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A Solution in Search of a Problem? Discrimination, Affirmative Action, and the New Public Service

In "A Solution in Search of a Problem?," Professor Sally Selden describes the challenges facing affirmative action policy in contemporary America and various lessons learned from each challenge. Her central question is whether affirmative action has been altered so often and so extensively that it no longer has any capacity to remedy past discrimination; and conversely, whether or not an inequality problem still exists. Among the range of issues raised in this piece, from trends in public opinion to implications of multisector service delivery, I focus this commentary on one key element of affirmative action policy implementation: identifying the deserving target population. I do so because ebbs and flows of both public and judicial support for affirmative ac-

tion have centered on varying views of who deserves proactive steps to advance their economic status, and how best to do so.

Put most simply, the purpose of affirmative action programs is not to diversify educational institutions and workplaces just for the sake of mixing up those populations. The central principle of affirmative action is to redress past discriminatory barriers and provide economic opportunities to historically marginalized groups. Legal and social barriers have prevented certain people—particularly women and African Americans—from educational and professional opportunities that would have helped them advance economically. Thus, I would argue that it is useful to appreciate that explicit legal bar-

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riers are the focus of equal employment opportunity (EEO) law, while implicit social obstacles are the target of affirmative action policy. The latter seeks to simulate equality in unequal circumstances in order to change prejudiced perceptions and eventually discriminatory behaviors. Marginalized groups receive such opportunities for the purpose of fostering an egalitarian society, but fundamentally, this is done to mitigate economic inequality.

Given this emphasis on economic opportunity, I believe it is important to add more explicitly the dimension of socioeconomic status—or class—to Professor Selden's examination of affirmative action policy. To show why I believe it is important to do so, I incorporate this dimension to explore more fully three questions raised by her: Does a problem still remain that needs redressing, what are the sources of that problem, and how might proponents reframe affirmative action as a policy issue to perform this task? The answers to these questions, in turn, suggest to me that beleaguered proponents of affirmative action would do well to reconceptualize the problem and reframe the promotion of their cause as one of class-based discrimination. I conclude by offering a few suggestions for research.

What Has Changed? Narrowing the Target Population for Affirmative Action

Professor Selden makes eight observations about legal decisions that have shaped affirmative action and trends in policy implementation over time. She first observes the vacillations in public opinion over time, and that these vary by race. For a little over a decade, from the U.S. Supreme Court's *Regents of the University of California v. Bakke* (438 U.S. 265 [1978]) decision to

Richmond v. J. A. Croson Co. (488 U.S. 469 [1989]), both the populace and the judiciary generally agreed that race is an appropriate characteristic to identify affirmative action's target population. Beginning with *Croson*, however, the Supreme Court started to demand a stronger rationale—strict scrutiny—in order to justify race-conscious affirmative action programs.

Croson and subsequent court findings indicate that presuming race is a proxy for class is not as accepted as it had been previously. Indeed, Professor Selden's second observation is that the courts increasingly have narrowed the scope of affirmative action policy, from protected classes defined by race or gender to specific people in specific contexts. No longer do proactive steps to improve the economic status of blacks and women in general serve a compelling societal interest. Rather, it is in our best interests to assist specific economically disadvantaged people in particular circumstances.

In sum, narrowing the scope (i.e., the target population) of affirmative action has been the single most important outcome of the courts' growing skepticism that race is an appropriate gauge of class. To be sure, federal courts are increasingly *laissez-faire* compared to activist courts of the past. Yet, as Professor Selden argues, political and popular pressure to curb active representation by the judiciary has eroded affirmative action. I will argue later that this is because affirmative action policy is perceived as quintessentially active representation, offering winners and losers in policy debates and in employment chances. But first, let me review the continuities in affirmative action policy that remain essential to redress the discrimination of this more narrowly targeted group of citizens.

What Has Stayed the Same?

The Need for Transparency

Professor Selden observes from her review of the literature that, "The durability of intentional and unintentional pay discrimination remains high, despite progress in this area." As such, one important principle of affirmative action that remains intact is transparency: the decision-making processes about who gets hired, promoted, fired, accepted into a college, or denied admission must be conducted in a way so that the outcomes are "fair." While policy makers and courts endlessly debate what is "fair," few have argued that these decision-making processes should not be as transparent as possible. As the article notes, pay discrimination by race and sex remains high, but it is careful to point out that the disparity may be unintentional.

If decision-making processes are not transparent and exposed to the light of day as affirmative action policies are designed to ensure, however, then unintentional discrimination—Kenneth Arrow's (1972) "statistical discrimination"—can result in pay differences that correlate with race, ethnicity, and gender. Employers' experiences with lower-performing women or blacks—or their expectations that they will perform poorly—cause them to see all women and blacks as poorer workers, leading to lower pay and fewer opportunities for advancement. Thus, Arrow adds, "it is not very satisfactory to postulate that the unobserved determinants of performance just happen to be correlated with race" (1998, 96). Hiring, pay, and promotion decisions that are not exposed to a larger marketplace of ideas can perpetuate employers' and colleges' discriminatory behaviors. As Arrow notes, "there is plenty of room for discriminatory beliefs and preferences to play a role which would be much less likely in a market subject to competitive pressures" (1998, 98).

Affirmative action forces employers and educators to evaluate minority and female candidates according to explicit criteria and to make those criteria available to the public (i.e., in effect, to create a market pressurized by competing ideas).

Thus, affirmative action redistributes information from those who traditionally have had insider knowledge on decision-making processes to those who have not. And access to information, educational opportunities, and promotional prospects are crucial resources that can improve one's economic status and quality of life in the same way that cash transfers do. For example, Minority Business Enterprise and Women's Business Enterprise (MBE/WBE) programs provide access to information about government contracting opportunities to traditionally disadvantaged businesses. These were the focus of *Adarand Constructors Inc. v. Peña* (515 U.S. 200 [1995]). One could even argue that information, education, and promotions can be leveraged to improve economic status more than can direct cash transfers. Thus, in the eyes of many, information is not the only thing redistributed. So, too, are opportunity, employment, income, and status. And therein lies a major source of affirmative action's perceptual problems today.

Why Are the Stakes So High?

Affirmative Action as Redistributive Policy

Meredith Newman (1994) is perhaps the first public administration scholar to view the redistribution of resources more broadly and to recognize affirmative action as an example of redistributive policy. Public aid is a commonly cited example of redistributive policy (Lowi 1964), because money is redistributed from taxpayers to those in need. And like public aid, the appropriate target population of affirmative action policy in-

creasingly has been challenged. Likewise, affirmative action policies are among those that redistribute important resources from those who have them to those who do not. To appreciate this reality, *PAR* readers would do well to review the exhaustive inventories and analyses of court cases and programs that can be found in Norma Riccucci's (2002) book, *Managing Diversity in Public Sector Workforces*, as well as in all of the research conducted by Katherine Naff and J. Edward Kellough that Professor Selden cites. University admissions policies, for example, have sought to provide access to higher education to historically underrepresented students. These policies have been examined in several court cases, including *Bakke*. Likewise, efforts in workplaces to hire and/or promote underrepresented applicants and workers provide access to career opportunities. Several court decisions have focused on workplace policies (e.g., *Piscataway Township Board of Education v. Sharon Taxman* (522 U.S. 1010 [1997])). In each case, information and access to resources were redistributed from groups that have had them historically to those that have not. Basically, then, redistributing opportunity to improve socioeconomic status is the "what" of affirmative action policy—explaining the process by which it works is the "how." Even more fundamentally, however, understanding why the what and how of affirmative action policies is needed requires an understanding of the class-based roots of a lack of information and opportunity.

**The Face of Class:
Understanding the Social Network
Origins of Employment Discrimination**

Kenneth Arrow (1998) argues for a network approach to explaining workplace discrimination. Economic sociologists use job search models that emphasize the importance of acquaintances in providing information

about a wider variety of job opportunities compared to close friends and family members. In this vein, Mark Granovetter (1983) first theorized about "the strength of weak ties," and generations of researchers have since borne out his theories empirically (Lin 2001; Montgomery 1991, 1994; Rankin 2003). Close friends and family members tend to have the same kind of information about employment or educational opportunities that the individual already has, resulting in redundant information. However, loosely tied acquaintances provide novel information. Thus, "who you know" transforms "what you know" into job opportunities, employment, and better networks.

That neighbors are found to provide redundant information suggests segregation by class status. Rankin, for example, examines the job search strategies of low-income women and finds that "women tend to end up in lower-wage, female-dominated occupations partly because their social networks are composed of greater numbers of women, family and kin, neighbors, and fewer employed members" (2003, 286). Patricia Drentea (1998) arrives at similar conclusions about women's job search patterns, and others have found that blacks and Latinos follow these strategies as well (Elliott 1999; Holzer 1987; McGuire 2000).

Consequently, the most common context for American class interaction may be at the point of sale—when the middle-class consumer interacts with the working-poor cashier, waitress, or clerk. Yet even when a school, neighborhood, workplace, or club is racially diverse, chances are it does not represent a broad spectrum of socioeconomic classes. Moreover, even when genders and races intersect in workplaces, valuable information on how to perform well, who to know, and how to get ahead have been found to be withheld from dissimilar co-

workers in order to undermine efforts to diversify workplaces (McGuire 2002; Reskin and Bielby 2005). Given all this, affirmative action helps overcome the information failures of both social class and employment networks. It gives women, race minorities, and ethnic minorities access to different people and institutions, which provides them with new information for the purpose of improving their economic status and life chances.

Toward a Class-Based Approach to Affirmative Action?

Given the centrality—albeit rather bleak picture—of race and class that I have provided, how can beleaguered affirmative action policies provide opportunities for the disadvantaged to improve their economic status? I would argue that affirmative action advocates would do well to recognize the central role of class status and the explanatory power of social networks in the problems they seek to redress. Doing so would not diminish the importance of race, gender, and ethnicity, and it would keep the focus of policy discussions on economic mobility. What is more, a debate about economic mobility, rather than race, ethnicity, and gender *per se*, seems a more politically—and now judicially—advantageous agenda to pursue and defend. This is especially the case if, as I contend, racial, ethnic, and gender discrimination can be addressed in the process.

Emphasizing class status would put affirmative action opponents in the position of having to take a stand against upward economic mobility—defending the economic status quo—in order to make their case. Moreover, if affirmative action advocates maintain that class and race are inseparable, incorporating socioeconomic class status into debates about affirmative action's principles would

only further their interests. In addition, affirmative action advocates could more efficaciously confront two questions directly that have been implied by their opponents. First, would the potential negative effects borne by whites through reverse discrimination outweigh the potential negative effects borne by blacks and Hispanics if nothing were done? Second, and conversely, would the potential effects of reverse discrimination outweigh the potential positive effects of doing something?

My argument is not to suggest that race, ethnicity, and gender do not matter. Despite an emerging black middle class and advances for women and ethnic groups, the American economy still is characterized by income inequality across race, ethnicity, and gender. Put differently, race is not a perfect proxy for class, but little has changed to warrant it an invalid proxy. What is more, where socioeconomic status patterns depart from racial or ethnic norms, race remains a critical factor to upward economic mobility. In other words, socioeconomic status does not trump race.

I invited my sharp graduate students in my Managing Workplace Diversity class to consider tensions between race and class in America. One student, unimpressed by the enthusiasms surrounding reports of economic progress by blacks and Latinos, stated flatly, "as long as class remains an issue, race will be an issue" (Nassar 2006). She articulated a phenomenon that I call "the Eliza Doolittle Problem": Would Professor Higgins have made the bet if Eliza Doolittle were black? Probably not. Both Eliza Doolittle and Jay Gatsby, for that matter, are archetypal American myths about the potential for class mobility. Their skin color, however, facilitated their class mobility.

Thus, as long as economic status is an issue, as it is with affirmative action policy, then race will remain an issue.

Still, affirmative action advocates increasingly are limited in the extent to which the law allows race classifications to be used to redress discrimination in the workplace. Consequently, they would do well to shift their argument to class stratifications, because their outcomes essentially will be the same. I am reminded of an observation by longtime civil rights champion, Ray Marshall, who was the Secretary of Labor under President Carter and who has worked on behalf of civil rights for more than 50 years:

There is no question that race has historically determined where people live, their personal associates, the kinds of schools they attend, the kinds of jobs they can get, and the lines of business enterprise they can aspire to. There is abundant evidence, moreover, that minorities and women not only have inadequate access to jobs and business opportunities, but to work-based education and training.... Experience shows that positive interventions can break these cycles and cause minority children from very disadvantaged backgrounds to excel in school and in life. But without these interventions very little is likely to happen. A major challenge for public policy is to institutionalize opportunity instead of discrimination (Horowitz 2002, 102).

Thoughts about Future Research

In "A Solution in Search of a Problem?" Professor Selden suggests implicitly that the challenge has not been met—discrimination, not opportunity, remains the norm. However, she is also hopeful that affirmative action policy still can make a difference. Do

these conclusions suggest avenues of future research for scholars? Certainly, the eight observations culled from the literature by Professor Selden, as well as my arguments, suggest a wide range of directions and methodologies for advancing the debate. From a public management research perspective, a focus on diversity management might prove most useful. Strategic diversity management within legal boundaries, after all, may prove to be the best tool for advancing the economic mobility of historically marginalized people. Thus, managers, rather than judges, might be at the forefront of realizing affirmative action goals. Studying how they might do this most effectively—or using comparative case analyses to see the conditions under which they are more likely to be able to do so—seems an important contribution to the debate.

Likewise, scholars might examine the very structure of affirmative action policy: a challenge to implementing affirmative action policy is that it is not codified as "affirmative action law," but is implemented as policy across a range of institutions—schools, workplaces, and government contracting—throughout the country. Aspects of individual programs have been challenged in court, and subsequent case law shapes the ways that the remaining policies are developed, implemented, and tweaked. Without formal codification like EEO law, the success and survival of affirmative action policy rely more heavily on interpretation, which can be influenced by popular sentiment. A key question ripe for research, for example, is what policy instrument(s) best reduce discriminatory outcomes that are not due to differential abilities of workers. More broadly, how public managers are coping with this situation, how they weigh and balance the costs and benefits of succeeding, and how

these affect agencies' core missions seem to be profitable areas to pursue.

Finally, social network analysis is a powerful methodological framework within which researchers from any perspective can explain the redistribution of economic opportunities and obstacles hindering policy success. For example, requiring that a certain percentage of jobs go to women and race/ethnic minorities on a state infrastructure project expands the networks of previously excluded people to include job contacts and information resources that they would lack in the absence of affirmative action. According to social network theory, new acquaintances from different circles provide people with novel information that translates directly into positive job-related economic outcomes (Burt 1976, 1980; Granovetter 1973, 1983). Social network analysis can capture correlations between race, gender, economic status, age, or any individual dimension and the expansiveness of a network. Human capital theory allows us to link what we know with economic outcomes. Social network theory allows us to link who we know with economic outcomes. Affirmative action can diversify individuals' network contacts, providing an interesting context within which to apply social network theory. The possibilities are exciting, and "A Solution in Search of a Problem?" points toward several fruitful avenues for future inquiry.

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