

categories succeed. This assumption is abundantly supported by scholarly studies as well as by the historical record. Moreover, to be effective, laws must be based on a moral consensus. Since individual rights and equality before the law figure prominently in the definition of fairness and justice for the vast majority of the American people, these indeed constitute a sound foundation on which public policies can be based.

There is also a practical consideration here. Since we do not have a colorblind society, it is essential that we have colorblind and ethnic-neutral legal and administrative codes, that is, one law for everyone. By promulgating different laws for distinct categories of people we are exacerbating the natural tensions inherent in a diverse society.

There are those who occupy a middle ground that allows for nuance. They recognize the wrongheadedness of the present regime of racial, ethnic, and sex preferences, while arguing that race may be taken into account under some circumstances. This position seems reasonable but leaves us with a sticky problem: Where do we draw the line? We find ourselves on the same old slippery slope with our descent greased by the lawyers, political operatives, consultants, PC academics, quota enforcers and others—the grievance industry is vast—who will pounce on any irresolution and rend it so as to neutralize all reform. Allow the camel's nose under the tent flap and see what happens next.

In sum, debates on racial, ethnic, and sex policies for the academy, and for the country as a whole, should focus on a careful consideration of basic principles and the broader consequences of the policy that embodies them, all within the context of an honest discussion of what kind of society we really want and what kind of policies might bring us closer to achieving it.

## **Building on the Ashes of Failed Policy**

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Times past to speak happily of the future of race relations in America established one solidly in the camp of progressives. Today, the same discourse earns one the title “conservative retrograde.” Never mind. It remains true that California's voters announced in last November's election a public truth that is the key to a happy future for race relations: the death of affirmative action. While it is only natural that inertial social forces—like the presidency—will continue to deny the evidence before their eyes and posture in defense of an approach that neither delivered its promises nor spoke to the country's

most urgent needs, the fact is that affirmative action no longer constitutes a rational response to any need the country has.

This has been true for some time, not only since last November's election. I declared the death of affirmative action at an American Political Science Association roundtable on the subject in August of 1995. At the same time, I also indicated what the specific required in the face of that news must be. I see nothing that has changed since. I will, accordingly, repeat myself. First, however, I must reiterate what it means to declare affirmative action dead.

Think of affirmative action as it was first, hopefully, conceived, namely, as a social modality that could propagate a general social attitude of inclusiveness as the means to render race consciousness redundant. Leave aside the fact that elementary logical analysis would have persuaded even a novice that a surfeit of toxins would not result in a reduction of toxins in a living organism. Give credit to the many honest folks who bought the remedy on the strength of its promise rather than its logic.

Next, think of affirmative action as what it ineluctably became, namely, a privileged position for special interests motivated by instincts of self-preservation rather than preservation of the society. In this vein affirmative action meant, to be sure, life or death for certain ambitions for the "main chance." Life or death for the ambitions of particular individuals or groups, however, would not necessarily constitute life or death for the society.

Of the two dimensions of affirmative action, therefore, that alone to which the news of its death meaningfully applies is the first, the general social attitude of uplift and reconciliation. No credible observer now believes that affirmative action can in any way whatever contribute to the betterment of American society. That is the very reason that organs of popular opinion confine their attentions exclusively to questions of whether affirmative action is "good for" minorities or women. They would be laughed right out of their polling parameters if they tried to ask the American people whether affirmative action had any contribution to make to the well-being of American society as a whole.

With that news comes the necessary acknowledgment that affirmative action is dead, for no general policy or practice has the kind of life that counts (that which engages the people's hopes about their united future) when it cannot be considered by the people themselves as a necessary element of their happiness. Democracy triumphs no matter what the courts say.

Affirmative action is dead, then. Every credible index points to that conclusion. Affirmative action died because affirmative action failed. Too many poor black people, in particular, whose hopes were unjustifiably inflated by the premises of affirmative action, remain desperate for intervention in their lives (as opposed to being newly committed to hopes of fruitfulness from their own exertions) for thoughtful analysts to waste time trying to conceive of new rhetorics to restore their confidence in affirmative action.

What comes next, therefore, is an obvious recourse to the necessary task of social integration, which means nothing less than the devotion of energies to the end of eliminating race consciousness as a decision-making element in the pervasive activities of life in our society. I describe in those terms a task rather than a fated accomplishment.

Obviously, we will live for some time yet (perhaps as much as a generation) with the death throes of affirmative action. In that context the path the society takes may as well turn malign as benign. The complications of court decisions, legislative uncertainties, and especially presidential misjudgment may all contribute to a continuing inability in the society to undertake this necessary work. That is, after all, our history. If Martin Luther King and Thurgood Marshall could, in the end, waver and fail, it must not surprise anyone that others are highly likely to do so as well.

Expect, then, embittering words, social and political confrontation, and much poor judgment to interfere persistently with the clear historical trajectory toward a more fulsome social understanding among the people themselves. The question is, will the malefactors of policy eventually do harm enough to undermine the deeper, healthier tendency of the society itself? No one can foresee that. A wise wager, however, would fall on the side of George Washington, who identified the American people's "love of being one people" as a force too great to be turned back by the puerile efforts of Lilliputian politicians. And until and unless we see a contrary politician of truly world-historical stature emerge (and none now mounts the stage or stands in the wings), we may confidently foresee a happier future for race relations in America. This is to say that the people carry themselves where their public officials have not known how to carry them.

Draw the following conclusions: the legal (including judicial) arguments for race-based decision making will get weaker not stronger; the underlying community tensions that characterize so much of our policy and our media discourse will abate rather than intensify (although short-term intensification is rather to be expected), in proportion as we discover less oblique tools with which to address intractable problems (race is an oblique and inaccurate totem for the ills of urban society, and its use in that arena is the principal cause of the continued salience of race in America); the notion of a proprietary interest in civil rights, whether on the part of American blacks, women, hispanics, or anyone else, will cede place to a common legal and administrative orientation. Moreover, what every child has said emphatically for more than a generation now, "I have a right to..." will come to be seen as nothing more than a childlike preface to a question to be resolved on general legal or administrative principles rather than an appeal for allocative decision making at the level of politics.

One must ask also whether this new America will be a better or a worse America. The answer is: That depends! There exist many conceivable false steps in new directions equally and even more perverse than affirmative ac-

tion. If our emerging legal and administrative practices come to be dominated by one or more of these, it will follow that we will be worse off even while it is good that affirmative action is dead. This is one reason why nothing matters more at this moment than decisively to reject the erroneous “white male” complaint against affirmative action and to get on with a happier discourse about the future of race relations in the United States.

## Affirmative Action, Race, and the Pragmatic Temper

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When California voters passed (by a margin of 54 to 46 percent) a constitutional amendment ending public sector programs that use race- and gender-based preferences in education, hiring, and contracting, they were sending a simple message to politicians and bureaucrats: If affirmative action requires racial preferences, end it—because you can't mend it.

It is precisely because of its moral simplicity, however, that I found the ballot initiative (Proposition 209) so troublesome. For me, the Yes-or-No direct democracy of the initiative process is too blunt an instrument to shape a more deliberative and nuanced response to a tangled web of complex issues. The backers of Proposition 209 asserted the superiority of pure principle. Claiming that theirs was the only morally correct position, they asked, “Doesn't everyone agree that we want a colorblind and equal-opportunity society?”

The answer is Yes. But that isn't the only question. Twenty-five years ago I thought the issue of affirmative action was too often framed as one of categorical certainty on all sides, to the point of fostering a moralism that would brook no disagreement.<sup>1</sup> I have long since concluded that affirmative action must ultimately be viewed not in the simplistic categories of “for” or “against” but in relation to other competing and legitimate values and in light of many practical problems. It often represents a collision of right vs. right rather than of right vs. wrong. Thus I could not accept the zero-sum formulation of CCRI's most ardent supporters that any form of race-related preferences under any circumstance is *wrong* and that Proposition 209 is *right*.

But skepticism about CCRI does not imply any kind of blanket endorsement of affirmative action. We know that the use of race to overcome past and present racism has resulted in “excesses” and has frequently violated the