



Is Affirmative Action Still Needed?

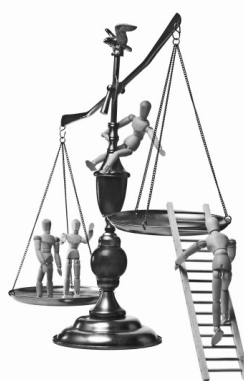
| *Discovering the pros and cons of continuing affirmative action.*

Introduction

Commenting on the debate around the nomination of Sonia Sotomayor to the U.S. Supreme Court, Marie Wilson asserts that “diversity in people translates into diversity of thought and perspective—the launching pad for innovation, ingenuity, and the foundation of democracy.” Wilson suggests that Judge Sotomayor’s nomination challenges us to “question our nation’s commitment to diversity.”¹ At the same time, defenders who cite her years of experience as qualification for the bench appeal to an argument of fairness. Both positions reflect the current debate on affirmative action.

The argument for affirmative action is rooted in two fundamental values. One is an argument based in an understanding of fairness and equity; the other asserts that there is an intrinsic value in diversity itself. Nearly fifty years have passed since President John F. Kennedy initiated the first affirmative action strategies, yet the debate around affirmative action continues. Proponents claim that although progress has been made, the effects of current and past discrimination necessitate the continuation of affirmative action programs. Others argue that affirmative action is inherently unfair and antithet-

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ical to its stated goals. Still others claim that the barriers to diversity have largely been removed and affirmative action is no longer needed. And at the other end of the spectrum, some argue that affirmative action has not gone far enough in the struggle to eliminate racism and other forms of discrimination and that more effective strategies should be sought, rather than to continue to perpetuate what they see as only partial measures.

Affirmative Action’s Origins

Rooted in our nation’s history and the struggle to overcome the disparities of racism created through slavery

RACISM STUDY PACK

This study is part of the Thoughtful Christian Racism Study Pack. The list below is the suggested order of the study pack, although you may study it in any order your group chooses.

- Why Is it So Difficult to Talk About Racism?
- Racism 101
- The Bible and Racism
- A History of Racism in the United States
- White Privilege
- Is Affirmative Action Still Needed?
- Do Segregated Churches Imply Racism?

and other forms of racial discrimination, affirmative action emerged out of the recognition that simply removing legal barriers would not change systems—that positive, proactive, intentional efforts needed to be employed to bring about the reality of a democracy that served the needs of all of its citizens, extended equal opportunity and equal access to all, and actively engaged all of its citizens in the social, economic, and political life of the nation.

Affirmative action began in the 1960s as the civil rights movement brought about government action to end discrimination. It is defined by the set of public policies and initiatives implemented largely by the federal government to address disparities and eliminate the effects of past discrimination based on race, color, religion, sex, and national origin. The term “affirmative action” first appears in Executive Order 10925 issued by President John F. Kennedy in 1961. This executive order established the President’s Committee on Equal Employment Opportunity and mandated nondiscrimination for federal employment and federal contractors. The order directed the president’s committee to “scrutinize and study employment practices of the Government of the United States, and to consider and recommend additional affirmative steps which should be taken by executive departments and agencies to realize more fully the national policy of nondiscrimination within the executive branch of the Government.” Similarly, it requires federal 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.”²

The 1964 Civil Rights Act prohibited discrimination in employment, education, and public accommodations. Although the term “affirmative action” does not appear in the law itself, it created the Equal Employment Opportunity Commission (EEOC) and gave it regulatory authority to promote the goal of equality through strategies designed to overcome disparities and eliminate discriminatory practices. The EEOC has served both as an agent of implementation and compliance, promoting the goal of equality by designing policy and processing complaints of discrimination from individuals and groups. The EEOC processes an average of forty-eight thousand claims each year.³

Subsequent laws and executive orders have built on this foundation. The courts have also weighed in—upholding some affirmative action strategies and turning down others—refining the definitions of what are preferable and permissible strategies to achieve affirmative action goals.

How It Works

Affirmative action strategies can encompass a wide range of activities. Fundamentally, it involves planning and acting to bring in people in groups that have historically been absent in certain areas of employment and education, due to discrimination based on race, color, ethnicity, sex, age, or disability. It can include recruitment and outreach programs, mentoring, training, employee development, management development, and special support programs aimed at improving retention of employees and/or students.

It has been mandated by law and executive order for government employment and government contractors. The EEOC has defined policy and, in some instances, courts have mandated action in response to a finding of discrimination. In the simplest terms, affirmative action is an intentional effort to achieve equal opportunity and equal access, measured in the balanced representation of people in the protected categories throughout an organization—in all divisions and at all levels.

“It is the insurance company taking steps to break its tradition of promoting only white men to executive positions. It is the admissions office at the University of California Berkeley seeking to boost the number of blacks in the freshman class beyond a smattering by looking for a few black kids who may not have learned to do well on multiple choice tests but are nevertheless very smart. It is a lily-white all-male trucking company hiring a black female driver and then coping with the anger of the other drivers. It is the Detroit Police Department striving to overcome the obstacles that capable blacks and women experience in making sergeant. Affirmative action can be a formal program with a written, multipart plan and a special staff to carry it out, or it can be the activities of one manager.”⁴

Training in prevention of sexual harassment, antiracism, cultural awareness, and cultural competence have been

added to strategies to help create organizational cultures that support diversity and help sustain a diverse workforce or student body.

More History

Historical precedent for affirmative action can be traced to initial efforts to compensate freed slaves following the Emancipation Proclamation in 1862 and facilitate their transition into free society. The Freedmen's Bureau, an agency of reconstruction that did not last long, confiscated the land of Confederate soldiers and leased it to freed slaves. In 1941, an executive order signed by President Franklin Roosevelt prohibited discrimination and segregation in hiring by defense contractors. In 1953, the Committee on Government Contract Compliance directed the Bureau of Employment Security "to act positively and affirmatively to implement the policy of nondiscrimination."⁵ The Thirteenth Amendment to the Constitution, making slavery unlawful, the Fourteenth Amendment, guaranteeing equal protection, and the Fifteenth Amendment, guaranteeing equal voting rights, codify equal opportunity and nondiscrimination in the Constitution.

Arguments against Affirmative Action

Opponents of affirmative action often argue on the basis of fairness. They assert that the primary value that should operate in competition for employment or college admissions is merit and that applicants should be considered objectively without attention to factors such as their race, color, ethnicity, or sex. In their view, strategies that allow schools to consider factors other than test scores or grades amount to an unfair and arbitrary advantage for minority applicants. They point to examples of white males with higher test scores who were not admitted when racial minority students with lower scores were, as evidence of bias. Proponents of this view contend that everyone should have to earn access to better schools and better jobs without any help from affirmative action programs.

While rigid quota systems have largely been prohibited by law and the courts, some argue that any numerical goals or standards in essence amount to a quota and that quotas create inequality, injustice, and inefficiency when they force employers or admissions committees to choose women or people of color over a more highly qualified



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Proponents assert that the quality of work and the quality of service improve when there is a diversity of perspectives at work in problem solving.

white male. Ultimately, they maintain, such efforts have an adverse effect on its intended beneficiaries—labeling and stigmatizing women and people of color, creating negative feelings toward them, instigating resentments in coworkers and fellow students.

Also grounded essentially in an argument of fairness are the claims that affirmative action is no longer needed—that overt discrimination is a thing of the past that rarely occurs today either in employment or education. In those rare instances where overt discrimination does happen, they argue, victims may still seek remedy through the existing complaint process and the courts.

Given what some perceive as the mixed success of affirmative action, some advocates have argued that the solution to disparities in employment is to improve the quality of education in elementary and secondary levels for people of color. They contend that equipping people of color with the tools to compete successfully would be a more effective use of public resources and make the remedies of affirmative action in employment unnecessary.

Arguments for Affirmative Action

Advocates for affirmative action contend that the implementation of affirmative action programs has worked to benefit everyone. They argue that the changes that schools and employers have made in admissions, and in recruitment, hiring, and promotion procedures have made them more open and transparent, that they have worked to enlarge the field of candidates and expanded

competition. Job openings are posted publicly, rather than depending on word of mouth or closed venues. Changes have actually led to the elimination of selection procedures that screened out candidates for irrelevant reasons.

Unnecessary qualifications standards have been removed—minimum height and weight standards, for example, have been replaced by specific requirements that apply to the actual work, such as “must be able to lift and carry 50 pounds.”

As a result, such changes may in fact benefit some white men who, under previous criteria, would not have otherwise had a chance of being hired or selected—as well as women and people of color. In their view, affirmative action has increased competition, and promoted the hiring of the best candidates from all sectors. When whole groups are excluded from competition, some highly talented candidates are left out. When the pool is limited to white males, more mediocre candidates get selected. When the selection pool is expanded through affirmative action, competition is greater and more highly qualified candidates enter the system.

Advocates for affirmative action also argue on grounds of fairness. They point to the history of slavery, Jim Crow, and other patterns of discrimination that have excluded women and people of color from access to educational institutions and to better-paying jobs. Affirmative action, they argue, works to overcome and remedy present effects of past discrimination and break ongoing patterns of discrimination.

In response to those who claim that affirmative action creates an unfair disadvantage for white males, advocates for affirmative action point to the absence of complaint when white men benefit from advantages that come from family connections or other affinities—for example, when a selecting official who played sports or attended a certain school favors applicants who played sports or attended the same school, or school admissions policies that favor applicants who have parents or grandparents who attended the same school. They point out that actual complaints of discrimination filed by white men have been very few, while complaints of discrimination filed by women and people of color remain at a level that suggests workplace discrimination is more than a rare occurrence.

Although not the explicit goal of affirmative action, proponents argue that it works to remedy the effects of poverty created by historic patterns of discrimination—opening access to education and better-paying employment opportunities that enable persons to move themselves and their families out of poverty. For example, women with children living on welfare have been able to get employment in construction that was previously closed to them, but that pays well enough that they can provide for their children and move off of welfare. As this provides a more constructive model for their children and incentive for them to follow in their mother’s path, it has long-term benefits beyond taking one family off welfare.

Proponents of affirmative action also maintain that there are intrinsic benefits to diversity itself. Educators argue that diversity in the classroom enhances the quality of exchange and expands the learning for all, and helps better prepare students to live and work in an increasingly diverse society and a smaller world. In the workplace, proponents assert that the quality of work and the quality of service improve when there is a diversity of perspectives at work in problem solving, when people who represent the perspective of the client or customer have a voice in designing products or providing services—thereby improving efficiency and effectiveness. Ultimately, they maintain, increasing diversity in the workplace will help maintain the U.S. position and competitiveness in a global market.

In her blog on Judge Sotomayor’s nomination, Marie Wilson asks if increasing the diversity among our most powerful decision makers is not a valuable goal in itself. “When we think of the increasingly complex decisions this Supreme Court will tackle, do we not want the most varied group possible lending their diversity of thought and perspective?” Wilson reflects the view that diversity in itself is a valuable goal, maintaining that diversity of experience within a group of decision makers reflects a broader world, adding wisdom and perspective, and results in a more comprehensive and nuanced take on complex issues. “The soundest decisions are always made when all angles are approached, when dissent is encouraged, and when all viewpoints are considered. Why on earth would we want a narrow point of view—particularly in an era when our nation and world are ever-more diverse?”⁶

Is Affirmative Action Still Needed?

Affirmative action will continue to stir controversy as long as it exists. In recent years, voters have struck down affirmative action, most notably in the University of California system and the University of Michigan. Leaders of this movement continue to work to get this issue on the ballot in other states.

While proponents of affirmative action can point to significant benefits that have been gained in recent decades, ultimately they contend it is still needed because race and sex discrimination continues to be a reality. The president of Stanford University, Gerhard Casper, in a speech addressing Stanford's commitment to affirmative action, sums it up, "Alas, our society is quite color-conscious, and we therefore cannot yet afford to be colorblind."⁷

In an analysis that suggests the primary benefit of affirmative action is in its function to maintain enforcement of nondiscrimination laws—it mediates the power of big business and big government, and contributes to making a small dent in poverty among African Americans and other people of color—Cornel West asserts it is at best a compromise measure. It will not eliminate racism or sexism, but, he claims, "it is a virtual certainty that without affirmative action, racial and sexual discrimination would return with a vengeance."⁸ His cynicism, he asserts, comes not from a lack of faith in his white fellow citizens, but rather reflects his assessment of the depth to which racism and discrimination are embedded in the history of our nation and the structures of power.

Wilson closes her blog entry with this observation, "In a few decades, white people will become a minority in this country, and women already form a majority. We will need all of the experience we can get as we govern and grow a new America, and position ourselves to compete on the global stage with the ingenuity born of an increasingly diverse and just society."

Affirmative action will no doubt continue to evolve in shape and form, in response to an ever-changing environment. The rapid growth of the Latina/o community in recent decades through immigration and birth, along with other immigrant groups, will bring new challenges as generations born in the U.S. seek their rightful place in education and the workplace. U.S. society will continue to face the challenge of incorporating all of its members in the social, political, and economic life of our nation with equity and mutuality.

About the Writer

Rev. Teresa Chávez Saucedá, PhD, teaches, writes, and consults on Latina/o theology, racial justice, and cultural proficiency.

Endnotes

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3. "Teaching with Documents: The Civil Rights Act of 1964 and the Equal Employment Opportunity Commission," <http://www.archives.gov/education/lessons/civil-rights-act/>. Also see Equal Employment Opportunity Commission Web site at <http://www.eeoc.gov>.
4. Barbara R. Bergmann, *In Defense of Affirmative Action* (New York: BasicBooks, 1996), 7.
5. Marquita Sykes, "The Origins of Affirmative Action," NOW Web site, August 1995, <http://www.now.org/nnt/08-95/affirmhs.html>. Also see Theodore Wood, "The Need for Affirmative Action: Strong as Ever!" University of Dayton School of Law, 1998, <http://academic.udayton.edu/Race/04needs/s98wood-p.htm>.
6. Wilson, "The Difference."
7. Charles J. Ogletree Jr., "The Case for Affirmative Action," *Stanford Magazine*, n.d., <http://www.stanfordalumni.org/news/magazine/1996/sep/oct/articles/for.html>.
8. Cornel West, *Race Matters* (New York: Vintage Books, 1994), 95.