university), interviewed for the administrative position with the Committee, was invited to take the job, and accepted the offer.

Another respondent recalled that there was no interview for the job. He had received a call from the acting chairman who offered him a one-year appointment. Although the positions were announced to various graduate schools, one professor explained that he did not even apply for the position. He was contacted by a member of the mathematics department, and was invited to come to IU to give a colloquium talk. Following the talk, he was sent a letter with the job offer. It seems as though knowing the right people mattered. Another explained:

I came to (the university) as a guest professor for one semester. This is, of course, a common way to have a close look at a prospective faculty member, and I suspect, but do not know, that the Department had permanent appointment in mind from the first. Whatever the original intention, that was the result.

Without the invitation of Deans or chairs of departments, it is apparent that some would not have been successful in their search for a teaching job. The hiring process today requires a job talk, an interview with faculty, and a teaching session. It is apparent, from the responses received for this research; much of the faculty hiring was done through no set criterion. The method of choice for hiring faculty, during the 1950's and 1960's, seems to have been through the chair or some member of the faculty; after the initial contact, future faculty were thus granted a teaching appointment.

When inquired about the tenure process, there were no mixed responses. The majority of those who were granted tenure did not have to present a dossier, a detailed sketch of their research publications, or evidence of campus involvement. A respondent explained that he received tenure as a result of a half page memo, in which the chairman recommended that he was doing a good job—leading the Dean of the college to approve the tenure. A respondent explained:

When I was offered and accepted appointment as an associate professor at (the university), tenure was not included. I was told in confidence that tenure would probably be included if I demanded it but that to do so would indicate lack of self-confidence. Not wishing to admit the lack of self-confidence that I actually felt, and not (in those simpler days) being worried about the matter, I made no demand. I literally do not remember how soon tenure was granted, but I do know that I went through none of the complex procedures—the gathering of every scrap of proof of pertinent activity and of letters of recommendation, the pressure to publish that had become de rigueur a couple of decades later.

Others in the survey stated that they did nothing special. A respondent recalls that the chairman handled the entire matter. He prepared no special materials on teaching and research.

To his knowledge, there was not even a departmental vote in determining his tenure. A respondent explained:

I can't recall my tenure process—it sort of happened without my having to do much about it. I suppose I must have been asked for copies of publications, which I would have given to the chair in any case. I don't remember being asked to name referees. In those days, nobody bothered with teaching evaluations. If there was a college promotion and tenure committee, I wasn't aware of it. As a junior member of the department I was never consulted in tenure decisions or in hiring decisions, even of new faculty in my field. It was all quite paternalistic.

From these responses—limited as they are—it is evident, just like the hiring process, the tenure process seemed to have no formal guidelines. It seems that those who were liked by the department were granted tenure. In determining guidelines, as we read through the survey responses, it is apparent that only one criterion mattered—whether the candidate was liked by the members of the department. Some of the respondents recalled that there existed no teaching evaluations, and more importantly, there was no tenure committee that evaluated faculty on research and teaching.

It is interesting to note how important the department chair is in the process of hiring and tenure. They contact perspective faculty, and they also determine if they want to retain the same faculty members they recruited. While determining tenure was not explicitly determined by publications and teaching, majority of those in the sample had publications—at least four or more. However, many of the respondents explained that the number of research publications were not as important in the past as it is today.

When asked if the profession has changed today, many argued that it indeed has. In terms of tenure and hiring, a respondent explained:

Now all positions are advertised in publications as well as letters to major departments so everyone knows about all positions and anyone can apply. Anyone can apply anywhere, while in the mid-1960s, the major professors decided who were suitable applicants for various positions. As a result, you get a very large number of applicants to each opening, many of whom have no chance of being interviewed. Your stay in graduate school is longer—I went through a program in which you obtained a PhD in 3 years and 3 summers—5 years is now the norm, and so more publications are expected. Tenure is probably harder to get, requiring more publications and/or more positive outside letters.

From this statement and others, it is evident that the tenure process has gotten harder, and the gaining of a teaching position is much more difficult. A respondent argues that since the demands of tenure have increased, he has witnessed a steady decrease in the interest in students and the lack willingness to give them time. The respondent goes on to articulate that it is understandable. “If a junior faculty member hopes to be awarded tenure in his sixth year, he usually has to demonstrate a national reputation earned by the end of his fifth year.” The time devoted to research takes away from the time that should be given to graduate students.

Others argue that the job market has changed dramatically; most agree that the standards for hiring are much higher now, and it is far more difficult for persons to obtain tenure. In terms of teaching, there is a shift towards evaluation. More tangible evidence in teaching performance is required to attain tenure. A respondent explains: "There was more of an emphasis on good teaching...back then and less on research. Today, the importance is more on research; however, teaching is still important, but it is secondary to research. A respondent explained:

The appointment process was more informal when I was employed at (the university). While there was considerable emphasis on publications, other things counted as well. People paid attention to ways that individuals might make unique and special contributions to the University beyond scholarly publication.

Another respondent articulated:

The hiring and tenure process has become much more complicated, but not necessarily with better results. Faculty are also influenced, because of the process, to be less committed to the institution and more to their own research record and their national professional and standing within it.

Certainly, the majority of those who participated in the study reveal that the changes have come in the form of tenure and hiring; there is now a formal process. For hiring, prospective faculty must go through the rigors of a job talk, interview, and teaching session. The informal channels that once used to be there may still exist; however, everyone who is considered for a teaching position must go through similar channels. In gaining tenure, professors no longer just find out if they received tenure; they must put a dossier together, form a tenure committee, and show evidence of scholarly publication and exemplary teaching. No longer are hiring and tenure dependent solely on the chair of the department, or how much one is liked. With the demand of publications, some have observed that the time given to students have decreased substantially.

When asked if affirmative action has changed the nature of the profession, all of the respondents concluded that it, indeed, has. A majority of the respondents argue that with the advent of affirmative action, more women and minorities are gaining opportunities in the teaching profession. More specifically, a respondent explained:

[Today], all positions are advertised in psychology journals [in order to] get more applicants and applicants from less prestigious graduate programs although all things being close to equal, the person from the more prestigious graduate program tends to be favored, it is good that the process is more open and anyone can apply.

Another respondent claims that:

Affirmative action programs have greatly enhanced the breadth of scholarship and the sensitivity of all members of the university community to issues affecting minorities and to different cultural backgrounds. I hope that Indiana University will continue to foster affirmative action, perhaps calling it "diversity," a term that I find more acceptable than "affirmative action," if we all remember that action must accompany beliefs.

The effects of affirmative action policy on colleges have been positive, according to the respondents. Many argue that it has allowed under-represented groups an opportunity to teach at the college level. With more women and minorities in the field, scholarship has broadened; also, there exists more sensitivity toward minorities and to the issues they face. Two of the respondents explained that affirmative action has not changed the profession. A respondent argued that “it simply has made the process more complicated.” The bottom line is that it probably caused more positive than negative changes.

From a small sample, we learned that, indeed, the hiring and tenure process has become more complicated—it is filled with standards. During the late 1950’s and into the 1960’s, hiring was done through informal channels. Either the chair of the department contacted a perspective faculty member, or someone in the department made the contact. After the initial contact, the individual was either invited to teach for a semester or came and lectured for the department. After that occurred, they were often hired as full-time faculty. In terms of tenure, there existed no set process; faculty was just informed that they received tenure. Today, from the information gathered from the respondents, the tenure and the hiring process has become more formalized.

Conclusion

Although much of the literature consulted remains opposed to the implementation of affirmative action in hiring and assigning tenure in the university, we have demonstrated that critics of the policy have failed to put it in a historical context. In an effort to fully understand the opponents’ claim that affirmative action has compromised standards within the University, we have designed a survey to measure what standards existed before the implementation of affirmative action.

Based on the accounts of the respondents (emeriti faculty) in the responses collected, there were no formal or standard procedures in the hiring or tenure process. Many of the respondents recalled that they did have at least minimal understanding and knowledge of the subject matter in which they were hired to teach, but few had a plethora of publications or teaching or researching experience to complement that knowledge. One respondent indicated that he was hired into an administrative position, then later he was given a teaching position along with assumed tenure.

Many of the respondents indicate that before affirmative action, the hiring process was much more informal and was heavily coordinated by the department chair. The department chair often had the authority to hire and grant tenure to an individual based solely upon the chairs acceptance of that individual without heavy consideration being placed upon the number of scholarly journals, or books that the individual had published or presented.

According to the evidence provided before affirmative action the university was much more reluctant in hiring and granting tenure to minorities and women. Historically, minorities and women have been ostracized by the white male intellectual elites based solely on race and gender, and not intellectual vibrancy. The anecdotal evidence tends to suggest that there were no formal standards in place before the creation and institution of affirmative action. However, opponents of affirmative action continue to argue that the policy has led to the intellectual dismantling of the academe. The nature of this research suggests that if university standards are being compromised in the hiring and tenure process it is not directly or indirectly a result of affirmative action.

Implications of Results

This study is an attempt to disprove the myth that affirmative action has decreased standards within the university. The evidence and the analysis tend to suggest that before affirmative action there were no standards in the hiring and tenure process. Essentially, the open positions only attracted individuals whom the department chair chose to inform, maintaining a network of hiring practices that excluded minorities and women. Based on scenarios such as this affirmative action requires that all open position be advertise to the public as well as to groups that are underrepresented in the applicant pool.

Despite the negative associations with affirmative action and the university, our research indicates that the formulation and implementation of affirmative action has created standards as it attempts to dismantle, “old boys” network and infrastructure. Affirmative action has attempted to abolish the preferential process of hiring individuals based on authority figures’ personal affections toward members within the aforementioned network. Many claims are made that affirmative action itself is a process that discriminates as it opens the doors of opportunity to women and minorities who were once left out by the informal networking process and hiring practices of departmental figureheads and the university community.

This research is an indication that affirmative action has not only aided in diversifying the university, but also has created a formal process that rewards individuals based upon achievement in their respective field of study. As a result of this ongoing attempt to diversify the university and make it a fair and equitable employer, the university has been enriched ethnically, culturally and intellectually by this inclusive policy. The implications of this research are constantly evolving, but our study indicates that affirmative action is misunderstood and misinterpreted as a policy that lowers standards. However, our study clearly indicates that in addition to being a policy that encourages inclusion for everyone, affirmative action has aided in establishing standards for hiring and tenure in the university.

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Appendix 1: E-mail Study Data Sheet

Forum on Public Policy

You are invited to participate in a research study. The purpose of this study is to understand changes in the nature of hiring, tenure, and promotion standards for faculty in the university over the past four decades.

Information

Greetings, we are Lawrence J. Hanks, Jas Sullivan, Sara R. Spencer and Elgin Rogers. As a project of our graduate student seminar on Affirmation Action, we are conducting a survey on hiring and tenure practices in the College of Arts and Science before 1970. Thus, we are contacting you as an emeriti faculty. The survey is designed to take between 5 and 15 minutes, and may be returned as an attachment in an email. Your response will be greatly appreciated.

Goal of the Study

The purpose of the study is to gain and understanding of hiring, tenure, and promotion practices in the academy before 1970.

Confidentiality

Complete confidentiality will be maintained; your responses will not be linked to you after your participation is completed.

Contact

If you have questions at any time about the study or procedures you may contact Lawrence J. Hanks (812) 855-9752, lhanks@indiana.edu, or Jas Sullivan (812) 856-0005, jamsulli@indiana.edu.

If you feel your rights as a participant in this project have not been honored during the course of this project, you may contact the Office for Human Subjects Committee, Bryan Hall 110, Indiana University, Bloomington, IN 47405, (812) 855-3067, or by email at iub_hsc@indiana.edu.

Participation

Of course your participation in this study is voluntary. If you choose to participate, you may withdraw from the study at anytime. If you withdraw from the stud study before data collection is completed, your data will be destroyed.

Many thanks for your time and consideration.

Lawrence J. Hanks, Ph.D.

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Appendix 2: Questionnaire

1. In what year were you hired to teach at Indiana University?
2. Had you completed your PhD when you were hired?
3. Did you have any publications or conference participations when you were hired?
4. From what years did you teach at Indiana University?
5. In what department were you a faculty member?
6. Explain, in detail, your hiring process.
7. Explain, in detail, your tenure process.
8. About how many publications and presentations did you have when you were awarded tenure?
9. How has the profession changed since you were hired as a University professor?
10. Do you think that Affirmative Action has changed the nature of the profession? If yes, how so? Do you see positive and/or negative changes?

Appendix 3: Arguments for/against Affirmative Action and their Rebuttals

Arguments for Affirmative Action and their Rebuttals

Argument #1

*Affirmative Action provides for a more level playing field; it removes the historic advantage enjoyed primarily by white males.*¹³

Rebuttal #1

*The playing field is already level. Racism and sexism are virtually dead. However, affirmative action creates a new racism and sexism, reverse racism and reverse sexism*¹⁴

Argument #2

*Affirmative Action is necessary because of the discrimination that continues to exist in America.*¹⁵

Rebuttal #2

*Discrimination is virtually non-existent. When it raises its ugly head, the law is on the side of the women and people of color who claim discrimination.*¹⁶

Argument # 3

*Affirmative action is a modest compensation for the years of slavery and the other forms of discrimination experienced by the members of protected groups.*¹⁷

Rebuttal # 3

*Those who are presently alive today cannot be held responsible for what happened decades and centuries ago.*¹⁸

Argument #4

*Affirmative Action helps to provide equal opportunity*¹⁹.

Rebuttal # 4

*The civil rights movement provided equal opportunity. Affirmative action seeks to provide special benefits via goals, timetables, and quotas.*²⁰

¹³ Dworkin, Ronald. "Affirmative Action: Does it Work?" "Affirmative Action: Is it Fair?" in *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass: Harvard University Press, 2002)

¹⁴ Cohen, Carl and Sterba, James. *Affirmative Action and Racial Preference : A Debate* (Oxford: Oxford University Press, 2003)

¹⁵ Ezorsky, Gertrude. *Racism and Justice: the Case for Affirmative Action*. (Ithaca, N.Y.: Cornell University Press, 1991)

¹⁶ Glazer, Nathan. *Affirmative Discrimination*. (New York: Basic books, 1975)

¹⁷ McGary, Jr., Howard. "Justice and Reparations," *Philosophical Forum* 9 (1977-8): 250-263.

¹⁸ Thernstrom, Stephan and Thernstrom, Abigail. *America in Black and White: One Nation, Indivisible* (Cambridge, Mass.: Harvard University Press, 1998)

¹⁹ Orentlicher, David, "Diversity: A Fundamental American Principle" . *Missouri Law Review*, Vol. 70, p. 777, 2005

Argument #5

*Affirmative Action promotes diversity which is good for the academy, business, and America.*²¹

Rebuttal # 5

*Business and academic interest should not overshadow the equal protection clause of the Constitution and the valued notion of a color blind ideal.*²²

Argument # 6

*Affirmative action, because it seeks to utilize the diverse talents of the ever expanding female and people of color constituency, is good for America. It is both patriotic as well as pragmatic to utilize the talents of all of our citizens in an ever increasing global market.*²³

Rebuttal # 6

*Affirmative action violates the equal protection clause and discriminates against whites in general and white men in particular. It creates a focus on race and gender when we should be attempting to be gender and color blind.*²⁴

Arguments against Affirmative Action and their Rebuttals

Argument #1

Affirmative action is unconstitutional; it violates the equal protection clause; it violates the highly prized value of a color blind society.²⁵

Rebuttal

*Our society has never been color blind. The US Constitution implicitly refers to slavery in at least three locations.*²⁶

Argument #2

Affirmative action violates the notion of meritocracy; affirmative action reduces standards.²⁷

Rebuttal

*Standardized tests tend to have racial, cultural, and socio-economic biases. They do not measure merit in any type of conclusive way.*²⁸

²⁰ Holzer, Harry and Neumark, David, "Equal Employment Opportunity and Affirmative Action," Public Policy Institute of California Working Paper No. 2002-07

²¹ Anderson, Elizabeth. "[Racial Integration as a Compelling Interest](#)," *Constitutional Commentary* 21 (2004): 101-127

²² Eugene Volokh, "Diversity, Race as Proxy, and Religion as Proxy," 43 *UCLA L. REV.* 2059 (1996)

²³ Hanks, Lawrence J. "The Patriotic-Pragmatic Argument: A Politically Feasible Case for Affirmative Action," Oxford Round Table Forum on Public Policy (2006):

²⁴ Graglia, Lino. "Grutter and Gratz: Race Preference to Increase Racial Representation Held Patently Unconstitutional: Unless Done Subtly Enough in the Name of Pursuing Diversity 78 *Tulane. Law Review.* 2037 (2004).

²⁵ Richard Posner, "The DeFunis Case and the Constitutionality of Preferential Treatment of Racial Minorities," in Gabriel Chin, ed. *Affirmative Action and the Constitution* vol.1 (New York: Garland, 1998), pp. 249-280

²⁶ Rosenfeld, Michael. *Affirmative Action and Justice.* (New Haven: Yale University Press, 1991)

²⁷ Davis, Michael. "Race as Merit," *Mind* 92 (1983): 347-367.

²⁸ Fish, Stanley. "[Reverse Racism, or How the Pot Got to Call the Kettle Black.](#)" *The Atlantic*, November 1993

Argument #3

Affirmative action creates ill will at best and a new type of racial and gender based hostility at worse. Those not discriminated against with affirmative action resent those who benefit from it. This is not good for the morale of the nation.^{29, 30}

Rebuttal

All public policies place someone at a disadvantage. Slavery and other discriminatory practices created ill will in people of color and Caucasian women.³¹

Argument #4

Affirmative action creates a sense of doubt and low self-esteem for those who benefit from it. Moreover, it tends to rob members of the protected groups who truly deserve their positions since the public perception is that they got their positions because of their race.³²

Rebuttal

This argument also lacks validity since it has never been documented in a systematic study. It is merely an assumption. Moreover, Bowen and Bok (The Shape of the River) offers counter-evidence. Their comprehensive study of Ivy League graduates who benefited from affirmative action to be well adjusted and had high levels of self-esteem.³³

Argument #5

Affirmative action is “reverse discrimination.”³⁴

Rebuttal

Preferential treatment is essentially different from “reverse discrimination.” While protected groups simply get a preference to fulfill compelling state interests, the traditional discrimination did not allow consideration of people of color and women.³⁵

Argument #6

Affirmative action only helps middle class blacks; it does little to address the problems of the black underclass.^{36, 37}

Rebuttal

Affirmative action was never intended to help underclass blacks; it was intended to help blacks who had the qualifications for opportunities afforded by the legislations of the civil rights movement.³⁸

²⁹ Sowell, Thomas. "[Dirty Secrets about Affirmative Action](#)," *Conservative Current*, October 16, 1996

³⁰ Sowell, Thomas. *Preferential Policies: An International Perspective*. (New York: William Morrow, 1990)

³¹ Hacker, Andrew. *Two Nations : Black and White, Separate, Hostile, Unequal*. Rev. ed. (Ballantine Books, 1995)

³² Steele, Shelby. *The Content of our Character: A New Vision of Race in America*. (New York: HarperPerennial, 1991)

³³ Bowen, William and Bok, Derek. *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*. (Princeton: Princeton University Press, 1998)

³⁴ Newton, Lisa. "Reverse Discrimination as Unjustified," *Ethics* 83 (1973): 308-12. Reprinted in Jeffrey Olen and Vincent Barry, eds., *Applying Ethics* (Belmont, Cal.: Wadsworth, 1989), pp. 311-315

³⁵ Dworkin, Ronald. "Affirmative Action: Does it Work?" "Affirmative Action: Is it Fair?" in *Sovereign Virtue: The Theory and Practice of Equality* (Cambridge, Mass: Harvard University Press, 2002)

³⁶ Loury, Glenn. "[How to Mend Affirmative Action](#)," *The Public Interest*, Spring 1997

³⁷ Wilson, William Julius. *When Work Disappears*. (New York: Vintage Books, 1997)

Argument #7

Given the number of poor whites in this country who have also been discriminated against on the basis of class, affirmative action should be based on class and not race. It is simply unfair for the children of high achieving African Americans to get preferences while poor whites are judged on merit alone.³⁹

Rebuttal

Slavery, the public policy which lays the rational foundation for affirmative action, was not based on class. Although Africans could gain freedom, Africans were assumed to be slaves unless they could prove otherwise. While upper status African Americans have overcome a good deal of the baggage of slavery, they continue to be at a disadvantage in a country where there is still institutional sexism and racism as well as white and male privilege. White women and African Americans were constitutionally denied civil rights while this was not generally the case for white males. Even the poorest of white males were not systematically discriminated against. Moreover, they benefited from whiteness and male privilege.⁴⁰

Argument #8

No one in my family owned slaves. My grandparents were born after slavery. My parents were born after "Jim Crow." I was born after the civil rights movement and have always lived in an integrated world where everyone had equal opportunity. Why should I have to pay the price for something that neither I nor my family had anything to do with?⁴¹

Rebuttal

While neither you nor your family members are personally responsible for racial discrimination, you are a citizen of a country which had a Constitution that supported this egregious practice. Since we are still living under the same Constitution and government which committed the crime, the citizens who are presently alive must pay the debt which was made in the past. The focus here is collective responsibility—not individual responsibility.

*We all benefit and are sometimes negatively impacted by events and circumstances that were absolutely not of our own making. Whites who are alive today, although the vast majority did not have anything to do with the state sanctioned racial discrimination of the past, benefit from the legacy of white privilege that was state sanctioned public policy for over 300 years (From the codification of slavery by New York in 1641 to the Supreme Court demanding de facto integration of public school in Alexander v Holmes County Board of Education (1969) which equals 327 years). While the severity of the negative impact has lessened over the years, people of color in general and African American in particular bear the burden of past of being constitutionally deemed "less than."^{*42}*

**One could make this same argument with respect to gender by substituting different dates and events*

Argument # 9

³⁸ Harwood, Sterling. "Affirmative Action Is Justified: A Reply to Newton," *Contemporary Philosophy* (1990): 14-17

³⁹ Kahlenberg, Richard. *The remedy : class, race, and affirmative action*. New York: Basic Books, 1996

⁴⁰ Hong, L., and S. Page. 2004. "Groups of diverse problem solvers can outperform groups of high-ability problem solvers." *Proceedings of the National Academies of Science* 101:16385

⁴¹ Pojman, Louis. "The Moral Status of Affirmative Action," in Julie McDonald, ed., *Contemporary Moral Issues in a Just Society* (Belmont, CA: Wadsworth, 1998), pp. 297-315

⁴² Adams, Francis D. and Barr Adams. *Alienable Rights: The Exclusion of African Americans in a White Man's Land, 1619-2000*. New York Harper Collins, 2003.

There were many white ethnic groups (the Irish, the Italian, Germans, Jews, etc) who suffered discrimination, did not benefit from affirmative action, and have become a part of the melting pot of America. African Americans and other people of color should follow that same path.^{43, 44}

Rebuttal

While there are similarities in the white ethnic struggle and the African American struggle for equity, this comparison ignores two major factors: (1) white ethnicities were still white; and (2) the depth of the discrimination.

While the white ethnics were discriminated against, they were still white and were considered more acceptable than African Americans. In point of fact, as African Americans began to make progress in various skilled trades like barbering, and blacksmithing, in many cities they were displaced by white ethnics. Moreover, white ethnics were never considered sub-human or animals like African Americans, Native Americans and other people or color. Thus, they had less baggage to carry on their journey to equality.

The U.S. Constitution never sanctioned and legitimated discrimination against white ethnics. Thus, the white ethnic struggle for equity and incorporation into the American Dream was of a different type and the barriers in their way were decidedly less entrenched.⁴⁵

Argument # 10

Race and or gender is often the only reason that certain candidates get selected or that race and or gender is often the deciding factor and many candidates would rather not be selected if this is the case.⁴⁶

Rebuttal

The meaning of the statement "race or gender is often the only reason that certain candidates get selected" is ambiguous. . It could mean that race or gender was the decisive factor in the decision or at an extreme it could literally mean that race was the only factor in choosing the person. While the practical lack of utility of this position makes it unconscionable, as a rhetorical device it feeds into the stereotypical straw man of the quintessential unqualified affirmative action recipient. (e.g. if gender and race were the only criteria one could go to any sorority house and randomly choose a female of color and meet the criteria).

Some potential affirmative action recipients have expressed the desire not to have their race and or gender counted as a factor. A practical solution in this case is to make their desire known to the institution in question. Nonetheless, it seems reasonable that one's position on this issue would be affected by one's view on the role of gender and race with regard to decision making as well as the ethics of the individual.

If one is of the opinion that being a person of color and or a female negatively impacts ones chances for opportunities, then that person is far more likely to see affirmative action as a tool to neutralize the impact of racial and gender bias against women and persons of color. Thus, the practice is seen as fair and acceptable. If one is of the opinion that racism and sexism are not factors in decision making process in American society, then the preference given to white women and persons of color is seen as reverse discrimination. Ill will is often imputed when it is suggested that white women and people of color know that racism and sexism is a virtually non-existent factor, yet their existence is alleged for self-interested gain.⁴⁷

⁴³ Kahlenberg, Richard. "Class, not Race," *New Republic*, April 3, 1995, pp. 21-26

⁴⁴ Thernstrom, Stephan and Thernstrom, Abigail. *America in Black and White: One Nation, Indivisible* (Cambridge, Mass.: Harvard University Press, 1998)

⁴⁵ Harwood, Sterling. "Affirmative Action Is Justified: A Reply to Newton," *Contemporary Philosophy* (1990): 14-17

⁴⁶ Holzer, Harry and Neumark, David, "Equal Employment Opportunity and Affirmative Action," Public Policy Institute of California Working Paper No. 2002-07

⁴⁷ Bonilla-Silva, Eduardo. "Rethinking Racism: Toward a Structural Interpretation," *American Sociological Review* 62 (3) (1997): 465-480

Argument # 11

If a color-blind and gender-blind decision-making process is the American ideal, it is a contradiction to provide preferences based on color and gender?⁴⁸

Rebuttal

While a lack of color blindness and color consciousness may be the ideal, it was never the reality. From the inception of this country until the civil rights movements of the 60's and 70's, race and gender mattered in a negative manner if you were a person of color or a white female. This was the original contradiction. To insist on a color and gender blind standard now, without a transitory period of compensation and preference, is immoral and unfair.

While discriminating to end discrimination sound counterintuitive, there is a basis for it in science. Virtually all vaccines must contain a small amount of the virus that it is to protect against.(e.g. a vaccine designed to protect against a snake bit must contain some of the venom from the snake.) Thus, the analogy is a good one. If one makes the concession that preferential treatment is a form of discrimination, it is a necessary one given the scientific model for vaccinating against viruses.⁴⁹

Argument #12

African Americans dominate basketball and football where the best players are chosen and there is no affirmative action consideration for whites. Why shouldn't the same rule apply for businesses and universities?⁵⁰

Rebuttal

Standards of excellence in basketball and football are relatively clearly discernible and objective. The standards of excellence for a good student, lawyer, doctor, professor, etc. are far less objective and subject to biases. Moreover, given the dominance of black athletes in football and basketball, there is a premium on white players because of political, social, and economic factors—whites, who comprise the overwhelming majority of those who buy tickets, want to see other whites participate. Thus, affirmative action exists for white players. If a white player and a black player are virtually equal, the white player gets the position because of the value that he/she brings to the team.⁵¹

⁴⁸ Lind, Michael. *The Next American Nation; The New Nationalism and the Fourth American Revolution* (New York: Free Press, 1995)

⁴⁹ Gutmann, Amy. "Responding to Racial Injustice," in Gutmann and Appiah, *Color Conscious: the Political Morality of Race*. (Princeton: Princeton University Press, 1996)

⁵⁰ Narveson, Jan. *Moral Matters* Broadview Press, Buffalo, NY, 1999, pgs. 301-316

⁵¹ Rosenfeld, Michael. *Affirmative Action and Justice*. (New Haven: Yale University Press, 1991).

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