

Ec 137, Prof. G. C. Loury

Lecture on John Skrentny's *The Ironies of Affirmative Action* (re. legitimacy in US public policy making.)

- I. John Skrentny's book, *The Ironies of Affirmative Action* provides a history of the development of Affirmative Action, which is useful.
 - a. Civil Rights Act of 1964, the bill that was the culmination of the Civil Rights Movement, contains within it an exception that protected veterans' preferences. "Nothing in the bill should be construed as disallowing veterans preferences."
 - b. The current regime of Affirmative Action in employment came into existence by administrative fiat – by the way in which agencies of the government construed legislation and drafted regulations. And, the politics of that process had as much to do with people wanting to look good and to be able to show that they were getting results for the task that they had been assigned, as it had to do with ideology – with ideas about quotas or reparations or anything like that.
 - c. President Nixon – in some ways the father of Affirmative Action – made an effort to get unions, initially in Philadelphia, to admit blacks into apprenticeship programs for skilled crafts. His motives were complicated and mixed and they involved perhaps some commitment to the ideal of non-discrimination, but they involved also some commitment to a strategy of breaking up the Democratic Coalition -- the electoral coalition in presidential politics that depended a substantial degree upon both organized labor and black support. What better strategy than to take two central constituent elements of the opposing party and to get them at loggerheads with each other, fighting over an issue that's important to both. Not to misunderstand me here. The Labor Movement certainly was not one-dimensional or one-mind about these matters. But, a lot of the blue collar craft unions looked upon the employment opportunities that they had as their turf and deeply resented the intrusions associated with Affirmative Action. I mean, so there's a lot to learn here.
 - d. There was a sense of crisis engendered by the riots in the 1960's -- urban riots, cities burning, all across the country. I mean, it really is hard for us to picture what that might have been like. But, you think about the Los Angeles civil disturbance of 1992, which you may remember, and just factor that up by a factor of ten or so. And let it not just be a one-off thing that happened in one place at one time, but something that was happening in many places. And that was happening summer after summer. Let there be a huge roar that's hugely controversial that's going on in the far off part of the world. And, you may get some sense of what the feeling of crisis was. And people wanting to have some response to that; wanting to be able to say that something was being done.

- II. But there's also an analysis in Skrentny of the ironies of Affirmative Action. How the left and the right both behaved around this issue in ways that you might not have been able to predict:
- a. And there's a theory there. There's a piece of Social Science theory here. This *new institutionalism* that Skrentny talks about. But is advanced to give an explanation of these anomalous phenomena. How could it be that Hubert Humphrey, the great liberal Democrat from Minnesota, could stand and affirm the ideal of color-blindness -- we want this bill to make it legal, acts of racial discrimination in employment -- just so as to guarantee in practice the principal of abstract individualism and merit. That's Skrentny's term: abstract individualism. We want to guarantee it. We do not intend quotas here. We're not trying to promote the position of blacks unfairly against some other group. We're simply trying to assure that every individual will be judged, in Martin Luther King's words, on the basis of the content of their character and not the color of their skin. That's all we -- all we are saying is give abstract individualism a chance. How could it be that that could be said in 1964, universally affirmed by everybody on the left side of beyond? By the time you get to 1970, all of these people, many of them exactly the same people, are singing a different tune. And by the time you get to 1980, Affirmative Action is almost equated in the minds of the liberal side of the political spectrum with a commitment to non-discrimination. How could that be? How did that happen? So, he's got an account of that.
 - b. How could the Republicans have allowed that to happen? He has an account. And it's worth taking a look at. This business about legitimacy. About boundaries of legitimate action by political actors as they perceived about who their audiences are.
 - c. Ironies, like that we affirm a principle of merit, individual merit, and yet that goes on cheek by jowl with numerous instances in which that principle is violated. And we're able as a society to manage that kind of contradiction or tension without any particular alarm. I mean, isn't it ironic that a Civil Rights Act guaranteeing equality in employment would contain within it a protection that, OK, so much equality, but not so much as to misunderstand us here. Like you would endanger veteran preferences.
 - d. And what does Skrentny say about that? It's actually worth taking a look on page 63. He says the point here is not that veterans preferences is bad or that Affirmative Action is good, or that blacks are actually morally deserving. This is not an argument for the black side of the Affirmative Action debate. "These are things for American voters and courts to decide. But it is important for them to decide with a clear notion of the moral culture." So, we're talking here about what is the moral culture. And understanding resistance to Affirmative Action, we must realize that the modern and American identification with the abstract individual model, or Meritocracy, and equal opportunity, only tells part of the story.

- e. What is also important in the Affirmative Action debate is the often taken for granted meaning given to different groups in society. This is not built into some over-arching self-consistent natural law with a pre-determined degree of desert or set of rules for every possible group. Throughout American history, some groups have simply been constructed as morally worthy and others have not. As sociologist, Theda Skocpol argues, quoting her: “institutional and cultural oppositions between the morally deserving and the less deserving run like fault lines through the entire history of American social provision.’ Americans who resist Affirmative Action are simply articulating the American model of justice as it relates to race and employment preference. Affirmative Action is objected to because of its racial beneficiary.”
- f. Now, I want to commend that paragraph to you and think about that last sentence for a minute. It's objected to because of its racial beneficiary. [Compare with my discussion of racial stigma in Chp. 3 of *The Anatomy*.] He is not saying American is racist and since blacks are getting affirmative action, therefore, they are going to object. But when it's veterans, they're nice white guys or something, it's OK. He's saying something much more complicated than that. He's saying that ideas about desert and deserving this are socially constructed and they interact with history in complex ways. And with respect to race, that interaction leaves us at the end of the day with the judgement that preferential policy on behalf of blacks is more suspect than it would be on behalf of some others. Right? Obviously, race is involved in that. But to say that's just racism, misses the point. Doesn't quite get it right. It's too simple.

III. To underscore this point about deservingness and legitimacy, let's move out of the arena of Affirmative Action for a minute and think about welfare, about IQ differences, and about generational conflict. We can see the principles of legitimacy constraining political discourse in all of these areas.

- a. [Welfare] Who deserves to get money from the state when they are in need? Do women whose husbands die deserve to get money? More so than women who never had a husband. Well, the answer is yes. As you may know, the Social Security Act of 1935 created a public policy providing support to families with dependent children and that act was subsequently amended so as to distinguish between the widows, who would get support and the women who were never married, whose children were, quote, "illegitimate", close quote. That word is apt in this context. And as we know, in the way in which thinking about welfare has evolved in the United States' political culture, women without husbands who have babies that need money to live don't have the same claim on our attention, the same legitimacy as women who had husbands who died and need money to live. Those are now separate titles, separate pieces of legislation. And the former, women without husbands have been spun off now into a new regime of welfare reform where the benefits are strictly time-limited and so on. I could go into this -- we've already discussed it

some here. I'm not trying to rehash the argument. And I'm not trying to say it's right or wrong. I'm simply trying to say, the distinction, the boundary here of legitimacy between different women, who are in exactly the same situation. They are women. They have children. They don't have enough money to live. But a distinction has been made between them on the basis of the legitimacy of their claim. Well, all I want to try to get across in the spirit of Skrentny is, if I'm going to understand this, I need to understand where that distinction comes from and what it's based on and what it reflects about the moral culture of the polity. We can agree to disagree with it, but we need to understand it.

- b. [IQ differences] Let me come at this another way. There's a book called, *The Bell Curve*. Among many things in the book, was a discussion of racial differences and intelligence. Charles Murray and Richard Herrnstein go on in that book to argue about the source of these differences. And part of what they argue there is that genetic factors play a role, a significant role, in explaining this difference. Now, that's -- that sends people up the wall. One of Murray's great lines in that book is that "we can discuss these issues without running screaming from the room." We don't have to run screaming from the room. We can face these facts. What am I getting to? What I'm getting to here is, does anybody know whether the average IQ of Southerners, of people born below the old Mason-Dixon line, east of the Mississippi River, is lower or higher than the average IQ of Northerners, people born in the states that fought on the Union side of the Civil War, in a given year? Can anybody answer that question? No, no one can answer that question. Nobody's interested in that question. Does anyone know whether or not the IQ of someone who's 65 years old is on average lower or higher than someone who's 50? Probably lower because you think aging. How much lower? Are we a country being run by a bunch of dumb old people? We need to step aside because their wits are no longer as sharp as they once were. Why aren't we looking into that? This is all in the service of legitimacy, perception and political culture. That's why I'm mentioning this here. There are some boundaries that are salient and there are others that are not in this society. There are some lines that get drawn and we aggregate people on either side of the line and we think in those categorical terms quite readily. And there are other lines that don't get drawn at all.
- c. [Generational Conflict] The fact of the matter is, you people out here may not get any social security monies out of the American government. I could, if I were a demi-god, be telling you because all these old people have gotten Congress to legislate healthcare benefits for them. What are they trying to do with medicare now? They want their drugs paid for? They want their nursing homes paid for. They want to live forever? And the money is just going down the drain? And, the burden is going to put on you because all your working lives you're going to be paying taxes and if anybody's got a job here, well, when I look on my pay-stub and I see what's going into social security, it's a very large number. It's a significant

amount of money. And I'm thinking, gee, if I had that to invest in the market, the market has quadrupled in the last (laughter) ten years, I'd be OK. But, I pay my taxes. I'm a good citizen and so forth and so on. What I'm saying is, I could be talking to you in those terms, drawing a boundary down the middle of the society based on a certain age, creating these groups of the young and the old. The old are aggressive. They are outrageous. They won't let rational discussion occur of their programs without blanketing Capital Hill with a blizzard of faxes from their well-oiled lobbying machines. They've had their turn. They should have saved. You see where I'm going with this? And besides, they've got lower IQ's anyway. But, that's not a discourse that's got any place in our politics. Why? Well, I don't know. Maybe some of those old people are our mothers, fathers. Grandfathers. In other words, we identify with them. We think they're OK or whatever. Maybe, the political history and culture have never constructed generational differences in such a way that they could be the basis of perceived conflict of interest. Maybe it's worth thinking about why that's so.

- d. Theda Skocpol's book about the origins of the welfare state, Soldiers and Mothers, is a fascinating treatment of exactly this issue of legitimacy. She wants to understand how it is that in the United States, the welfare state matured and developed differently, as a political matter, than it did in west European social democratic states. And, she notes the importance of the pensioner's benefits associated with the Civil War. The Civil War was a terrible, terrible event and it had a long ripple effect in American political culture in the decades of the late 19th century. A lot of people died on the battlefields of the Civil War. They left families. And they were mutilated and so forth and so on. And, those families needed to be cared for. And so, both at the state and the federal level, various institutions and legislation were created to care for those families. All right? And the widows. And their children. And Theda Skocpol argues that this kind of development constituted the basis for the legitimacy of social welfare provision in the United States to a much greater extent than in other societies where there was a rather more straightforwardly ideological and re-distributionist conception of why these policies should be undertaken. You see what's being said here? I mean, you deserve to get it not because the society should be equal. You deserve to get it because you lost your leg or because you lost your husband in this terrible conflict. All right? Those are very different kinds of claims.

- IV. *Consider the Clinton Presidency's social policy.* Clinton re-positioned the Democratic Party to compete with Republicans, after the ideological shift rightward during the Reagan years, and in the wake of humiliating national defeats handed to Walter Mondale and Michael Dukakis. Clinton managed to move the Democratic Party toward the center, to quiet for the most part its radical left wing and, through a mix of center-right social policy initiatives (on

welfare and crime, for instance) to effectively signal his party's endorsement of values widely held-up as legitimate in the electorate at large.

- a. To be sure, this strategy has been aided by the good fortune of an unprecedented economic expansion.
- b. And, it has been powerfully abetted by the incompetence of Clinton's political opponents, who failed to understand that this country is far less ideological and (thank God!) much less morally self-righteous than is the right wing of the Republican Party.
- c. There is, however, an obvious problem. *Co-opting conservative rhetoric on the social issues, when not tempered by an uncompromising adherence to some core principles, can amount to moral capitulation.* That the death penalty is popular does not make it right. That middle class voters resent the tax-funded support of unwed, unemployed, uneducated young mothers does not mean such resentment is justified in the richest country on earth. That parents fear the prospect of drug use by their children does not make the War on Drugs good social policy.
- d. The *Clinton presidency*, while beating a full retreat from the "liberal ideology" that so plagued the Democrats in national politics during the 1980s, has also *managed to confer an undeserved legitimacy in American society upon some widely held though not especially commendable notions.* This, too, must be reckoned a part of the Clinton legacy: self-consciously progressive rhetoric has been effectively banished from the top of the nation's major center-left political party.
- e. *As one example, consider the public discussion of welfare policy.* Clinton campaigned in 1992 on a promise to "end welfare as we know it." In this way, he inoculated himself against the charge of being an old-style liberal Democrat seeking only to protect the welfare status quo. Clinton's original plan was, in my view, a good one, but it never had a chance. When, after protracted struggle with Republican majorities in Congress, a welfare reform bill was passed and signed into law in 1996, it became one of the most far-reaching, conservative shifts in social policy in the post-New Deal era. The federal entitlement of indigent children to public support was terminated. Strict work requirements for recipients were put in place, and time limits were imposed on the duration of eligibility for assistance. Such a policy seemed to abandon the most vulnerable of our fellow citizens. Peter Edelman, one of several Clinton appointees to resign in protest of the signing of that bill, made the crucial point: much of welfare policy is really better thought of as disability policy. One-third of the welfare case load involves some disability in either the mother or the child; between one-third and one-half of the caseload seems not to be employable, since in the best "supported work" demonstration studies that many remained without jobs after three years of concerted effort to find one. A great number of these folks are socially, psychologically, physically or mentally impaired. Young children are involved. Why should our response to them be properly conceived along the single dimension of work?

- f. This was due neither to historical inevitability nor to intellectual necessity. Rather, it was the result of political expediency. *"Workfare" became the saleable antidote to the conservative's anti-welfare rhetoric. The Democratic mantra became, "If you work hard and play by the rules, you shouldn't be poor." But, where does this leave the great number of people who are not able (or willing) to "work hard and play by the rules?" By implication, they (and their children) deserve to be poor. In other words, the conservative distinction between "deserving" and the "undeserving" poor people has now been written into national policy by a Democratic administration!* A line of argument starting with the idea that everyone should pull his own weight, has ended with a five year lifetime limit on receipt of federal income support for millions of indigent families incapable of supporting themselves. Of course, defenders of this reform process can cite declining welfare rolls and relatively high employment rates among previous recipients. But, here again, the sheer good luck of an extraordinary economic climate must be kept in mind. Clinton has presided over a huge change in the structure of our income maintenance/anti-poverty policy, with much greater importance now being placed on earnings relative to transfers. Little remarked upon is the fact that this policy shift implies a massive change in the allocation of business cycle risks among income classes in the U.S. economy. Low-income American families are now much more vulnerable to the inevitable upturn in unemployment that lies ahead.
- g. *All of this leads me to regret the diminution of ideological (as distinct from partisan political) fervor that one must, I think, associate with the Clinton presidency.* Crime rates are down, and the President takes due credit. Be it noted, however, that incarceration rates have continued to soar over the past eight years, growing at roughly the same rate during Clinton's presidency as during Ronald Reagan's. (The number of people in local, state, and federal custody on a given day has essentially quadrupled since 1980.) We are fast becoming a nation of jailers. Our major public outreach to impoverished, ill-educated young men occurs within this vast corrections establishment. Now, defenders of President Clinton would no doubt deny that the vast expansion of imprisonment that has taken place on his watch, alongside a comparable growth in our economic well-being, should be counted as part of his legacy. The point is debatable. What is beyond doubt, however, is that he has done precious little to awaken in the American people a sense of disquiet about it. Indeed, to the contrary, and in keeping with his great political strategy, he has on occasion pandered to base public sentiments. That most certainly is a part of his legacy. And it does not look like progress to me.

- V. So, perceptions of legitimacy are a crucial aspect of political culture, they constrain the way politicians talk about policy, and ultimately affect what public policies can be enacted.

- a. *We're the land of the free here in the US. We distrust government and love liberty. We believe in the private sector, in self-reliance, and in fair play (whatever those terms might be taken to mean.)* Think how difficult it is to pass legislation restricting access to guns in this society. Recall that we had to amend our constitution in order to be able to have a federal income tax. The Supreme Court had to be virtually packed, or threatened to be packed (?) by Franklin Delano Roosevelt in the wake of the Depression in order to create space to pass the legislation and develop the regulatory agencies that were needed to grapple with the profound social trauma of the Depression. And that constituted the early stages of the development of a more welfare state-oriented federal policy in the United States. So, there were aspects of political culture that held certain kinds of developments in a less legitimate stand than would have been the case in other societies. And if you want to understand the history of the development of social policy, you need to understand that.
- b. *Well, so too with respect to race. We can draw the IQ line by black and white. But we won't draw it in some other ways (by region or by age.)* There, our position would be, well, OK, we've got some people who've got high IQ's. We've got some people who have less high IQ's. And, we're going to react to them in that way. I mean, we're going to deal with that. They're *our* people. Or we might say, the divisiveness of a discourse that's rooted in that kind of categorical imputation of human worth that's associated with saying -- well, on average, some people are brighter than others; it's just genetic; that's the way it is -- is so divisive a discourse, so disruptive of our sense of community as a nation, that we won't enter into it. I mean, that's probably one reason why there are not a lot of studies on whether or not these people in the southern states are or are not smarter than the people in the northern states. And I have no position on the issue. I don't know the answer. I don't want to know the answer. I mean, I don't want to be misunderstood. I'm not slandering it. There are some people out here who may think they know that the northerners are smarter than the southerners. I don't see how you could know that. My point, of course, is that it's a loaded question. And it's a question that doesn't get asked.
- c. *Why is the immigrant/black comparison so loaded in our society? What am I talking about? Do you know what I'm talking about here? The immigrants have made it. The blacks haven't. Why not? That's the conservative's argument in effect: There's work in the cities. Why don't the blacks get it? There are many poor communities where people marry. Why don't the blacks marry? Good question maybe. Outrageous question maybe. I'm taking no position on it. But I'm saying to you that on all sides of the political debate, that's a kind of formulation that is powerful. It is pushing people's buttons. All right? It sends people up the wall. And you'll hear some black people say things like, African-Americans didn't come here voluntarily. And you may wonder, what are they saying? In 1999 when the slave trade ended in 1808. Is it -- I mean, what is the*

sentence supposed to mean exactly? What would be the relevance of observing that 200 years ago, someone who may be one of my ancestors did not choose to arrive on these shores in response to an observation that, well, there are several communities in this city, some of whom exhibit a higher rate than do others of performance on certain measures of social achievement. Some of them are immigrant communities. Other are African-American communities. And I want you to tell me why in exactly the same economic situation, some people's patterns of behavior are so much different than others. And then the response to that is: our ancestors didn't come here voluntarily. What's the relevance of that? I think you're going to have a hard time giving a logical account, but I think it's not difficult to give a kind of symbolic and emotional explanation of why these people would phrase it in that way. They're saying our circumstances are different. They're saying don't compare us. They're saying we haven't been dealt a fair hand. They're saying, I reject your model. Your model, your explanatory model that accounts for group differences and performances. I reject your model because you're basically saying there's something about us that's wrong. They're saying that on the basis of that history I have a claim. Even things that may or may not be right. They could be argued. But they would be built in to the discourse. They would be a part of the discourses.

- d. And *what is this "model minority" business all about in regard to Asian-Americans?* This business of the comparisons of different groups that are not white. We've got this history. We've got this white supremacy thing going. There was a thing called white supremacy that sort of helped to appropriate the continent, push the native peoples aside, keep the coolie labor as coolie labor and keep the slaves as slaves. I mean, there was such a thing. We got this white supremacy thing going and now we're getting over it. Right? We've become more enlightened. Moved forward. Attitudes have changed. That's all history. But there's some legacy of that to be seen in the inner cities, let's say, or in the jails or public hospital waiting rooms, welfare offices, whatever. And, but -- you see, not all non-whites do poorly. Some do very well. They have high test scores. They're moving up. They're intermarrying. So, obviously, it's not a problem about white supremacy. So might such an argument go. I'm just illustrating by verbalizing the argument. That's not my personal view. I think that's a poisonous argument. That's my personal view. But, what's a self-respecting Asian to do? Be proud of your achievement? Right? Worked hard. Came from somewhere to someplace else. Terrific achievement. How that interacts then with an ongoing political culture in which race is a central part of the dialogue becomes a question. What kinds of ideological positions does one lend one's biography in support of? Becomes a question.
- e. So, these are all going to be examples to illustrate why the framework that Skrentny sets out here about these *boundaries of legitimacy, about these moral perceptions of worth, how they're culturally, historically determined*

and how they affect the way that policy gets formulated? Why it would be important to pay attention to that framework. Why there is value in that. That's what I want to underscore.

- f. *Reparations and Legitimacy*. There are people going around the country saying that reparation should be paid to African-Americans because of slavery. And they call attention to the fact that the Japanese-Americans who were interred during WWII and had their property confiscated or stolen or lost or whatever have been recognized by congress and provisions made to pay out reparations to people. And it's interesting to look at how the public conversation about this question of reparations for African-Americans plays out. When you hear the right respond -- when they condescend to respond -- to the demand for reparations, we hear a lot of vitriol, a lot of vituperation. Many non-black people are very, very negative about the reparations demands. For what? Read D'Souza. If -- and this is almost an exact quote from Dinesh D'Souza's book, *The End of Racism*. "If America owes blacks reparations for slavery, what do blacks owe Americans for the Abolition of slavery?" But, never mind the logic or lack there of in the claim. OK? I'm just trying to illustrate his attitude. In the same book, he dares to point out, who knows how well these blacks would have been doing if they'd left behind -- if they had been left behind in Africa? Take a look at Africa these days. Interesting argument. Some people say, we want reparations, other people say, you've got them already. You could be in West Africa right now. That's poisonous stuff.