

AFFIRMATIVE ACTION IN HIGHER EDUCATION
THE UNITED STATES AND SOUTH AFRICA

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Tape: side 2; 525-726

CD: 1st section; 1:38:40

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Delighted to be here—I am very grateful to the organizers for the invitation. This is a tremendous opportunity for me as a social scientist to learn something. I hope I can make a contribution over the next couple of days. I take the view that there is a great deal to learn in this comparative exercise, of looking at this collection of policies—affirmative action—in the United States and in South Africa. In doing so I don't presuppose that the societies are alike very much; I know that there are many differences and I, for one, will not be the most expert party to talk about the facts on the ground and the situation here in South Africa. But as an economist—as a social scientist interested in studying these problems of inequality and how we then try to intervene to mitigate inequality—I just think there is a tremendous opportunity here because what you've got is a commonality of instrumentality, of policy instrumentality, set against two very different contexts, very different backdrops. The numbers are different, the sociology is different, the politics are different. So this, then, creates a rich opportunity for comparative inquiry because a lot of stuff that will be taken for granted when one is immersed within the context becomes relativized once one puts it in a comparative framework.

So that by way of general introduction, I want to try to do three things in my little brief remarks here. I want to propose a definition of the problem. So, the question was asked, "What are we talking about? Are we talking about the same thing?" I want to propose a definition of the problem; I want to suggest a framework for the analysis of the problem, a sort of broadly-gauged, two-dimensional framework for how we can think about all these different policies that fall under the general rubric of affirmative action and then I want to apply that framework a little bit—the third part of my remarks—to see if I can generate some insight.

A definition of the problem. I think of affirmative action as about the democratic construction of elites in a social context of diverse identities. All three components of the definition are important in my mind: democracy, elitism/hierarchy, and diversity. Let me talk about the first, elitism. We're selecting elites. It's really important to be explicit that that's what we're talking about. That the organizations—the business organizations, the educational institutions, the political structures—are themselves not democratic, they're not open to everybody. They're selective. The rationing problem—an economist wants to think about affirmative action as a sub-theme within the larger context of how we're going to ration scarce opportunities—access (who gets in? who gets the job? who gets the contract?)—the rationing problem presupposes elitism. I want to emphasize this again. There is something anti-democratic at the core of affirmative action because

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you're presupposing that not everybody's going to get the opportunity. The business organization chart is not flat. There's a hierarchy there. The study of advanced subjects in the university is not open to everybody. It's open to talents, it presupposes some acquired skill which is specialized. So we're talking about elitism. If we bear that in mind—this is just at the definitional stage—we can avoid some confusion because there's an impulse to democracy (of course, that's why we're in this business in the first place) and yet the fundamental backdrop is elitism. So mistakes can be made. For example, a person may say, "A-ha! The solution to the problem of the under-representation or non-transformation of our educational institutions is open admissions. Why shouldn't we have open admissions?" Well, the answer to the reason why we shouldn't have open admissions is because we're about an elite enterprise. The enterprise is intrinsically elite. That's why we don't have open admissions. So we're trading off—there's a tension, there's a conflict amongst the objectives. Now historically the way that in liberal societies one has dealt with this problem of the contradiction between elitism and democracy is through some kind of idea like "career open to talents." You pick up a philosopher like Michael Walzer I think of as one, but there would be many, so you see this idea explicated in his book, *Spheres of Justice*, but also in other places, but the principle is: career open to talents, equal opportunity. There's going to be inequality at the end of the day, and I just want to emphasize the point, elitism is built into the structure of modern life. The complicated institutions and organizations that produce the benefits of modern life are specialized, they draw on specialized talents that are developed over decades of self-application. They are intrinsically elite. There is not even an equality movement which doesn't—once the leaders gather to figure out what the agenda is going to be—immediately throw up problems of inequality because somebody has to be in charge and someone's going to be a better speaker than somebody else. I'm not being flippant. I'm trying to make what I think is a really important point because there's a kind of phony egalitarianism that denies this reality of the modern world. That needs to be avoided. We know we should have a hard problem here because we want to be democratic and yet we have to be elite if we're going to be effective. See, that's the kind of problem that I'm trying to define. So, traditionally the way that's been dealt with is "career open to talents" and the idea has been everybody has a fair shot. That breaks down once you get a history in which the diversity of identity, ethnicity, race becomes important, instrumental into who has access. So in the United States—racism, slavery, Jim Crow segregation, and so forth—we have a history of careers obviously not open to talents. Some communities excluded in South Africa, I don't have to tell you, you have a history of careers not open to talents. The democratic imperative now in conflict with the hierarchical or the elitist necessity—"now we have to do something"—and that's where affirmative action comes in. So that's what I propose of as how we try to maybe want to think about this problem. We have democracy, we have identity diversity. Now I could tease out some sub-themes in that. One, for example, is identities are not given. This is really interesting. In other words, once I set up a university—once I set up an elite program—once I set up an officers training corps—once I make the inegalitarian distinctions necessitated by the structures that are themselves hierarchical—these

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complex organizations that require the development of talent, that necessitate hierarchy—once I'm in that business, when I put people in position their notions of themselves change. You can't send people from a small village of a thousand or ten thousand people to the big city and the university and think that they're going to be the same people that they were when they left the village. You can't open them to reading the literature of other cultures and of other languages—into the modern world—without expecting that they're going to become different people in virtue of that. So I just offer that as one of the sub-themes that comes out of thinking about this kind of tripartite definition that I'm proposing: democracy, a democratic idea; elitism necessitated by the structure of the modern world; and the diversity of identities.

Framework for analysis. We've got a lot of different kinds of policies running around under the rubric of affirmative action. Preferential admissions to the university is only one of them. I thought it was very appropriate that David Featherman mentioned in his introductory remarks this book by Ira Katznelson brilliantly entitled *When Affirmative Action Was White*, but not because it scores a point in some polemics debate in the United States about are you for or against affirmative action—"A-ha! You see, affirmative action used to be white"—not for that reason, but because it calls our attention to the fact that a lot of stuff that we don't put under the rubric of affirmative action is, really, about affirmative action. So, for example, the war on drugs in the United States which a very fine criminologist named Michael Tonry shows in a book published in the mid-90s called *Malign Neglect*, that it could have been easily predicted by any demographer with a good computer and a dataset that the incidence of costs imposed by the war on drugs was going to be vastly racially disparate. I'm offering this now as an example of why affirmative action isn't just affirmative action. Why it isn't just about universities and somebody getting a preference. Why it's about how when we structure policies in a democracy which is racially diverse the consequences of what we do can either exacerbate or attenuate racial inequality, and that's something that's worth thinking about. So in the United States this is a huge issue—this issue of the war on drugs and punishment—but I'm still talking about affirmative action, I want to insist. In the United States the size of the prison population has quadrupled—a factor of four—in twenty-five years. The number of people in jail has gone up by a factor of four in the United States in twenty-five years. More than half of them are blacks and blacks are an eighth of the population. That's a hugely disparate incidence. Now, is it fair? Is it just? Let me put all those questions to the side, we couldn't possibly take them up and do them justice here. I simply want to make a first order observation: it's an important instrument in either exacerbating or attenuating racial inequality and that was Michael Tonry's observation in that book. He said when you thought about what you wanted to do about drugs, couldn't you have at least given a moment's reflection to what the racial incidence of the thing's going to be? To make a simple model out of this you could just say "how much of the enforcement weight do I put on the buying versus the selling side of the transaction?" and you could get an interesting analysis just out of that, although that's only one dimension of what I'm talking about. You see what I mean? A little bit

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like prostitution; men buy, women sell. Depending on how you want to enforce the law you can impose costs very differently by racial groups. But with drugs, everybody buys and ghetto kids sell, to a first order approximation. So depending on how you want to leverage your policy you can get a very different racial incidence. Now all I'm saying here is—of course it's a kind of anti-elite; we're constructing a prison population now (but you see the general theory still applies), we're constructing an elite in a negative sense now—we're stigmatizing, we're criminalizing communities—I'm talking about hundreds of thousands of people here—this is major, this is a big thing, and it's racially unequal in its application. The other “where affirmative action is but we don't always see it” example I want to give is Katznelson's history of the New Deal, and the G.I. Bill, and the post-World War II American cultural policy. Hugely important things. Blacks were—because of the influence of Southern congressmen in the coalition that got the New Deal through in the 1930s, who had their own interests in preserving their way of life—because of the tremendous implications for labor relations, that giving unemployment benefits to farm workers (what do you think is going to happen to the wage of farm labor if you give unemployment benefits to farm workers?)—of giving money to women who don't have husbands who have children to raise—that's the kind of legislation that we're talking about. The Southerners were rightly concerned that its enactment in some straightforward way might change power relations in the South, so they made sure that it was enacted in a way that minimized the extent to which those changes could undermine their way of life. That had huge, trillion-dollar order of magnitude financial implications for racial inequality in the country. So that, too, was a kind of tacit affirmative action. Anyway, this framework that I'm really just sort of sketching here and I elaborate on in my own writing at greater length, is about trying to see that the instrumentality is one thing, that is, the mechanism used to allocate positions and the rules we have to govern the mechanism (I don't mean to be too abstract, I definitely want to be understood). What I'm saying is what we're deliberating over is what are the instruments that we're going to use to select the elites. And I'm saying one way of talking about that is no preferences by race. But I'm saying that's an impoverished way of talking about it. To set it up as if the issue is are we going to be color-blind or color-sighted is to really miss a big part of the issue. Because even within color-blind instruments there's a lot of discretion. The New Deal can be designed in lots of different ways and one way of designing it leaves to black farm workers in the South with a lot more bargaining power than another way of designing it. That's not an issue of preference, that's an issue of the structure of the American state. I talk about the American state—I know that I'm here in South Africa—but, presumably, similar issues would apply. That's an issue of the structure of the American state, not an issue of preference, but in some sense it's still about affirmative action. And so, too, how we construct our reaction to the social malady of drug use—after all the bottom line there is we don't want our kids getting exposed to something; we worry that it's a kind of cancer inside the social body that can diminish us, that's really what the problem is, that's why we're legislating against drugs and reconstructing this whole thing—but in a social context like the United States, such an undertaking has racial implications.

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This is just a policy. It's not some shrine for our kind of spiritual resolution of all of the conflicts that our terribly tortured racial histories have left us with. Neither is it an emblem of commitment to progressivism and justice, nor is it some panacea for all of these problems—it's just a policy. It's about the cost and the benefit. We don't have to always do this. It's not always a good idea. It depends. That's an empirical question. That's a question of fact. In other words, there are all these arguments running around about affirmative action in the United States and I'm sure you see them here in South Africa—"bad for the self-esteem of black people," "creates detorable incentives," "generates backlash," "degrades organizational performance"—I don't know. It depends. It depends on the context. It depends on the numbers. It depends on how you're doing it. Is affirmative action absolute population parity or is it kicking up by ten or fifteen or twenty-five percent the number of the disadvantaged minority group, or majority group as the case may be, that are represented in the institution? Does it take place in a context where there's real scarcity of skilled laborers so that the goals, if they are set too ambitiously, will create human resource bottlenecks and will lead to distortion? Or does it take place where there's a surplus of underutilized labor of the requisite skill that now only need an opportunity to get inside where they can do? That's an empirical question—it depends on the facts on the ground. Is the target population ten percent of the total social body or is it seventy-five percent of the total social body? Are the costs imposed on the non-beneficiaries so great that they might opt out of the society altogether or are they relatively trivial and the immediate alternative opportunities for those people are great? To give you an idea of what I'm talking about: in a selective university in the United States, about a quarter of the applicants get in and about an eighth of them are minorities. So we're talking about 1/32 of the applicant pool are the seats that, at least if all of the minorities were getting in were getting in on affirmative action, would be freed up by ending affirmative action. That's a small proportion. So, the majority of people who are running around saying "I didn't get in because of affirmative action" are almost certainly wrong just based on arithmetic. It can't be true. It can only be true for 1/32 of the applicant pool on the numbers that I gave for an elite selection that chooses a quarter in a context where blacks and others who might benefit from affirmative action are an eighth of those chosen. You just don't have a whole lot of leverage there. Now, most of those people running around complaining think that they were just on the margin of getting in, but since three-quarters of them were rejected almost all of the rejectees were not just on the margin of getting in. Again, that's just true by arithmetic. So now politically there may be a whole lot of this posturing about how affirmative action is undermining the opportunity for whites in America, but in the setting I'm talking about (perhaps in other settings it would be a different story)—in the elite university setting that just can't be true by arithmetic. I dare say something like that is probably not the case here. I'm not an expert here, but I dare say it's unlikely to be the case here. What I'm saying is unlikely to be the case is that the implementation of the policy at any level of effectiveness, it's unlikely to be able to say that that would have no implications for what the impact on the non-beneficiary population would be. That's not to say "don't do it."

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That's just to say "count." It's just to say "get the costs and benefits right" because if the consequence of reducing opportunities for those people is that they opt out (again, I don't know, it's not for me to say, somebody else is going to be a better statistician about that in South Africa), if the consequence of imposing those costs on the non-beneficiary population is to significantly reduce their supply of needed human resources to the economy overall, that's a cost. It belongs on the cost column in the ledger where the costs and benefits are being added up to assess whether or not you want to do the policy or do it to this extent.

This is, in my mind, a really important posture toward these policies. A posture to allow our judgment to be driven by the data. That's already a real significant move. That's the one that I'm advocating.

Thank you.

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ANN ARBOR, MICHIGAN. APRIL 2005

SESSION 2: CONFERENCE AT UNIVERSITY OF MICHIGAN, APRIL 2005

Moderator: Paul Courant - Provost and Executive VP, University of Michigan

Panelist: Glenn Loury - Professor, Boston University

Question Posed by Moderator:

I have asked him to address the question of what are the economic and efficiency consequences of affirmative action higher education, and, in a limited way, I have also asked him whether these carry over to other arenas.

Professor Loury:

I want to make four points in the context of the discussion of efficiency. Talk about efficiency first requires clarity on one's objectives-that's Point 1. Talk about efficiency also requires clarity on the alternatives available-that's Point 2. In my opinion, if you've got Point 1 and Point 2 with clarity, most of the remaining questions about affirmative action are empirical questions, not conceptual questions and one really needs to pay attention to the facts, which are hard to get and difficult to interpret. Point 4 is that there is a difference between color-blindness or race-blindness on the one hand, and racial indifference on the other-an important distinction of principle that I would like to try to emphasize. So there are four points: what are we trying to achieve in our institutions; what alternatives are there for us to pursue those goals other than conventional affirmative action; what are the questions of fact that are most critical; and what about this distinction between blindness on the one hand and indifference on the other.

With respect to objectives, I would like to observe that in thinking in broad terms about the value of racial representation which is the outcome of the affirmative action effort, there is the diversity point (and that has been made here). There is also the legitimacy point that I want to underscore. What we're doing with these institutions is rationing access to power in the society. That ultimately has to be justified. People are exercising influence over other people. People are enjoying to a differential degree the fruits of social cooperation. That has to be justified. The notion of merit is, in my view, too thin a philosophical reed upon which to rest such a project of justification. I don't say in saying that that merit is irrelevant, I simply say it's not the only thing that counts. Let me give an example: the primary schools in the City of Boston send their graduates onto the high schools and some of the high schools are better than others. Some are elite and they are selective and students are admitted through exam to the public school-the Boston Latin School is one such example. The idea that the goal of the institution is simply to find the smartest kids and admit them is one idea. But there can be many other ideas, like: the goal of the institution is to find the kids to whom the greatest value could be added by

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what the institution has to offer and admit them; or, like the idea that the goal of the institution is to in every one of the different primary schools in the city, insure that those students who are genuinely excellent-albeit, perhaps, not in every instance as good as every other student in the city-nevertheless have something to shoot for in terms of the best that the city has to offer its students with its public schools. I'm not going to try to resolve any of these arguments, I just want to say that they're deep arguments, they're interesting arguments, and they're not self-evident as to what the objectives are to be. Or, to give another example close to home, a public university has to go to a state legislature to get funding. The representatives there have a complex set of objectives-they're not the same as the faculty of a graduate science department's objectives. It's not at all obvious what the objectives of a public university ought to be and, indeed, in a democracy it's the legislature that ought to be the agency of those that it takes on to give it consult to make that judgment. To stand back and say the goal of a public university is to admit absolutely the smartest students without an argument is to engage in a kind of callow bit of moral sleight of hand, in my view. One has to make a justification for that position and, again, I don't here try to resolve the matter, I simply try to pose the question.

So it really matters what our objectives are and the legitimacy of institutional conduct is one of the objectives to which racial diversity can contribute-ask the generals, and the admirals, and the commandants of the military who put in briefs in the Michigan case and that's exactly what they'll tell you about the legitimacy of the exercise of authority within their military institution given a very minority-heavy bottom end of the hierarchy and the importance, therefore, of cultivating and developing leadership that is diverse in the military, and similar points could be made elsewhere.

My second point is that efficiency requires us to be clear about what the alternatives are. Now what exactly-given that we have certain goals of racial representation-are the alternatives to affirmative action conventionally conceived? In the short run, affirmative action as conventionally conceived-I mean racially preferential, I mean nakedly racially preferential affirmative action-is demonstrably the most efficient way to achieve any given racial representation goal and this argument is not rocket science. It's simply observing that if I have a line and if, in the absence of affirmative action, I admit everyone who's above the line and I then come into the cognizance of that I want more racial diversity, then the best way to do that is to ration out those in the non-preferred group (let's say whites) who are closest to but above the line and to ration in those in the preferred group (let's say blacks) who are close to but below the line. This is just common sense; we've got so many spaces, we're selecting people-if we have the goal of racial diversity, the best way to achieve it is to reallocate so that we disadvantage the least promising of the non-protected group and we advantage the most promising of the protected group. Well, that's a preference. So that if I'm only concerned about efficiency-given my objective of racial diversity-naked racial preference is the most efficient way to achieve that goal. That doesn't say that it's just-that's a separate question that we could take up and I'll come to that in a moment. But we need to be clear about

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what the alternatives are.

In the Michigan case, I, along with some social science colleagues, put in a brief in which we considered in some technical detail the question of whether or not so-called "race neutral alternatives" to conventional preferential affirmative action were more efficient or were of comparable efficiency, and we tried to measure this with data and we came to the conclusion that keeping the same representation goal but constraining oneself to use racially neutral means for pursuing that goal would have very significant negative consequences for the efficiency of selection. Of course, if one can't use the most efficient way to pursue a goal, the cost of the goal goes up and the "equilibrium" (as we say in economics), the likelihood, is that one will be pursuing a lot less of that now more costly goal. So, tying the hands of institutions about how they go about pursuing diversity is bound to have the consequence of getting less diversity because it makes the pursuit of it more costly. So, anyway, an economist is obliged to say, but it also happens to be true.

My third point: it really matters about what the size of effects are at the margin. Affirmative action is not just a zero or a one, the question is "how much?"-what are our target goals?-and to answer that question we need to know that if we're aiming to try to get 7% of our undergraduate admissions class at the elite university to be minority, what difference does it make relative to aiming to get 8% or aiming to get 6%? Not the all-or-nothing question affirmative action does this, or it does that, but at the margin a little bit more affirmative action costs this or it costs that. That's a subtle empirical question. Nobody's going to be able to answer that question off the top of their head; there is no *a priori* answer to that question. It varies with the factual circumstances across institutions and across social settings, and we need more studies like the one that I gather will be talked about here later that Professor Sander has produced which is controversial but which is important. We need that kind of work; we need clever people thinking hard about how to measure these things and there just isn't any substitute for that. Too much generic proclamation, too little careful scrutiny of the facts pertinent to particular situations. That happens to be my opinion, but, yeah, I think it's right.

My last point: the question of color blindness does not exhaust the important questions of principle in this area of discussion. Indeed, I would be prepared to argue that the question of blindness-this is the question of whether or not the race of a person has been taken into account when that person has been subjected to some treatment-is really a trivial moral question relative to the deepest questions of social justice that have been raised here. Now those questions are complicated. It does not follow from the fact that blacks had to experience slavery that programs of affirmative action are the appropriate and just means to respond to that history. One needs to make an argument. On the other hand, if I content myself with asking the question "has anybody experienced a first order racial discrimination here?"-in other words, is the form such that the people who make the decision can't know the race of an individual and, hence, can't be discriminating against that individual?-if I restrict myself to that question I impoverish, I would argue,

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the moral discussion. This is related to my first point about goals. What I'm saying here is that there are, broadly-speaking, two stances one can take: one can be for race blindness, which is about the procedure employed in making decisions, or one can address oneself to the question of race indifference. Race indifference is the alternative concept I want to put forward.

Blindness versus indifference: a person is indifferent if they say, "We have various social outcomes, human beings experience them, I really don't care what the color of those human beings are. I'm concerned about people, period." A person is blind if they say, "We're doing certain things with people and we ought not to allow the race of that person to affect what we do to them." Those are vastly distinct notions. I'll give you an example from the criminal law: the jails overflow with blacks in this country. Now, one procedural question is: what about prosecutors, what about courts, what about judges and juries-do they discriminate? We might address that question. Hypothetically let's suppose that the answer to that question after thorough investigation was "No, they do not discriminate." That's the hypothetical. Are we done? Have we now resolved the question of racial justice? Did the question of racial justice-when we looked at our jails overflowing with young black men-turn only on procedural matters about what courts and judges and lawyers do? Or did not this continuing manifestation of a palpably unjust history raise questions of justice to us that had not only to do with what the courts and the lawyers were doing, but with what we, in some larger sense, are about? I submit that it's the latter and I submit that the analogy carries over pretty nicely into higher education. Does an elite, privileged, rich institution in the context of an ongoing social enterprise which has in history been palpably unfair in racial terms, exhaust its concerns about justice by checking to see whether or not it has discriminated against any individual who has come across its path, and when the answer to that question is "No," they're done? Well, no. I think not. I think the University of Michigan, the University of California, the University of Minnesota, the University of North Carolina and the others owe the citizens of their respective states a good deal more than taking the race box off of their application form.

Thank you.

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