



The Preference of White Privilege

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In opposing Affirmative Action, President Bush resurrects Jim Crow

The decision by President Bush to file a brief in the United States Supreme Court opposing the University of Michigan's admissions program illustrates just how superficial the president's repudiation of Senator Trent Lott was during that sordid episode several weeks ago. It's also consistent with a formula that is tried and true for Republicans in our nation's capital: give lip service to outreach, to equal opportunity, and now repudiate segregation from the past, while at the same time, tie the hands of the very institutions that are most effective in dismantling the consequences of that history.

Repudiating segregation requires more than singing "We Shall Overcome." It requires real efforts now to integrate institutions of higher learning.

The Preference of White Privilege

Affirmative Action is often misunderstood as a preference, while the real preferences that happen every day are virtually ignored in a discourse that uses stereotypes and race baiting to do its work. Consider the experiences of Dr. Martin Luther King, Jr. and George Bush, two names that will certainly come up in the conservative assault on affirmative action. We know that tests tend to under-predict the performance of certain members of the population, especially people of color. Dr. King's score on the GRE placed him in the bottom percentile of all test takers, yet he is probably the most gifted orator and one of the most brilliant visionaries of the 20th century. Think about all the other would be gifted orators, surgeons, lawyers, teachers, and business people whose potential remain tragically wasted by unwarranted reliance on such an artificial benchmark of merit as a test score. On the other hand, when we think about preferences, let's consider our president, whose SAT score was 150 points below the average Yale matriculant. And who no doubt benefited from his pedigree. This form of privileging constitutes a preference, the kind that is most responsible for excluding the wealth of talent that would otherwise gain access to higher education while maintaining white hegemony. This simply shows the hypocrisy of the argument against affirmative action; it's really not about equal opportunity or merit at all. It is largely a racially coded, and delimited diatribe that trains attention on those aspects of educational policy that are least

responsible for the current state of educational mis-opportunity.

Preference Double Speak as a weapon to Misinform

As much as opponents of affirmative action invoke the specter of its supposed “victims”, the policy’s critics fail to acknowledge or kick up much of a fuss about the range of other reasons that schools often let in people with lower than required test scores. Colleges and universities can consider whether someone plays the flute, excels in athletics, speaks a foreign language, lives on a farm, the son or daughter of an alumni, or from a family that is a major financial contributor to a university. All of these factors are regularly used to bump some people who were otherwise better qualified to gain admission.

Race, as a factor in college admissions, is now subject to condemnation and a double standard, because it is now the only reason that universities cannot depart from rote test scores. The putative victim of a higher test score is every bit as excluded by a policy of geographic diversity than one of racial diversity, but she only has a case when her admission is perceived to be negatively impacted by an institution’s consideration of race as one of several factors in its decision making. Some say race is different and I quite agree. Race is the only factor among all of them that so completely colors our past, shapes our present, and conditions our future. Racial diversity is the only form of diversity that when absent reinstates a racial order that has its roots in Jim Crow.

Informing a Misinformed Public; Uncovering the Truth

Public opinion opposed to affirmative action is not surprising given the fact that part of the debate is lost at the moment these policies are called “preferences.” Being race conscious is not necessarily being preferential, no more than being gender conscious in an all male environment is discriminatory against me. In fact, we don’t usually think of policies meant to address or remedy injustices as a preference for persons who have been excluded or discriminated against. We see them as corrections.

For example, Columbia University, where I teach half the year, was initially an all male school. Consequently, virtually all the restrooms were built for men. When it became essential to make room for women, some of those restrooms were converted for their use. Yet, we tend not to think of this as a preference. It is simply a correction, a making room, adjusting the way we do business to account for the fact that we didn’t have you in mind when things first got underway.

A misinformed and misled public labels affirmative action a preference when people fail to connect the policy to the exclusions that preceded it and necessitated its implementation. An informed public identifies the same policy as a correction, an opportunity; when people understand that the baseline, the way we previously transacted business, is neither fair nor neutral. American society is structured upon built in preferences for whites, specifically white men, or those who can gain access by trading

on advantages that approximate white privilege. Affirmative action is a counter preference policy, and a modest one at that.

The bottom line is that affirmative action is not a matter of affording “preferential treatment” to its beneficiaries. It is best understood as an attempt to promote equality of opportunity in a social context marked by pervasive inequalities, one in which many institutional criteria and practices work to impede a fair assessment of the capabilities of the working-class, women or people of color. These obstacles include not only continuing forms of blatant discrimination, but also more importantly, 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, they nevertheless function to do so. In countering such forms of discrimination, affirmative action policies attempt only to “level the playing field.” They do not bestow preferences. Rather, they attempt to undo the affects of institutional practices and criteria that, however unintentional, amount to, in effect, “preferential treatment” for white men, heterosexuals, and the economically privileged.

Dispelling the Merit Myth and Meritocracy Lie

The present assault on affirmative action is built around the fallacy of test scores, assuming that testing is the only way to establish merit. Test scores do not create an original entitlement to admissions. In fact, the use of test scores as a predictor of probable success is a contested idea. Even the Educational Testing Service (ETS), which is a primary distributor of tests, warns against assuming that these instruments constitute some objective form of merit. We know that tests are one tool, among many, and measure essentially one skill, among many, that an individual must possess to be successful.

Any number of skills determines success, and most are largely under valued in the process, including perseverance, creativity, the ability to learn from mistakes, hard work, and the ability to work well across race and culture, and evidence of direct knowledge. Think about the wisdom, fortitude and creativity of some of our best legal minds, lawyers like Charles Hamilton Houston, Thurgood Marshall, Constance Baker Motley and Bill Hastie, men and women who spearheaded a legal revolution. Their brilliance would not be captured by a test, even one that predicted some degree of variance in first year grades. None of their inherent skills are considered, yet they may disproportionately characterize many of the candidates who manage to overcome many of the social obstacles still associated with race.

Yet tests do not account for these skills, nor do tests present objective evidence of the presence or lack of the basic skills that they purportedly qualify. At best, tests modestly predict the variance in first year grades. Beyond that, they tell us absolutely nothing about who is going to be a good lawyer, engineer, accountant, teacher, doctor and countless other occupations. Test themselves are about as predictive as one's tax returns. In fact,

one could simply use tax returns and race and admit pretty much the same class as one does with test scores. We should hope that something as determinative as test scores would really be robust and meaningful, but unfortunately that is not the case.

There is plenty of research that suggests that some test takers under perform on such tests due to something identified as “stereotype threat.” Claude Steele, brother of affirmative action antagonist Shelby Steele, and others, has found that students subject to intellectual stereotypes perform far more poorly on a test framed to be an intelligence test than they perform on the same test that is presented as an achievement test.

We must lay claim to the moral superiority of our position. Affirmative action refers to programs that affirmatively unravel privileges enjoyed by whites and used to deny opportunities to people of color, and women. It is a legitimate public policy designed to deconstruct systems that perpetuate race stratification.

White Supremacy as a Consequence of Race Discrimination

Race discrimination is immoral because of what kind of society it created, one ordered upon white supremacy. The how is incidental to its existence. Yet recent Supreme Court doctrine has focused so closely on the mechanism of white supremacy and racial classification, that the Court is now cross-eyed. I don't think most Americans really believe that there is a moral equivalence between the use of race to segregate and the use of race to achieve full integration, between a no trespass sign and a welcome mat. Still, contemporary Court doctrine seems to be borne on just this premise.

There still is racial capital, tangible social benefits gained from being white in society. In this regard comedian Chris Rock was absolutely right in assessing that even the usher at his concert is cognizant of his skin color privilege, preferring to be white and working class rather than Black and wealthy like the comic. The reality is that colorblindness is fiction, and in fact, everybody knows it. Even whites at the lower rungs of society.

The Unfinished Business of the Civil Rights Movement

Our society is anxious to get over race, but not anxious to dig down deep, suck it up, and do what it takes to really make a racially egalitarian society. Equality doesn't come cheap, and it does not come without costs, especially to expectations, and ways of doing business. At every stage in American history, there has been a major debate about who will pay for equality. This is just another one of those episodes.

One would have thought that the end of legally sanctioned white supremacy might have brought about a fundamentally different way of doing business, a full review of all the ways that racial exclusion become ingrained in our nation's social order. And how these practices have influenced the way we do things, the principles that our institutions value, the indicia of merit and desert. Unfortunately, the primary things that changed were the removal of “whites only” signs. How these institutions were administered, their core

values and missions, and how they determined quality, success and the like never really changed. And now, modest efforts to ensure some sort of equality have come under a blistering attack.

I think people will eventually realize we have come full circle. At UCLA, we have fewer African American and Latino law students in 2003 than we had ten years ago, or even fifteen years ago. That peak isn't simply slowing; it is reversing. This roll back will have dramatic effects. For example, in 1994, our first class constituting a racial plurality, we enrolled 54 African Americans and more than 60 Latinos. After Proposition 209 went into effect, we enrolled 26 Latinos and just 2 African Americans. Despite recruiting, and other initiatives, we have yet to approach the number of African Americans and Latinos that were once enrolled. And this is likely to happen all over the country should the 6th Circuit opinion upholding affirmative action be overturned.

Conservatives often say that the solution is elsewhere, for example, in fixing the public education systems. Yet, few of the scarce tax dollars available are being spent on providing real opportunity to the children the right now claims to embrace. There is very little advocacy on school finance reform though funding disparities exist in states throughout the nation. The reality is that as much as conservatives talk about class, they are fully willing to perpetuate the current caste system that delivers excellent education to the rich and substandard education to all but the most "fortunate" poor. They feign concern about class distinctions and make those arguments only as an attack on affirmative action.

You will seldom, if ever, see an intraracial class argument among whites, with white elites making arguments that they should share a greater piece of the educational pie. One would think that given the massive push back that the Center's created in these initiatives, that they would spend resources now on the educational system that they think is the real problem. But they haven't. And they won't, for that is not the real object of their anger and opposition.

The reality is that schools have to decide what they want their institutions to look like and the values they project to the broader society. We can create a student body of any kind whatsoever, and all will go on to be successful at what they do. The idea that selection is just about merit, and each school simply admits the best class possible without a thought to what they want a class to look like, is as absurd as deciding to bake a cake or fix a meal based on the supposed quality of the ingredients without figuring out how you want it to taste in the end. It is just a fabrication to think otherwise.

If we think of racial power and privilege as a river, one that flows somewhat predictably in a particular direction and will continue to do so without affirmative efforts to change that course, then affirmative action is like a tributary. It diverts a few resources and flows opportunities to irrigate communities that are otherwise parched from decades of being underserved and left out. Very little can and will be done to change the shape of the river;

the grooves are just too deep at this point. But we can divert, and grow opportunity elsewhere, but it won't be through so-called race neutral means.

The Supreme Court doesn't even assert that there is a level playing field; just that universities are ill equipped to level it. Consequently, recent cases have focused narrowly on an institution's ability to remedy effects of past discrimination within that institution only, as opposed to systemic or societal discrimination. Left without any remedy whatsoever is the broader question of unequal access.

The paradox now is that affirmative action has opened opportunities to consider other factors for admission to educational institutions, such as class, even though they may have the effect of enrolling someone "less qualified" over someone with higher test scores. Apparently that's permissible and acceptable as long as the beneficiaries of this policy are not people of color. Yet, the very people whose presence in the academy reveals the limited potential of standardized tests are the only ones who now cannot benefit from that knowledge. Indeed, in one affirmative action case, the plaintiff got the benefit of all sorts of other affirmative action policy, but still complained because he didn't get the benefit of racial diversity. Even if he had, he would not have been admitted, yet the court gave him standing. Consider by contrast the fact that students of color have no standing to challenge policies that fail to take into account real obstacles that they encounter, including reliance on tests and other mechanisms that effectively discriminate against minority applicants. It then becomes clear that the 14th amendment has been hijacked and set upon by groups that desire to turn back the tide on integration.

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