Affirmative Action as Equalizing Opportunity: Challenging the Myth of “Preferential Treatment”

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**INTRODUCTION**

Affirmative action is an issue about which there has been considerable public debate. We think, however, that it is a policy that has often been misunderstood and mischaracterized, not only by those opposed to it, but even by its defenders.' In this essay, we intend to describe these misconceptions, explain why we consider them to be misconceptions, and put forward a much stronger defense of affirmative action policies than that which is usually offered. In the first section, we examine and challenge prevalent misrepresentations of the scope of affirmative action policies -- both misconceptions about the groups of people these policies are designed to benefit and about the benefits they are intended to achieve. In the second section, we address misunderstandings about the rationales for affirmative action policies and take issue with those who regard affirmative action as bestowing "preferential treatment" on its beneficiaries. We argue that affirmative action policies should be understood as attempts to equalize opportunity for groups of people who confront ongoing forms of institutional discrimination and a lack of equal opportunity. In the third and fourth sections respectively, we take issue with (1) those who defend affirmative action on the grounds that it is nothing more than a form of compensation; and (2) those who defend it merely on the grounds that it promotes diversity and a range of other long-term goals. We argue that such rationales mischaracterize affirmative action as providing justifiable "preferences" to its beneficiaries. In the last section, we contend that the "stigma argument" against affirmative action dissolves when these programs are understood to equalize opportunities rather than as initiatives that merely bestow preferences on their beneficiaries.

**CLARIFYING THE SCOPE OF AFFIRMATIVE ACTION POLICIES**

Debates surrounding affirmative action often misrepresent the scope of these policies in several important ways. The most perturbing of these misrepresentations is the widespread tendency to construe affirmative action policies as race-based policies alone, and further, to talk about African Americans as the only racial group they are intended to benefit. This picture of affirmative action policies is, to put it bluntly, false. When these policies were first initiated, they were designed to benefit members of other disadvantaged racial minority groups besides African Americans. For example, almost two-thirds of the students admitted under the affirmative action program of the Davis Medical School that was challenged in the 1978 landmark Bakke' case were Latino or Asian American. Yet, most of the public debate surrounding the Bakke decision
discussed it strictly in terms of Blacks and whites only. Even more oddly, the opinions of the Supreme Court justices that considered this case -- the plurality opinions as well as the dissenting opinions -- discussed affirmative action as though African Americans were the chief beneficiaries.' This misrepresentation was unfortunate. Why? Because in the context of the racial history of the United States, such a misrepresentation of the scope of these policies is not only false, but also dangerous, since it is easier to create negative stereotypes about these programs when African Americans are viewed as their principle beneficiaries.

As a result, it is important that we recognize that, even at their inception, when affirmative action policies were predominantly race-based, they were designed to remedy the institutional exclusion of a number of racially disadvantaged groups. In many institutional contexts, affirmative action policies have long since been expanded to cover other areas of discrimination and unequal opportunity. Many educational institutions, professions and trades have opened their doors to women as a result of affirmative action, promoting the entry of women into a range of areas that were largely male dominated, ranging from law schools to corporations to police departments. These new opportunities have benefitted not only women of color, but also many middle class White women. Affirmative action policies in some institutions, such as professional schools, have also promoted the entry of working class applicants, including working class White men, a fact that is seldom discussed and little known. Derrick Bell points out that "special admissions criteria have been expanded to encompass disadvantaged but promising White applicants." For example, the open admissions program of New York's City University system, which was initiated by minority pressure, has benefitted even greater numbers of lower, middle, and working class Whites than Blacks.'

We need to remember that the world into which affirmative action policies were initiated was a world where a great many prestigious institutions and professions were almost exclusively enclaves of upper class White men; and where many of the blue collar trades were predominantly the preserve of White working class men. Affirmative action has been crucial in opening up the former to women, members of racial minorities, and working class Whites; and in opening up the latter to women and members of racial minorities. This is not to say, however, that each and every instance of affirmative action does or should consider each category of class, race and gender. Which factors should be considered depends on the patterns of exclusion within a particular occupation and institution. For example, affirmative action policies in the blue collar trades and police and fire departments should work affirmatively to promote the entry of women of all races and of minority men, since they were the groups that faced obstacles to entry, not White working class men. Student admissions policies at historically elite women's colleges attended predominantly by White upper class women, such as Vassar College, where we teach, on the other hand, should affirmatively seek not only to recruit students of color and women from working class backgrounds but also white working-class men once they adopt co-ed policies. Taken as a whole, affirmative action policies in many institutional contexts have long operated on multiple criteria of inclusion, even though they continue to be portrayed as policies that either solely or principally benefit Blacks.
The prevalent failure to consider the range of people that affirmative action policies have benefitted breeds a number of misplaced objections to these policies. For example, many people argue that affirmative action policies should be class-based instead of race-based, since they believe that middle class African Americans do not need or "deserve" affirmative action. This view is problematic in a number of ways. First, many proponents of this view pose the issue as a choice between race and class, ignoring the fact that affirmative action policies have been both class and race-based. Second, proponents of this view believe that middle class Blacks do not suffer from the effects of discrimination despite substantial evidence to the contrary.

In the mid-1980s, independent studies by the Grier Partnership and the Urban League revealed striking disparities in the employment levels of Blacks and Whites in Washington, D.C. - an area of the country deemed to be one of the "best markets" for Blacks. Both studies cite racial discrimination as the major factor that accounts for this difference. In the early 1990s, a study by the Urban Institute examined employment practices in the Chicago and Washington, D.C. areas by sending equally qualified and identically dressed White and Black applicants to newspaper-advertised positions. These testers were also matched for speech patterns, age, work experience, physical build and personal characteristics. The study found repeated discrimination that increased with the level of the advertised position, and revealed that Whites received job offers three times more often than equally qualified Blacks.

Finally, the limitations of the view that middle class Blacks do not suffer racial discrimination becomes clear when we attend to gender-based affirmative action policies. No one has seriously suggested that the sexism and gender-based discrimination women face in a variety of institutions is merely a product of their class status, or that middle class status shields White women from these effects. Just as affirmative action policies that only address class disadvantages are unlikely to remedy the gender based institutional exclusions faced by women, they would surely fail to remedy race-based exclusions faced by members of an array of racial minority groups. In short, the effects of gender and race bias would be only partially curtailed by purely class-based policies. Indeed, purely class-based policies would primarily benefit working class White men, whose race and gender are not the sources of invidious discrimination. As some recent feminist works teach us, we must, therefore, pay particular attention to the interconnected ways in which factors such as class, race, gender and sexual orientation work together to sustain disparities between different groups of Americans in a variety of institutional and social contexts.

There is, then, no need to pit class against race - or against gender and frame it as the only valid basis for affirmative action. An array of factors that contribute to institutional discrimination - such as class, race, gender and sexual orientation - should be taken into account. When several factors intersect and jointly contribute to a process of discrimination, as in the case of a working class Black woman, each factor should be considered. When only one aspect of a person's identity adversely affects his or her opportunities in a given setting - for instance, class status in the case of working class
White men, or race in the case of middle class Black men - then only that factor should be taken into account.

Another prevalent objection to affirmative action policies that seems connected to the misunderstanding of its actual scope is the argument that truly disadvantaged poor Blacks have not benefitted from these policies. The impression that affirmative action benefits only the Black middle class and that few working class or poor Blacks benefit from these programs is mistaken. The vast majority of Blacks were working class prior to the Civil Rights Era and the promulgation of civil rights laws and affirmative action initiatives. These efforts have combined to play a major role in the creation of the Black middle class that exists today. Bob Blauner points out that due to occupational mobility that is in part a product of affirmative action, nearly 25 percent of Black families had incomes of more than $25,000 (in constant dollars) in 1982, compared with 8.7 percent in 1960. Moreover, the proportion of employed Blacks who hold middle class jobs rose from 13.4 percent in 1960 to 37.8 percent in 1981. The number of Black college students rose from 340,000 in 1966 to more than one million in 1982.10 From sanitation departments to university departments, from the construction industry to corporate America, these programs have helped to open doors that were once tightly sealed.

An empirically accurate assessment of affirmative action policies shows that they have not only benefitted poor and working class Blacks, but poor and working class people of all races, including some White working class men and women. Thus, White working class opposition to these policies is mistakenly based on the belief that they are by definition "victims" of such programs, a mistake facilitated by discussions that portray these policies as only benefitting Blacks.

Finally, some people also argue against affirmative action on the grounds that it has not solved a host of problems pertaining to poverty, the inner city and the "underclass." It is true that affirmative action has not solved these problems -- nor has it solved problems such as rape, domestic violence and sexual harassment. However, we do not think that these are legitimate objections, since they more obviously over-inflate the scope of what these policies were intended to accomplish. Affirmative action policies cannot be, nor were they ever intended to be, a magic solution to all of our social problems. Indeed, no single set of policies can solve every social problem that we confront. Their purpose is limited in scope -- for they are designed only to partially counter the ways in which factors such as class, race, gender and sexual orientation function in our society to impede equal access and opportunity in a range of American institutions and occupations. In this respect, they have clearly succeeded.

RE-ENVISIONING THE RATIONALE FOR AFFIRMATIVE ACTION: FROM "PREFERENTIAL TREATMENT" TO "EQUAL OPPORTUNITY."

We believe that many mistaken views about affirmative action result from misunderstandings about the justifications or rationales for such policies. Unfortunately, the debate about affirmative action has largely been a dialogue between two broadly characterized positions. On the one hand, its critics describe it as a form of "reverse
discrimination" that bestows "undeserved preferences" on its beneficiaries. On the other hand, its defenders continue to characterize these policies as "preferential treatment," but argue that these preferences are justified, either as forms of "compensation" or on grounds of "social utility." Few question the assumption that affirmative action involves the "bestowal of preferences," or challenge the premise that it marks a sudden deviation from a system that, until its advent, operated strictly and clearly on the basis of merit. Setting out a view of affirmative action that rejects these ideas is our central task here.

In our view, affirmative action is not a matter of affording "preferential treatment" to its beneficiaries. Our position is that affirmative action is best understood as an attempt to promote equality of opportunity in a social context marked by pervasive inequalities -- one in which many institutional practices work to impede a fair assessment of the capabilities of those who are working-class, women or people of color. In this regard, affirmative action is an attempt to equalize opportunity for people who continue to face institutional obstacles to equal consideration and equal treatment. These obstacles include not only continuing forms of blatant discrimination, but more importantly, they include a variety of subtle institutional criteria and practices that unwarrantedly circumscribe mobility in contemporary America. These criteria and practices are often not deliberately designed to discriminate and exclude. The fact remains, however, that they nevertheless function to do so, as our subsequent examples demonstrate. In countering such forms of discrimination, affirmative action policies attempt only to "level the playing field." They do not "bestow preferences" on their beneficiaries. Rather, they attempt to undo the effects of institutional practices and criteria that, however unintentionally, amount in effect to "preferential treatment" for whites and men, among others.

Those who believe that affirmative action constitutes "preferential treatment" often assume (a) that the criteria and procedures generally used for admissions and hiring are neutral indicators of "merit," unaffected by factors such as class, race, or gender; and (b) that such criteria are fairly and impartially applied to all individuals at each stage of the selection process. In this section, we will try to show why these two assumptions are seriously open to question.

Although standardized tests are often "taken as absolute by both the public and the institutions that use the scores in decision making," there is ample evidence that they do not predict equally well for men and women. A study of three college admissions tests (the SAT, the PSAT/NMSQT, and the ACT) reveals that although women consistently earn better high school and college grades, they receive lower scores on all three tests. Rosser argued that "if the SAT predicted equally well for both sexes, girls would score about 20 points higher than the boys, not 61 points lower." Standardized test scores adversely affect women's chances for admission to colleges and universities, their chances for scholarships, and entry into "gifted" programs, as well as their academic self-perceptions. Similarly, James Crouse and Dale Trusheim argue, on the basis of statistical evidence, that the test scores are not very useful indicators for helping to "admit black applicants who would succeed and to reject black applicants who would fail."13
The literature on such standardized tests demonstrates that they are often inaccurate indicators even with respect to their limited stated objective of predicting students' first-year grades in college and professional schools. Yet, they are often used as if they measured a person's overall intelligence and foretold long-term success in educational institutions and professional life. As a result of these unsupported beliefs, affirmative action policies that depart from strict considerations of these test scores are often taken to constitute the strongest evidence for institutional deviation from standards of merit. Such policies are also thought to represent the type of "preferences" somehow reserved only for women and minority applicants.

There are also many other examples of established institutional rules, practices and policies that, no matter how benign their intention, have the effect of discriminating against the members of relatively marginalized groups. For instance, word-of-mouth recruitment -- where the existing labor pool consists of predominantly White men -- reduces the opportunity for women and people of color to apply for the jobs in question. Other examples include unions that influence or control hiring in well-paid jobs in the construction, transportation and printing industries when recruiting is solely accomplished through personal contacts. In this vein, a 1990 study reports that over eighty percent of executives find their jobs through networking, and that about eighty-six percent of available jobs do not appear in the classifieds. "Last hired, first fired" rules make more recently hired women and minorities more susceptible to lay-offs. The "old boy network" that results from years of social and business contacts among white men, as well as racially or sexually segregated country clubs or social organizations -- which are often paid for by employers -- also bear a disparate impact on women and minorities. Furthermore, stereotyped beliefs about women and minorities often justify hiring them for low-level, low-paying jobs, regardless of their qualifications for higher-level jobs.

Indeed, some empirical studies show that many Black candidates for jobs are rated more negatively than White candidates with identical credentials. Other studies demonstrate that the same resume with a woman's name on it receives a significantly lower rating than when it has a man's name on it, showing that gender-bias operates even when there is no direct contact with the persons evaluated. Still other problematic practices include evaluations where subjective assessments of factors such as "fitting in," "personality," and "self-confidence" work to accommodate class, race and gender prejudice.

Personal interviews, job evaluations, and recommendations all have an inescapable subjective element which often works in the favor of better-off White men. As Lawrence A. Blum writes:

"Persons can fail to be judged purely on ability because they have not gone to certain colleges or professional schools, because they do not know the right people, because they do not present themselves in a certain way. And, again, sometimes this sort of discrimination takes place without either those doing the discriminating or those being discriminated against realizing it .... Often these denials of equal opportunity have
a lot to do with class background, as well as race or sex, or with a combination of these."20

Interview processes that precede being selected or hired are often not as "neutral" as assumed. A two-step experiment done at Princeton University began with white undergraduates interviewing both white and Black job applicants. Unknown to the interviewers, the applicants in the first stage of the experiment were all confederates of the experimenters and were trained to behave consistently from interview to interview. This study reported that interviewers spent less time with Black applicants and were less friendly and outgoing than with the white applicants. In the second stage of the experiment, confederates of the experimenters were trained to approximate the two styles of interviewing observed during the first stage of the study when they interviewed two groups of white applicants. A panel of judges who reviewed the tapes of these interviews reported that white applicants subjected to the style previously accorded Blacks performed noticeably worse in the interviews than other white applicants.22 In this respect, there is also substantial evidence that women are asked inappropriate questions and subject to discrimination in interviews.

None of the discriminatory institutional structures and practices we have detailed above necessarily involve conscious antipathy toward women and minorities or the operation of conscious sexist or racist stereotypes. Some discriminatory structures and practices involve unconscious stereotypes at work, from which women and people of color are hardly immune in their own evaluations of other women and minorities. Many of the examples we discussed above involve practices central to hiring and promotion that work to disadvantage many marginalized Americans, even when all persons involved sincerely believe themselves to be fair and impartial. Because the process of getting through an educational program, or being hired, retained or promoted in a job involves the possibility of women and minority applicants being subject to a variety of such practices, it seems likely that few, if any, women or people of color are apt to escape the cumulative adverse effects of these practices. In the context of these structures and practices that systematically disadvantage some Americans, it would be naive, at best, to believe that our society is a well-functioning meritocracy.

The problem is far more complicated than is captured by the common perspective that working class people, women and the members of some racial minorities have generally not had equal advantages and opportunities to acquire the relevant qualifications, and therefore, they should be compensated by being awarded preferences even though they are not as qualified as their white male peers. The qualifications of members of marginalized groups, in fact, tend to be under-valued and under-appraised in many institutional contexts. Moreover, many of the criteria that are seen as important impartial indicators of their competencies, merit and potential (such as test scores) not only fail to be precise measurements of these qualities, but systematically stigmatize these individuals within institutions in which these tests unwarrantedly function as important criteria of admission.
We do not, however, wish to deny that factors such as class, race and gender often impede people from acquiring qualifications. Black school districts often receive less funding and inferior educational resources compared to similar white districts, often as a result of decision-making by whites. There is also increasing evidence of disadvantaging practices in the pre-college advising offered to minority students. Teachers often interpret linguistic and cultural differences as indicators of low potential or a lack of academic interests on the part of minority students. Guidance counselors often steer female and minority students away from "hard" subjects, such as mathematics and science, which are often paths to high-paying jobs.

In such contexts, even if the criteria used to determine admission and hiring were otherwise unproblematic, it is not at all clear that taking them simply "at face value" would fairly or accurately gauge the talents and potential of individuals from distinctly different backgrounds. When some candidates have to overcome certain educational and social obstacles that others do not, similarity of credentials may well amount to a significant difference in talent and potential. Thus, treating identical credentials as signs of identical capabilities and effort may, under prevailing conditions of inequality, significantly devalue the worth of credentials obtained in the teeth of such obstacles. We argue that individuals who obtained their credentials in the face of severe obstacles are likely to perform better than those who have similar or even somewhat better credentials obtained without coping with such obstacles. This is especially true over a period of years, where they have had opportunities to transcend the barriers that they face. Affirmative action policies, with respect to admissions and hiring, recruit individuals for positions where "success" depends on the nature of one's performance over several years. Such recruitment policies should rightly concern themselves with a person's evidenced potential for success rather than simply assess what a person's capabilities appear to be based on the comparison of credentials acquired by individuals under distinctly different circumstances.

Still, we are not arguing that affirmative action policies are, or can be, magical formulas that help us determine with perfect precision in every case the exact weights that must be accorded to a person's class background, gender, or minority status so as to afford him or her perfect equality of opportunity. Particular institutions must use practical wisdom and good-faith efforts to determine the exact measures that they will undertake to promote equality within their frameworks, as well as monitor and periodically reassess the parameters and scope of their institutional policies. Nor do we wish to deny that some persons recruited as a result of affirmative action policies might turn out to be incompetent or demonstrate significant limitations in their ability to meet requirements. After all, the same incompetence's are manifested by some who are recruited through "regular" channels. No recruitment policies are immune to these problems. What we argue is that in situations where issues of class, race, and gender operate to impede equality of opportunity, affirmative action policies have enabled many talented and promising individuals to have their talent and promise more fairly evaluated by the institutions in question than would otherwise have been the case.
THE LIMITATIONS OF THE COMPENSATION RATIONALE FOR AFFIRMATIVE ACTION

Affirmative action has frequently been defended on the grounds that it provides preferential treatment to members of marginalized groups as reparation or compensation for injustices they have suffered in the past. The term compensation draws heavily on the model of recompense or payment of damages that is found in tort law. In the context of tort remedies, the particular agent who is responsible for injuring another compensates the specific person injured by paying what is judged to be an appropriate sum of money for the actual extent of the injury that he or she has caused. This rationale tends to raise a number of questions precisely at those points where affirmative action policies seem to differ from the practice of tort based compensation. Some argue that those who are "paying the price" for affirmative action have no direct responsibility for any harms or injuries suffered by any of its beneficiaries. Others raise the question of why the specific forms of "payment" involved -- construed as preferences for jobs or preferential entry to educational institutions -- are the appropriate forms of compensation, rather than monetary awards. Such critics reinforce these arguments by pointing out that affirmative action policies do not seem to be the most equitable form of compensation because those who have been most injured are probably not the ones receiving the compensation, since their injuries have resulted in their not having "the qualifications even to be considered."

There have been attempts to defend the compensation rationales against these objections. However, we believe that taken alone they remain inadequate and problematic rationales for defending affirmative action. In suggesting that affirmative action compensates individuals for damage done to them by phenomena such as racism or sexism, these rationales imply that the problem is one of "damaged individuals" rather than a problem due to the structures, practices and criteria that operate within our institutions to impede a fair assessment of the capabilities of some Americans. We have argued in the previous section that there is ample evidence to show that many prevalent criteria and procedures do not fairly gauge the capabilities of the members of marginalized groups. The compensation model, however, does not question the normative criteria used by our institutions nor does it encourage critical reflection about the processes of assessment used to determine these "qualifications." As a result, it fails to question the view that affirmative action involves "preferential treatment." We consider this failure a serious weakness, since it does not challenge the view that affirmative action policies promote the entry of "less qualified" individuals. Instead, it merely insists that "preferences" bestowed on less qualified individuals are justified as a form of compensation in the context of affirmative action programs.

The compensation literature also conflates the rationale for race and gender-based affirmative action policies with that for policies which promote institutional access for veterans. Policies based on veteran status may indeed be understood as compensation for their risks, efforts, and injuries sustained in the service of the nation, which may also have impeded or detracted from their employment or educational goals. However, it does not necessarily follow that a rationale that works best to explain one type of special assistance program works equally well to explain all others. In this respect, not
only is a person's veteran status usually less visible than their race or gender, veteran status per se does not very often render persons targets of prejudice and institutional discrimination.

THE LIMITATIONS OF THE SOCIAL UTILITY RATIONALES FOR AFFIRMATIVE ACTION

We believe that our rationale for affirmative action is also stronger than the "social utility" arguments that have been offered in its defense. To illuminate our perspective, we will focus on one of the best known of such defenses offered by Ronald Dworkin.26 Dworkin understands affirmative action to involve "preferential treatment" and discusses affirmative action policies only as they pertain to Blacks. His argument can be summarized as follows: first, he contends that affirmative action policies that "give preferences" to minority candidates do not violate the "right to equal treatment" or the "right to equal consideration and respect" of white male applicants." Dworkin argues that these rights would be violated if a white male suffered disadvantage when competing with Blacks because his race was "the object of prejudice or contempt", but that this was not the case with affirmative action policies."

Second, Dworkin maintains that the "costs" that white male applicants do suffer as a result of affirmative action policies are justified because these policies promote several beneficial social ends, the most important of which is their long-term impact in making us a less race conscious society. Other beneficial social ends that Dworkin argues are served by affirmative action include providing role models for Blacks, providing more professionals such as doctors and lawyers willing to serve the Black community, reducing the sense of frustration and injustice in the Black community, and alleviating social tensions along racial lines.29

Whereas Dworkin focuses on the negative claim that affirmative action policies do not violate the right to equal treatment, or the right to equal consideration and respect for the interests of white men, we make the positive and much stronger claim that affirmative action policies are justified because they are necessary to ensure the right to equal treatment for the members of marginalized groups in a social context where a variety of social structures and institutional practices conspire to deny their interests equal consideration and respect. While we have no quarrel with Dworkin's claims about the social benefits of affirmative action, we do not rest our case on such consequentialist arguments about its long-term effects -- arguments that are notoriously vulnerable to counter-arguments that project a set of more negative consequences as the long-term results. Since we do not believe that affirmative action bestows "preferential treatment" on its beneficiaries or imposes "costs" on white male applicants as Dworkin does, we do not need to rely on Dworkin-type arguments that the long-term social benefits of these "preferences" justify imposing these "costs."

Our rationale for affirmative action also differs from social utility arguments that justify these policies on the ground that they contribute to a greater diversity of backgrounds and perspectives within academic institutions, thereby enhancing the learning process.
First, "diversity" on campus can be enhanced by admitting people from a wide variety of backgrounds with a wide range of special talents. But a commitment to "diversity" per se could justify policies that promoted the recruitment of students from abroad, from remote areas of the country, and those with artistic skills or unusual interests. While there might well be institutional reasons for, and benefits from, promoting diversity in these forms, none of these students need necessarily have suffered from the systematic effects of social and institutional forms of discrimination within the United States. Thus, many students who would provide "diversity" would not qualify for affirmative action, even though there might well be other reasons for admitting them. Second, while admitting greater numbers of working-class people, women and members of certain racial minority groups into institutions in which they are significantly under-represented would also increase institutional diversity in meaningful ways, we see such beneficial consequences as complementary benefits of affirmative action rather than its central goal.

While we believe affirmative action has had beneficial consequences in making many areas of work and education more integrated along class, race and gender lines, we see these consequences as the results of treating people more equally, and not as benefits that have resulted from "imposing costs" on the non-beneficiaries of affirmative action. Our central objection to both the "compensation" and "social utility" rationales for affirmative action is that neither questions the related assumptions that affirmative action "bestows preferences" on some, and imposes "costs" on others. In short, we insist that affirmative action policies that attempt to foster equal treatment and respect do not constitute "preferential treatment" - such attempts to undo the effects of institutional practices and criteria that privilege the capacities of some people over others are not "costs" that need to be justified by pointing to the "benefits" of the long-term consequences of these policies.

CHALLENGING THE "STIGMA" OF AFFIRMATIVE ACTION

Affirmative action has been criticized on the grounds that it "stigmatizes" its participants because both they themselves as well as others regard the beneficiaries of affirmative action as "less qualified" than non-beneficiaries. Affirmative action policies are also criticized on the grounds that they cause resentment among the "more qualified" people who are denied entry as a result of these policies. We believe that both criticisms are often the results of a failure to comprehend the appropriate array of rationales necessary to defend affirmative action programs. Furthermore, we believe that these arguments about "stigma" and "resentment" are unwittingly reinforced by those who defend affirmative action on the basis of the "compensation" or "social utility" arguments, since both of these rationales fail to challenge the claims that affirmative action (1) promotes the "less qualified" and (2) imposes "costs" on those who are "better qualified" for the positions in question.

Without affirmative action policies, those who are its beneficiaries would not be given equal consideration or have their qualifications and capabilities assessed fairly. Given our rationale for affirmative action, the "stigma problem" disappears since we see
nothing demeaning or stigmatizing in being given equal consideration or in being treated as fairly as one's peers. From our perspective, not only do the beneficiaries of affirmative action have no valid reason to feel "inferior," the non-beneficiaries of it have no good reason to regard themselves as "more qualified" than its beneficiaries. Our account of affirmative action also helps to illustrate why resentment by the non-beneficiaries of these programs is unjustified. We believe that such resentment is based on the false belief that the "better qualified" are being burdened by having to bear the "costs" of "preferences" bestowed on others, a sentiment reinforced by views that equate affirmative action with preferential treatment. Since we do not believe affirmative action automatically bestows preferences, we do not think that it necessarily imposes any corresponding costs or burdens on its nonbeneficiaries. Quite to the contrary, we believe that it should be understood as an attempt to counteract a variety of practices that work to unfairly privilege, among others, those who are middle class, white and male. We believe that the only costs to affirmative action's non-beneficiaries is that they lose these privileges, privileges that are the results of a lack of fairness and opportunity for others.

Neither affirmative action policies, nor a fair and judicious assessment of the performance of their various beneficiaries, are the central causes of the prevailing negative stereotypes about the competencies of women, or people of color. Critiques of affirmative action along these lines often suggest that the world was once a fairer place, and that it has only recently become tainted with new stereotypes about the capabilities of women and the members of racial minority groups as a result of affirmative action policies that infuse large numbers of "under-qualified" and "unqualified" beneficiaries into American institutions. Such critiques suggest that affirmative action has exacerbated the old negative stereotypes about women and people of color which had begun to wane. In fact, however, it was racist and sexist stereotypes, and the institutional practices that worked to perpetuate and reinforce them, that made affirmative action policies necessary.

One of the ways in which racist and sexist stereotypes function is by diminishing our ability to see people of color and women as individuals. Thus, an individual woman or minority person's inadequacies can be generalized and seen as signs of the incompetence of whole groups of people, whereas the failures of white men remain personal limitations. Moreover, success stories involving women or minorities often tend to be interpreted as exceptions, and not as examples of the capabilities of women or people of color generally." Much of the discourse on affirmative action reveals this pattern: instances of women and people of color who have failed to meet the requirements of a profession or institution are taken to be testimony to the grand failure of affirmative action policies and the incompetence of the bulk of its beneficiaries. No nuanced account is given of the possible causes of these failures. The fact that no set of admissions, hiring or promotion criteria can guarantee that everyone who manifests potential for success will in fact succeed gets lost amidst anxious rumors of incompetence. Seldom emphasized are the numerous stories of those who have succeeded as a result of affirmative action.
As far back as the debate over the admission of minority applicants to the Davis Medical School in the Bakke case, little attention was paid to the success stories of people admitted as a result of affirmative action. Yet, four years after the admission of the sixteen "affirmative action" candidates to Davis in 1978, thirteen had graduated in good standing, several had excelled, and one of their number had earned the school's most prestigious senior class award for "the qualities most likely to produce an outstanding physician." Much of the debate in 1978, however, presumed, just as it does now, that affirmative action's departure from the traditional admissions criteria represented a departure from objective criteria of "excellence."

There are a number of additional troublesome assumptions that underlie the stigma arguments. For example, for decades, almost all of our elite institutions and professions, as well as many non-elite career paths, were domains that permitted entry to a very small, and extremely privileged segment of the population. Yet there were millions of equally talented individuals who, because they were either working class, or women, or members of racial minority groups were denied the same chance to develop their talents and capabilities in these spheres -- talents and capabilities that may well have exceeded those of many of their privileged white male counterparts. Rarely, if ever, have the privileged white men who benefitted from such "undeserved preferences" ever castigated themselves or publicly expressed the feeling that they were not "really talented" or "really deserving of their positions," even though they acquired them under circumstances that eliminated most of their fellow citizens, including the female members of their own families, from the competitive pool. We are unaware of a body of literature from these individuals filled with anxiety and self-doubt about their capabilities and merit. Indeed, one of the unnerving effects of privilege is that it permits the privileged to feel so entitled to their privileges that they often fail to see them as privileges at all. In such a setting, it is more than a little ironic that the beneficiaries of affirmative action programs, designed to counteract the effects of institutional discrimination, are now viewed by many Americans as stigmatized by the very programs that eliminate the unwarranted obstacles faced by affirmative action's beneficiaries. Many who complain about the preferential treatment they believe affirmative action accords to women and minorities in academia assume that everyone other than its beneficiaries is admitted purely as a result of merit. Yet, paradoxically, policies that favor relatives of alumni, and children of faculty members or donors to the university have not created a storm of legal or social controversy. Perhaps this is because such policies tend to benefit predominantly white middle class individuals. Our point is not simply to claim, however, that people who accept preferential policies that benefit middle class whites are often outraged by "preferences" rooted in affirmative action policies. Our point is a much stronger one that hinges on the profound differences between affirmative action and these other policies. Policies that favor children of alumni or donors to the university are policies that may serve some useful goals. But they are genuinely "favors" or "preferences" with respect to the individuals admitted in that such policies are in no way intended to equalize the opportunities of those thus admitted. Thus, we insist on a conceptual distinction between affirmative action and policies that are genuinely tantamount to bestowing preferences.
In this respect, our point is not to endorse a "purely meritocratic society" as the ideal society. Rather we seek to highlight the reality that many existing institutional structures not only fail to function as pure meritocracies, but also serve systematically to disadvantage whole groups of people, including working class people, women and people of color. To those strongly committed to traditional meritocratic ideals, we suggest that when close attention is paid to the systematically disadvantaging effects of many institutional procedures, they may actually have reason to see affirmative action as conducive to their meritocratic ideals rather than as serious deviations from them.

CONCLUSION

The intellectual confusion surrounding affirmative action transcends ideological categories. Critics and supporters of all political stripes have underestimated the significance of these policies, collaborated in equating affirmative action with "preferential treatment," and permitted important assumptions about how institutions function to lie unchallenged. We argue that these policies do not automatically involve preferential treatment, and that instead they should be understood as attempts to promote fairness and equal citizenship by affording the members of marginalized groups a fair chance to enter significant societal institutions.

The fact that formal legal equality seems commonplace and obviously justified to many today should not obscure how recently formal equality has been a reality for many, nor the struggles it took to make it a reality. More importantly, we should not imagine that the achievement of formal legal equality erased the consequences of centuries of inequality, making the promise of equality and full citizenship an immediate reality for those previously excluded. The institutional consequences of such historically group-based exclusions in significant domains of occupational and social life still remain. Class, race and gender, for example, continue to deprive people of the opportunities to participate in numerous forms of association and work that are crucial to the development of talents and capabilities that enable people to contribute meaningfully to, and benefit from, the collective possibilities of national life.

Only since the latter part of the nineteenth century and the early decades of the twentieth century have some democratic political communities, such as the United States, sought to embrace the members of marginalized groups they had once excluded from the rights and privileges of citizenship. Only in the latter part of the twentieth century has there dawned the recognition that laws and policies that promote formal equality do not necessarily ensure substantive equality or genuine equal opportunity for all Americans. In this respect, affirmative action policies are a significant and historic achievement, for they constitute an attempt to transform our legacy of unequal treatment with respect to certain marginalized groups of Americans. They symbolize our political commitment to ensuring substantive participation in all domains of life for various groups of our diverse citizenry. Thus, we believe that affirmative action programs warrant a more favorable evaluation, both as an historic achievement and in terms of their positive effects within contemporary American institutions, than they are usually accorded.
References


3. Bakke, 438 U.S. 265 at 298 (1978) (plurality opinion) (pointing out the inequity of "forcing-innocent persons"to"bear -the burdens-of re-dressing grievances-not of their making").


5. Id.


8. Id.


12. ROSSER ET AL., SEx BIAS IN COLLEGE ADMISSIONS TESTS: WHY WOMEN LOSE OUT (2d ed. 1987).


14. See generally Barnett v. W.T. Grant Co., 518 F.2d 543, 549 (4th Cir. 1975) (finding word-of-mouth hiring discriminatory because of its tendency to perpetuate the all-white composition of a work force); Franks v. Bowman Transp. Co., Inc. 495 F.2d 398, 419-420 (5th Cir. 1974), rev'd on other grounds, 424 U.S. 747 (1976) (holding word-of-mouth recruitment discriminatory on a disparate impact theory); Rowe v. General Motors Corp., 457 F.2d 348, 359 (5th Cir. 1972) (stating white employees tend not to know African Americans who would be qualified to perform the work in
question); Parham v. Southwestern Bell Tel. Co., 433 F.2d 421, 427 (8th Cir. 1970) (finding existing white employees tend to refer members of their own race, thus perpetuating racial disparities); NAACP v. City of Corinth, 83 F.R.D. 46, 62 (N.D. Miss. 1979) (holding prima facie case of disparate treatment discrimination established by showing that job vacancies were filled by word-of-mouth).


22. Id.

23. See, e.g., Alison M. Conrad and Jeffrey Pfeiffer, Understanding the Hiring of Women and Minorities in Educational Institutions, 64 Soc. EDuc. 41, 141-142 (1991) (discussing that 67% of Hispanic undergraduates were discouraged from attending college).


27. Id.

28. Id.

29. Id.

30. The "stigma" argument is often found in the works of Shelby Steele. See SHELBY STEELE, THE CONTENT OF OUR CHARACTER (1990). Steele writes, "The effects of preferential treatment-the lowering of normal standards to increase black representation- puts blacks at war with an expanded realm of debilitating doubt, so that the doubt itself becomes an unrecognized preoccupation that undermines their ability to perform." Id. at 117.
