

The Evolution of Affirmative Action

By La Shawn Barber

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In this space we will feature transcripts of talks given at Accuracy in Academia's summer conference held at Georgetown University. La Shawn Barber, a Washington, D. C.-based writer, held the crowd spellbound with her talk on affirmative action, reproduced below. You can read more about, and by, La Shawn, at her web site—www.lashawnbarber.com.—ed.

In case you're wondering if you've seen me somewhere before, you haven't. You might be thinking I'm someone famous or well-known, but I'm not. I'm just a regular person, a former liberal, a believer in Jesus Christ, a conservative once in the closet. But I'm out. And I oppose race preferences even though I've benefited from them.

Race preferences are divisive and demoralizing. They cause self-doubt. They cause others to doubt black achievement. That's why Monday, June 23, 2003, was an unusually sad day for me. That was the day the Supreme Court disregarded the 14th Amendment to the U.S. Constitution and upheld the University of Michigan Law School's skin color preference admissions policy.

By a vote of 5-4, the Court ruled that black applicants may be given an advantage over other students because of the color of their skin, to the shame of all who died fighting for equal justice under the law during the Civil Rights Movement.

Race preferences are institutionalized throughout the government, private industry and universities. They permeate our society. Why? To compensate for past discrimination? For the sake of diversity?

Why is our government, founded upon the ideals of freedom and fairness, discriminating against some and preferring others based on race? It's unjust, unfair and unconstitutional. Why do we permit it?

The American Civil Rights movement was a revolution that demanded action. After the country watched black demonstrators being bitten by police dogs, sprayed with fire hoses and beaten on national television in 1963, President John Kennedy made his move. He knew the country was finally ready for comprehensive legislation dealing with racial discrimination.

On June 11, 1963, he went on national television and asked Congress to draft such legislation. Ironically, one hundred years earlier, President Abraham Lincoln issued the Emancipation Proclamation.

Kennedy wouldn't live to see the Civil Rights Act of 1964 pass the House and Senate. President Lyndon Johnson signed the bill into law on July 2, 1964, 40 years ago this month. The Act

outlawed discrimination in voting, public accommodations, such as hotels, restaurants and theaters and authorized the withdrawal of federal funds from programs that practiced discrimination.

I don't know about you, but the language sounds pretty clear to me: There is to be no discrimination or preferential treatment because of race.

“Affirmative action” was non-preferential in the beginning. The term was first used in a 1961 Executive Order by Kennedy. Johnson followed up with a similar order in 1965. Federal contractors were to take affirmative action to ensure that applicants are treated equally “without regard to race, color, religion, sex, or national origin” and encouraged to cast a wider recruitment net to include more qualified minorities in the hiring pool who had been historically excluded.

That, and *only* that, is affirmative action. The use of the term “non-discrimination” in Johnson’s order would lead a reasonable person to believe that it was intended to be race-neutral. During the early 1970s, however, race-neutral affirmative action became race-preference affirmative action.

And you can blame a Republican! President Richard Nixon, opened the door to racial quotas in 1971 when he authorized the Department of Labor to set specific goals and timetables to correct the “underutilization” of blacks by federal contractors.

Why did Nixon come up with this precursor to racial quotas?

Here’s a clue. Before the Civil Rights Act, companies like as Duke Power blatantly discriminated against blacks by relegating them to lower-paying and less-desirable jobs. After the law became effective, Duke Power instituted aptitude tests and high school diploma requirements for applicants seeking employment or employees seeking to transfer to previously “white” positions.

A disproportionately high number of black applicants and employees were failing the tests and/or didn’t have high school diplomas, so they filed suit against Duke Power on the grounds that these requirements violated the Civil Rights Act. The Supreme Court agreed. In 1971 in *Griggs v. Duke Power Co.*, it held that for purposes of hiring, Duke’s employment requirements operated to maintain past discrimination.

Even if there is no discriminatory intent, a practice is suspect if it has a disparate impact on members of a protected class. Subsequently, more companies began to develop race-conscious plans. Out of fear of lawsuits, companies set aside a certain number of jobs for “protected class” members. Race preferences are born.

Preferential affirmative action reared its ugly its head in education. *University of California v. Bakke* was the first major constitutional test of affirmative action in 1978. UC-Davis’s medical school at had two separate admissions tracks. Sixteen slots were set aside for blacks, who were judged by less rigorous standards. Rejected white student Allan Bakke filed suit, alleging violation of the Act.

The school argued that discrimination against white students was necessary to remedy past discrimination and that skin color diversity would enrich the learning of medical students because black students would contribute to the “robust exchange of ideas.” (Imagine a “robust exchange” in human anatomy and molecular biology).

The Court rejected the school’s use of racial quotas – the 16 slots – and ordered Bakke admitted. For the sake of diversity, however, the Court found that admitting lesser qualified minorities constitutes a “compelling state interest.”

Diversity now rules the day. By the way, whenever you hear liberals championing diversity, they’re definitely not referring to diversity of ideas; only skin color and sexual preferences.

I predict that the race preferences debate will only get murkier and more heated. With Hispanic immigrants surpassing blacks in minority status, they’ll increasingly benefit from so-called affirmative action although they can’t claim to have suffered from the effects of past discrimination in this country.

I also predict that as a consequence, black supporters of race preferences will demand even more or demand that Hispanics receive less. There is no end to the madness.

Race preferences benefit middle- to upper-class blacks. Why should a black lawyer’s child receive preference over a white mill worker’s child? We need to do away with race preferences now and find alternative ways of ensuring equal opportunity, not outcome, for all.

Race-neutral alternatives to affirmative action in public colleges and universities include broader socio-economic and regional selection, school choice for K-12, aligning K-12 curriculum requirements with college admissions requirements, just to name a few. Perhaps these alternatives would encourage equal treatment.

Perhaps the people themselves, and not unelected Supreme Court justices, will be ones to dismantle race preferences. Ward Connerly, a University of California Regent and vilified black conservative, spearheaded Proposition 209, the 1996 *voter-approved* measure that ended gender and race-based preferences in state hiring and college admissions in LIBERAL California and a similar measure in Washington State.

Connerly is committed to organizing similar ballot initiatives across the country.

There is no justification for skin color preferences in a free country like the United States, teeming with opportunity and all sorts of taxpayer-supported and private programs designed to educate, train and equip.

Race is a divisive issue in this country. The sooner we get past categorizing citizens by skin color, the sooner we can improve race relations.