EDUCATION

Affirmative Action and the Academy

by Philip Jenkins

While most of us would deny that the United States has an official ideology, much of our daily life is profoundly shaped by a body of principles that are manifested in policies known as affirmative action, multiculturalism, and "diversity." These decide matters as fundamental to one's life-chances as access to jobs and education, to social mobility and economic status, while the underlying principles have been absolutely internalized by millions who have given no thought to the ideological system they represent. This theoretical structure dominates our thought and conduct at least as pervasively as Marxism ever guided the population of the former Soviet Union or the present China. This is all the more remarkable because the theory in question has no immediately obvious name, no founding texts or writings, no groundbreaking individuals whose icons are given places of honor by the party faithful. We cannot point to paleo- or neoversions of the theory, no orthodox or heretical strands. Paradoxically, though, the basic principles of the model are regarded with such dogmatic veneration by its adherents that criticism or discussion is unthinkable. Careers have been destroyed by the devotees of this stealth theory.

There are two reasons for this lack of definition. First, the theoretical framework that gave us affirmative action originated as an ad hoc set of responses to what were perceived as egregious injustices, and these emotional reactions subsequently exercised a critical influence on policymaking. The theory thus developed to buttress the policy, rather than the other way around. Second, the ideology is not expounded at length because if it were, the basic principles would have to be admitted and discussed, and it would rapidly become apparent that these notions would carry no public support whatever, being thoroughly inimical to conventional concepts of democracy, fairness, and common sense. We therefore find the curious situation that a hugely influential theory of social organization and reform survives only by virtue of not being discussed, and indeed its advocates pursue a consistent strategy of avoiding an overt definition of principles. A strange theory indeed, all the more so since so many countries around the world are on the verge of imitating the American experiment in this area. This situation has a peculiar relevance for me personally, as I have spent most of my working life in the American higher education system, a world dominated by the system of structural racial and gender privilege that is called affirmative action. If this scheme is indeed to become worldwide, then I can truly say that I have seen the future at firsthand, and it absolutely does not work.

Affirmative action originated in the widespread public outrage at black oppression prior to the civil rights era, and the notion that vigorous government action was requested to counteract centuries of abuse. While this approach commanded wide public support, there was always a basic confusion about what exactly government was meant to do. A large majority of the population favored the creation of legal mechanisms to combat discrimination, especially in employment, and the only organized opposition to this idea came from a largely discredited group of segregationist politicians who warned that civil rights would ultimately mean a new form of racial bias against whites, and the institution of racial quotas. These warnings received little attention, and political leaders declared (probably sincerely) that neither outcome was intended or probable.

In the decade after 1965, however, a number of developments radically transformed the nature of "nondiscrimination." The courts played a pivotal role, with a series of decisions that enlarged the scope of discrimination and moved in the direction of equal outcome rather than equal opportunity. This meant, for example, that employers were prohibited from using a wide range of hiring criteria which had the de facto effect of eliminating more black than white applicants. The courts also supported federal schemes to ensure that employers moved toward a certain proportion of minority employees, students or contractors, effectively the quota system that had specifically been ruled out in the 1965 debates. This meant adopting differential racial criteria, such as the long-clandestine practice of "race-norming" test scores. (For instance, X receives 89 points on a test, Y receives 79. X scores at the 80th centile for whites, while Y scores at the 82nd centile for blacks. This means that Y's score is *higher* than X's, and is permanently and officially recorded as such, without any inkling of the sleight of hand which made a score of 79 superior to one of 89. In summary, Y gets the job or the university scholarship.) Still more explosive, the courts tended to place the burden of proof on defendants in discrimination lawsuits, making it exceedingly difficult to show that a limited minority presence did not amount to systematic discrimination. By the late 1970's, most employers had got the message that pro-minority discrimination was not only acceptable but essential, especially for those who had any hope of dealing with federal or state government. The 1978 *Bakke* decision consecrated the new regime.

Moreover, "minority" had now subtly expanded to include categories far beyond the intended beneficiaries of the original civil rights legislation, meaning Americans of African descent. The same principles now applied to all racial minorities, and most critically, to women, all of whom now required the same form of group compensation for past maltreatment. The oddities of the theory are, or should be, obvious. Fundamental to the notion of compensation is that there are identifiable groups who have historically gained or lost by discrimination. The black-white question alone involves the acceptance of the category "white," which while including the descendants of slave-masters and traders, also covers the heirs of Slavic miners, Irish laborers, or Jewish sweatshop workers, including those who had not set foot

on American soil in the slave era. The losers are an equally diverse group. While it is easy to agree that American blacks with few exceptions were consistently victims of collective discrimination, it takes a huge amount of special pleading to see women as a community in remotely the same sense, as an oppressed race or colonized people, or as the heirs of such (if they are the descendants of oppressed women of bygone days, then so, of course, are all men). And only the most blinkered racial stereotyping can view "Hispanics" as an oppressed category, rather than an immense and complex range of social and ethnic groups varying from brutalized peasants to pure *hidalgos*. Yet the most blue-blooded and wealthy Latina qualifies as an affirmative action hire quite as much as the grandson of a black sharecropper: more so, in fact, since as a Hispanic and a woman, she is the imagined victim of double abuse, and therefore can be ticked in two columns in the federal forms.

But even assuming that all the ancillary categories had been subject to past discrimination comparable to that of blacks, the principles that now gained acceptance were quite bizarre. Most basic of these "self-evident" truths is the notion of group rights, the sense that the individual exists and has rights only in terms of his or her collective status. Individuals are not created equal and have no inalienable rights, though they might be marked by indelible guilt for the perceived deeds of their ancestors. This is by no means a new principle, and was in fact the root of the American segregation system, to say nothing of the network of privilege that undergirded the European *ancien régime*. Linked to collectivist theory is a mutant sub-Marxist vision of existence as a struggle between the powerful and the powerless, each perceived in collective terms based on gender and ethnicity and the necessity for state action to side with the "wretched of the earth." Once again, this is nothing new, as a generation of Soviet legal theorists in the 1920's had evolved a radical jurisprudence based on class interests, so that the main element of a criminal trial consisted of the exploration of the social and economic background of the various participants, and the consequent allocation of punishment based on family history. While not novel ideas, none has a particularly distinguished pedigree within the American intellectual tradition, and one might think that Soviet legal theory and *ancien régime* privilege both represent the diametric opposite of democratic values and individualism. I, for one, would love to see a supporter of affirmative action abandon the customary charade that the system is based on noble goals like equal opportunity and the elimination of racism, and admit its authentic precedents, in the France of the 1720's or the Soviet Union of the 1920's.

Over the last year, affirmative action has become one of the central issues of partisan debate in the United States, and the more attention that is paid to it, the more opposition grows, interestingly among blacks and other minorities as well as whites. The defenses mounted for the system have been incredibly weak, and have pivoted on the assertion that opponents want to return to racial discrimination, while they are actually the ones seeking to abolish it. There has also been the vulgar trivialization of the issue as a pathetic grievance of "angry white guys." (Did anyone ever condescend to Martin Luther King sufficiently to describe him as an "angry black guy"?)

It now appears certain that the legal establishment of racial discrimination in this country is doomed, though the exact timing of the reform is unclear: it may go within months, or it may slither into the new century, but its fate is sealed in the very near future. At this point, we encounter the fascinating situation of what happens when a powerful, overarching theory collapses, leaving behind the whole congeries of laws and policies which had sustained it. There are few recent precedents for this: even when the Soviet Union died, communism was regretted by few outside the hard-core officeholder and the sentimental irredentists, and few of those actually believed the ideology any more. The coming social revolution in America will be a very different and far more traumatic event, with a profound effect on millions who are sincere true believers, and who are not merely going through the ritual motions.

To understand the impending crisis, it is useful to recollect the experience of segregation, which was a far more serious affair than a simple refusal to allow a particular person to use a given water fountain. It represented a whole mentality that pervaded the culture, even the thinking of people who, had they stopped to consider at length, would have rejected the underlying ideas. Segregation made a world in which it was effectively impossible to act or live justly, however good the intent of individuals. Moreover, the disease penetrated so deep that the culture found it unimaginable to do away with this basic reality, and came to fear even the discussion of change. The concrete certitude was best expressed in the defiant but ultimately pathetic slogan, "Segregation Today, Segregation Forever."

For all the general dissatisfaction and controversy about affirmative action and multiculturalism, no one can understand the utter permeation of the theory and its associated value-system without having witnessed it at its purest, in American higher education. That the universities are such a fortress of *multicult* results from a bizarre alliance that emerged during the last two decades, when feminist and left-liberal ideas established a powerful ideological presence in academic departments, while conservative administrators faced the legal nightmare of possible discrimination suits and the loss of federal funding. The two sides, oil and water in every other regard, formed a working coalition to establish an extreme system of institutional discrimination that favored women and minority faculty and students.

In case "expanding pluralism" sounds like a worthwhile goal, the corollary of this is the erosion of the principle that *quality alone* should serve as the criterion for hiring or advancement. Virtually every hiring and personnel decision in a modern university involves at least an element of gender and racial discrimination, and if anyone ever states that affirmative action simply means giving preference to an equally qualified minority candidate, then he is either ignorant or disingenuous. At best, it means "cooking" short-lists so that they always reflect "diversity"; at its worst, it means choosing the *least* unqualified of the available pool of female or minority applicants.

To quote one of the great religious leaders of our time, the late Jim Jones of "Jonestown" once remarked, "What goes on in here is so [expletive] weird that nobody's going to believe anything you tell them on the outside." This is the only explanation of what has been tolerated in American universities over the last decade or so, as it is inconceivable that either state legislators or tuition-paying parents have the slightest idea of the conduct of life within the

Academic Triangle. This is a world of faculty meetings where people count up the points they will receive for hiring a black woman as opposed to a Hispanic man; where chuckles greet the objection that X, being appointed as a full professor, has a résumé that would perhaps equip him to lecture part-time in a community college. This is a society in which the otherwise unemployable find superbly paid jobs as of "affirmative action officers," pushing forms that in their complexity would have done credit to one of the more arcane Oriental civil services at its height, while operating an enforcement machinery that collects reports of remarks deemed hostile to affirmative action and diversity. The practice is, of course, clandestine, like virtually every other aspect of this mirror world, especially the astonishing salary differentials between minority and white faculty of vaguely equal qualifications (and yes, Virginia, the differential does favor the minority, and by a huge margin). There are also superb anecdotal cases, like the woman who developed a magnificent career based on adopting a Hispanic surname, which catapulted her into the upper ranks of her profession within a few years of completing her mediocre doctorate. There are countless victims of this routinized injustice, including many white academics, but also the many talented minority professors of high ability and outstanding scholarship whose achievements can be so churlishly dismissed as the product of preferential treatment.

While faculty hiring offers abundant space for grim humor, so does the area of student recruitment, where the zeal to promote a "diverse" student body has led to discriminatory practices of astonishing proportions. Some universities use race-norming; others use "incentive awards," basically paying students of certain specified races to stay in college and maintain grades. This might be regarded as harmless were the universe of student places not finite, and the increased admission of the severely underqualified from one race means refusing the adequately or well-qualified from other races. To nobody's surprise, the victims of the new segregation system come from groups which were, shall we say, not entirely responsible for the horrors of slavery, including Jews and Asians. Nor have these groups received preferential treatment in American history, as both were victims of the most severe segregation and quota systems in the bad old days. Where a group performs indecently well in academic performance, it is always much easier to create a quota than to look seriously at what might be emulated in their cultural traditions or work habits.

None of these individual difficulties is one whit as serious as the internalization of these bizarre and unjust principles by virtually everyone in a position of authority. Only the crudest form of political tyranny depends on naked fear; the most successful depend on drawing the vast majority into some form of complicity with the regime, and thereby offering some form of profit or temporary advantage, and once compromised, it becomes harder to revert to total opposition. In the discrimination system prevailing within American universities, the only correct moral decision is probably to refuse all cooperation, to refuse, for example, to participate in hiring decisions, which many conscientious faculty already do to the best of their ability.

Remarkably, this enclosed world continues within its terrarium utterly unaware of its fragility, of the growing popular disaffection with universities, professors, and college fees, that has so far been contained only by the Jim Jones principle spelled out above. Nor do administrators, even those of real intelligence, have any idea of the tenuous legal principles on which affirmative action is built. In reality, everything rests on a few federal statutes that now appear very delicate indeed. Once these laws are removed, the hiring or promoting of someone on the grounds of gender or ethnicity becomes exactly what it should be, an actionable form of job discrimination. Administrators have not yet begun to realize the consequences waiting to descend, and the odds are that they will carry on as normal until the first discrimination suits hit them, probably threatening to cripple whole universities financially. What will they do then: lay off faculty or raise fees?

Other consequences are more interesting, including the mass unemployment of the affirmative action bureaucracy, the diversity empire. On the other hand, the hiring decisions of the last two decades have been made within that curious legal arrangement known as academic tenure, which means that unless they actually kill someone, it is virtually impossible to remove professors, no matter how mentally or morally extinct. This means that we face the survival well into the next century of a despairing caste of the weakest affirmative action faculty, the hopeless but tenured, who will find they can neither move up nor out. Well into the 2030's, they will probably be a source for bitterness and constant complaint about systematic bias, and presumably a focus for student activism. All told, the consequences for financial stability, faculty morale, and administrative stability within the universities are horrendous, and this scenario is likely to come to pass not in decades, but within five years or so. The end of affirmative action could be

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CULTURAL DIVERSITY

According to the March 1996 issue of *Border Watch*, a Hmong immigrant in Fresno, California, named Chai Thai Moua has been convicted of directing one of his relatives to kill a three-month-old German Shepherd, in order to exorcise an evil spirit that had "possessed" Moua's wife. Like many Hmong, Moua believes that "the released soul of a dog has keen eyesight and is particularly effective in tracking down spirits." Moua's sentence includes probation, community service, and a fine, but he plans to appeal his conviction "on grounds of religious freedom."

viewed as a metaphorical neutron bomb, which will leave college buildings standing, while annihilating their inhabitants.

With a system of institutional injustice like segregation, the degree of bitterness that accompanies its fall is directly proportionate to the effort put into the last-ditch defense of a hopeless cause. Ultimately, the system can be purged, and in much of the South, segregation now seems like a distant nightmare. There was a delicious symbolic moment when George ("Segregation Forever") Wallace won reelection as governor of Alabama with heavy black support and regularly appeared at black churches and social events. The higher education world can similarly free itself, but it will take decades, and the first step is to acknowledge the possibility that change must come, and come soon.

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Abolishing Compulsory School Attendance Laws

by Aaron Steelman

The state of Colorado recently did something revolutionary, at least it tried to. Last November, Republican State Representative Russ George introduced an amendment to Colorado's "Children Code"—a set of laws dealing with child welfare issues, including the education of Colorado's 650,000 students—that would have abolished that state's compulsory school attendance laws. A similar proposal was introduced in 1976 by Representative Tom Tancredo, now president of the Independence Institute, a pro-market public policy organization in Golden, Colorado.

George—most emphatically not an ideologue—proposed the amendment for one simple reason: he simply believes the compulsory schooling laws are not doing what they were intended to do. Instead of bringing valuable education to all, they have, in George's opinion, actually produced generations of children whose education can be described as mediocre at best. The many students who come to school interested in learning suffer from the presence of disruptive students who would rather be anywhere else than in the classroom, and who, without the compulsory attendance laws, would be. Teachers spend too much time dealing with these troubled students and too little time doing their primary duty: dispensing knowledge, says George. Defending his position, he stated: "The real question we're asking ourselves is 'Where do we focus our attention?' Do we focus it on the good kids or on the bad kids? So often the bad kids get a higher degree of attention and dollars. We need to ask ourselves, is that a price that's too high to pay? It's dragging down the quality of education for so many others. If I have to choose, I choose in favor of the kids who want to be in school and who want to learn. I don't know that public schools get any better when you turn them into places of detention."

Others were less narrowly utilitarian in their support of the amendment. When asked her opinion on the issue, Republican State Representative Jeanne Adkins asked: "Is it society's role to force kids to stay in school?" And Tom Tancredo added: "The dumbest thing we do as a society is to say we value education and then say we'll put you in jail if you don't accept it."

Of course, many disagreed. The Democratic Senate Minority Leader, Mike Feeley, said: "We don't throw away children in Colorado, and we think that is exactly what this effort is." Assistant House Minority Leader Diana DeGette called George's idea "a step back into the 18th century." And Lynn Simons, the U.S. Education Department's regional representative, labeled it "a terrible idea, an abandonment of children and gross societal neglect."

As a result of such attacks by fellow legislators, editorials in the *Rocky Mountain News* and the *Denver Post* denouncing the idea, and a few Republicans waffling at the last moment, George's amendment was killed in the House Judiciary Committee on February 20. State Representative Vicki Agler, one of the pivotal committee Republicans who in the end sided with the state and federal departments of education, stated that she had voted against it so that the public debate could be refocused "on other important parts of the bill."

In retrospect, it is not surprising that George's amendment failed. People who share their federal colleagues' opinion that balancing the federal budget in seven years is unduly rash are unlikely to repeal any significant law or statute with one stroke of the pen. But why did it provoke such bitter outrage by some legislators? Because, if passed, it would have cut to the heart of their ability to run their constituents' lives.

The entire corrupt system of government schools is dependent upon the compulsory attendance laws; repeal these laws, and the government schools will wither. Without compulsory attendance laws, the state would no longer be able to define what is and what is not an "acceptable" school. Parents who choose to homeschool their children would no longer have to submit "credentials" and "progress reports" verifying their ability to instruct their own children, and schools that employ unorthodox methods—such as rejecting the egalitarian approach employed by most public schools that all children are intellectually equal and hence should be educated uniformly—would no longer be terrorized by state accreditors. A myriad of new options would be opened to those parents who had not wanted to send their children to government schools but who, due to governmental regulation, were forced to. Those schools that truly work would flourish, and those that proved inefficient—is there any question as to which category government schools would fall into?—would eventually fall by the wayside. The state's role in education would be lessened dramatically, as would the horrid consequence of trusting the education of children to government.

From the inception, government schools were meant to inculcate certain "values" in their pupils. One such value was obedience to the present regime. As Murray Rothbard pointed out, "One of the most enthusiastic supporters of a public and compulsory school system was the 'Essex Junto,' a group of prominent Federalist merchants and lawyers in Boston hailing originally from Essex County, Massachusetts. The Essexmen were particularly eager for an extensive public school system so as to have the youth 'taught proper subordination.' For, as Essexman Stephen Higginson, a leading Boston merchant, put it, 'the people must be taught to confide in and reverence their rulers.'"

Other values that are now taught in