

End Affirmative Action laws

Observing the recent trajectory of the Supreme Court, one civil rights activist has bewailed the fact that "The Court is turning back the clock on civil rights." Indeed it is — all the way back to 1896 and the Plessy decision in which dissenting Justice Harlan declared that "the Constitution is color-blind."

In three decisions rendered since January, the Court has pared away at the doctrine of Affirmative Action. In its most recent decision the Court ruled that it is permissible for white males to challenge affirmative action settlements. In this case the Court found in favor of the claim of Alabama fireman Robert Wilks, who had been passed over for promotion because of Affirmative Action guidelines. Wilks summarized his case thus: "I feel I am paying the price for something I had nothing to do with." Wilks' declaration lays bare the fatuity of Affirmative Action.

Affirmative Action — which more properly is considered preferential discrimination — is a doctrine that issues from a social theory that was on the wane even before American independence. It is that rights exist in classes of people, and the individual is significant only in the context of his particular class. Hence, Wilks' claim to a job based upon merit would be less compelling than the need to redress the historical sins of his class — in this case, the white race.

It is clearly proven that this notion is at odds with the American concept of racial equality. America has always aspired to be a meritocracy, in which an individual's potential is limited only by his ambition and discipline. The emancipation effort and the civil rights struggles were an effort to extend equality of opportunity to all people regardless of race, and to a degree unprecedented in history America it has succeeded.

But the concept of equality is a double-edged sword, and many who use the term loosely bring to mind a Latin phrase, *ne puero gladium* (do not give a child a sword). There is a vast difference between equality of opportunity and equality of condition. Affirmative Action seeks to bring about the latter through the use of leveling mechanisms, seeking to restrain the supposed beneficiaries of

historical racism until the victims can catch up.

It was this concept of equality that led a Supreme Court Justice to write, "We now must permit the institutions of this society to give consideration to race in making decisions about who will hold positions of influence, affluence and prestige in America." So wrote Thurgood Marshall in his dissent in the Bakke decision, in which the Court applied some tentative restrictions to the doctrine of Affirmative Action. Had this declaration emanated from a white southern congressman instead of a black Supreme Court Justice it would have been readily identified as racist.

Behind the tie-die curtain, at the University of California at Berkeley, the Administration just recently abandoned a system of quotas that restricted the admission of Asian-Americans. This system was intended to prevent the frictions that occasionally arise as a result of Asian-American dominance in many academic disciplines, which some regard as the result of unfair cultural advantages.

Berkeley's quota system favored students — generally white — who were more adept at "social skills" than the harder academic disciplines. In short, it was another leveling scheme designed to compensate for a form of inequality. How did this system — which must, in all fairness, be considered racist — differ qualitatively from more common forms of Affirmative Action?

Affirmative Action was intended to be a form of homeopathic medicine, seeking to control the disease of racism by administering small doses of the same disease. But it has merely inflamed the affliction. Affirmative Action has become — indeed, it has always been — a racial spoils system that caters to racial revanchism.

It appears that Justice Harlan's reasoning may prevail after almost a century of equivocation on the part of the Court. Harlan's perspective is compatible with that of Martin Luther King, who longed for a day when people would be judged not by the color of their skin but by the content of their character. Dispensing with Affirmative Action is necessary to bring about King's dream.

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