American Social Liberalism and the Challenge of Ethnic Diversity: The Rise and Decline of Affirmative Action

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Abstract

In this article, it is argued that the progressive reform agenda of the mid-twentieth century liberal elite might have more effectively served the economic interests of non-white minorities had this generation of well-intentioned policy-makers been more attentive to the conservative criticism of the limits and pitfalls of their policies. As they turned preferential treatment into one of the mainstays of the national government's anti-poverty strategies, and by supporting a new "welfare philosophy" that was essentially based on service provision, the social liberals in power during the sixties and seventies transformed government assistance into an even less popular approach to socioeconomic disparities. While they focused their vision of social progress on group advancement, they ended up further compromising their egalitarian agenda as their political choices and decisions gradually lost much of their early popular appeal. This liberal elite, it is argued, laid the foundation for a new egalitarian paradigm which presents racial integration through preferential treatment - or race-based affirmative action - as an ideal solution to the socioeconomic underperformance of disadvantaged non-white minorities, causing the former to definitively fall into disfavor.

Keywords: Affirmative action, Laissez-faire, Public policy, US ethnic minorities, welfare

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Introduction

Affirmative action owes its growth into an essential constituent of American public policy to the liberal-reformist ethos of the mid-twentieth century. It was testament to an increasing disillusionment with capitalist ideology and a perceived need for the national government to play a greater role in the promotion of economic and social interests of the disadvantaged minorities (Bremner, 1992; Balogh,2009, pp.11-13).As discontent and protest against convention, social inequality and war gained momentum, many policymakers (e.g. S. Shriver, D. Boone, W. Heller, and R. Kennedy)were convinced that the country was now mired in seemingly inexorable problems the most serious of which were the endemic poverty, high unemployment rates and academic underachievement that appeared to affect mainly non-white minorities despite optimism about the future of "the land of plenty" (Galbraith, 1998; Teelucksingh, 2017, pp-55-58). The decision in Brown vs Board of Education of Topeka (1954)[2] and the civil rights legislations of the sixties were indicative of this faith in the power of progressive policies and programs to bring about change.

The group-based policies of the sixties marked a significant departure from the classical individualist ideology of the early republic, a transformation that was accompanied by dramatic developments in the practice of federalism and political power which allowed fast-growing interest-group networks the possibility to influence policy-making (Brinkley, 2003). In this paper, it is argued that the development of preferential policies in general was, in fact, largely due to the superseding of capitalist ideology (as a "public philosophy") by a communitarian/social liberalism which articulated the political and economic interests of such highly organized advocacy groups (Brinkley, 2003, p.13).

The transformation of liberalism into a community-based social ideology, as described in the first section of this article, provides context for the discussion of the formal institutionalization of preferential policies during the second half of the twentieth century. This is to demonstrate that mid-century social policy was impaired by the delusional pragmatism of the liberal elite of the age as they sought to accommodate unpopular visions of social justice and equality to the challenges of an ever-increasing ethnic diversity. It is further argued that, as they turned preferential treatment into one of the mainstays of the national government's anti-poverty strategies, and by fanatically supporting a new "welfare philosophy" that was essentially based on service provision (Patterson, 2000, pp. 138-140; Ziliak, 2009, p.16), the mid-century social liberal elite transformed government assistance into an even less popular approach to interethnic socioeconomic disparities. This new generation of policy-makers, the paper concludes, laid the foundation for a new egalitarian paradigm which presents racial integration through preferential treatment as the only possible solution to the socioeconomic underperformance of disadvantaged non-white minorities, causing the former to definitively fall into disfavor.

[2] A landmark civil rights case in which the Court overturned its decision in Plessy vs Ferguson ruling that using separate educational and transportation facilities was "lawful under the equal protection clause" as long as they provided "equal" services. In Brown, the Court ruled that the "separate but equal" doctrine was unconstitutional since, almost by definition, segregated facilities were "inherently unequal."

American Social Liberalism: From Ideology to Myth

The development of economic (or classical) liberalism into an ideology articulated the spirit of popular rule and self-actualization fitted perfectly well the early promises of the young American democracy. Resting upon free economic transaction and entrepreneurship, it set up the broad principles for a new mode of public policy which determined decision-making in the social, political and economic spheres during the eighteenth and nineteenth centuries(Butler, 2015, pp.74-82).The creation of a more sophisticated administrative structure to regulate the market, however, became an urgent need at a later stage when higher production and consumption levels entailed an inevitable increase in the division of labor and the institutions geared towards specialization.

Greater government intervention in the economy was then hailed by the British economist John M. Keynes [3] who, by 1936, saw that the government had to assume a larger role in the regulation of the market by providing the necessary information on consumption and production trends to companies in difficulty and by designing appropriate monetary policies to mitigate the impacts of economic recession. During the 1930s, a decade marked by a severe economic recession, the American government began to recognize the need to implement a new set of economic programs (together known as the New Deal) that aimed to cut back unemployment and poverty (Fetter, 2017). The welfare state, originating with the Social Security Act of 1935, showed a new concern by the government with the social problems associated with classical economic liberalism.

Capitalist Ideology as Public Philosophy

By appealing to the entrepreneurial and commercial spirit of eighteenth-century America, liberal ideology thrived into a public philosophy which rested on a firm belief in the freedom of individuals to take initiative and pursue economic self-interest (Dowd, 2000, p.84). This key postulate in Adam Smith's laissez-faire theory (1776)[4] was popular in a nation of economically-motivated immigrants who sought profit and prosperity in a hostile environment. They had fled the tight control of the monarchy and its regulatory laws back in Europe to build a free social and economic order characterized by a deep distrust of a powerful central government that set up the terms for economic transaction and regulated social processes. The liberal theory of Adam Smith was essentially a capitalist ideology which reflected his belief in the ability of private capital to promote the general well-being of society.

While private investment of capital presupposed individual freedom from governmental regulations, the economy had to be an autonomously functioning system of organized corporate enterprises seeking optimal profit. Pursuing self-interest, individuals promoted the economic and social well-being of the whole society by creating opportunities for socioeconomic improvement through the market system. Smith considered individual drive toward self-interest a universal characteristic of men, as when he argues that:

[3] His influential book *The General Theory of Employment, Interest, and Money*, first published in 1936, represented what many economists call a "revolution" against the orthodoxies of classical liberalism.

[4] Elaborated in *An Inquiry into the Nature and Causes of the Wealth of Nations*, first published in 1776, and Smith's major work on the free-market economy.

Government action inducing individuals to invest capital was unnecessary while it may even distort the economic process. For when the entrepreneur intends his own gain [...] he is [...] led by an invisible hand to promote the welfare of his fellows which was no part of his intention [...]. By pursing his own interest he frequently promotes that of the society more effectually than when he really intends to promote it [...]. The statesman who should attempt to direct private people in what manner they ought to employ their capitals, would not only load himself with a most unnecessary attention, but would assume an authority which could [...] nowhere be so dangerous as in the hands of a man who had folly and presumption enough to fancy himself fit to exercise it (in Lowi, 1979, p.4).

Smith's opposition to government regulation of the economy mirrored the grievances of the colonies under the commercial system of the British Empire. Moreover, the appeal of capitalist ideology and its growth into a public philosophy guiding constitutional principles and governmental practices was basically responsive to the prevailing belief among nineteenth-century Americans in the primacy of free economic transaction and the inherent antecedence of private property and contract-holding, these being "additional bulwarks against tyranny" (Lowi, 1979, p.7). Commenting on the development of capitalist ideology into a public philosophy which found large popular support during the early stages of the Republic, Theodore Lowi (1979) observes that:

In so far as it shaped objective constitutional and governmental life, capitalist ideology can also be said to have constituted the public philosophy during the same period. Beliefs about popular rule, decentralization of power, and the evils of government were strong; ... happily for both, the tenets of popular rule and capitalism generally reinforced each other. (p. 5)

During these formative stages, then, the principles of popular rule and democratic government adjusting its operations to the general will of the public were concomitant with the social and economic promises of capitalist ideology which ultimately resulted into a viable public philosophy able to translate its individualist ethos into a lived reality.

The Division of Labor and Social Control

As the social division of labor produced a highly specialized labor force, the atomized units of production demanded more sophisticated structures of social control. The practical functioning of liberal economy thus required the application of rationality to the production process while the model of "automatic" society and economy proposed by Adam Smith was eventually inimical to the laws of population growth, later elaborated by Thomas R. Malthus in "Essay on the Principle of Population" (1798).

The Malthusian laws of industrial society foresaw the inherent relationship between increased productivity and population growth. Increased food supply parallels a rising population which, as it grows, gets inflicted by poverty and epidemics as a result of increased demand for further specialization that is unlikely to be satisfied entirely through the market system. Smith's thesis that increased specialization would enhance productivity and, therefore, improve the general well-being of society failed to account for the inherent limitations of the market economy and the insufficiency principle in relation to population trends (Dean, 2015, pp.22-23; Yamamori, 2017, p.336).

The economics developed by Smith and the following generations of classical economists rested on the premise that economic stability was to be achieved through a competitive market system governed by supply and demand. However, such economics developed a simplistic view of society which overlooked the inherent constraints of a number of phenomena related to industrialization such as urbanization and the concentration of population and the accompanying rise in demand (Dean, 2015, p.22). Lowi (1979) describes the intricate mechanisms of industrial society underlying the close association between production and population trends as follows:

once industrialization began [...] there seemed to be no stopping western societies from the fullest pursuit of all its implications: advances in the division of labor demanded more population; increased productivity made greater population possible as well as necessary, but populations were badly affected as productivity brought on concentration. Increasing concentration of population put great pressure for still more output, but productivity rates declined as the price of real estate and other factors of production went up. Inventions only postponed the moment when more masses of labor were needed, because new levels in the division of labor required more workers, and more population pressure was needed to keep the price of labor down and consumption up. (p.11)

Against backdrop of these complex relationships which govern market systems, population and production patterns appear to operate naturally as a manifestation of a self-sustaining pattern of growth. Yet it is important to observe here that industrialized society had to adjust to the organizational structures and processes of the market economy, and that coping with the need for information had to be done in quite "artificial" ways. Population pressures could not naturally be accommodated to the needs of the market unless society developed special institutions to keep under control the fluctuating prices of labor and production, reducing the costs of production and keeping consumption up being basic prerequisites of capitalism.

At the particular point when institutions had to be created in order to make possible the adjustment of industrializing society to the free-market economy, capitalist ideology as a public philosophy ceased to exit except as an ideology. But the rationalization process did not operate as naturally as it was supposed to be the case in theory. Instead, it was "applied" to social relations via a number of institutions of social control. Although it "never was incorporated into capitalist ideology" (Lowi, 1979, p.11), administration became a fundamental instrument of capitalistic control of social relations.

So therefore, the fate of capitalist ideology in modern industrial society was to move from theory to myth. For at a more developed stage of its evolution, the mechanistic and self-sustained free-market economy was to give way to public control institutions which regulated social and economic processes (Fantuzzo, 2015, p.49). In this new context, the government came to play a greater role in the economy which was then to be regulated through interest groups[5] and large organizations. These two trends in modern industrial economy led respectively to "statism" as the general attitude favoring government regulation of the economy and society, and "pluralism" which reflected the domination of the economy and society by interest groups and organizations (Archibugi, 2000,p.235).

[5] The term "interest-group liberalism" was first used by Theodore Lowi in The End of Liberalism to describe the paradigm shift in liberal ideology in the mid-twentieth century.

The original principles of political liberalism no longer paralleled the actual functioning of the new economic liberalism. An economy governed by large interest groups, labor unions and corporations was now dissociated from the democratic principles of political liberalism which rested on the supremacy of the individual. The decentering of the individual in the economic process was then to be accompanied by the ascendency of pressure groups and large organizations in the political sphere, which deepened even further the incompatibility between individualism and economic liberation.

Keynes and the Critique of Classical Liberalism

The history of the market economy is marked by alternating phases of growth and crisis which have had deep repercussions on society as well as on capitalism itself. Operating cyclically through periods of expansion and recession, the market system has failed to stop demand for goods from falling off when the cost of production diminished. Due to rising supplies in labor and a subsequent decrease in wages, consumption is reduced and the market fails to meet the productive capacity of the economy. It was eventually the failure of the market to control production which caused the depression of the 1930s (Rauchway, 2008, p.27). But the economic crisis transformed into a social crisis with sizable numbers of workers driven out of work (Cohen, 2014, p.82). The 1930s were marked by high unemployment rates with the government making huge investments in the public sector to compensate the massive lay-offs. The crisis would not pass without a full-scale criticism of the principle tenets of classical liberal theory by a number of economists. One of the most eminent critics of classical liberalism, and who was to have considerable influence on American economic policy-making, was the British economist John M. Keynes who critiqued many of the received ideas about the market system in *The General Theory of Employment, Interest, and Money.*

Keynes's thesis rebukes the claims of neoclassical theory that unemployment could only be short-lived and that the fluctuating rates of unemployment are self-corrective in the long run.[6] It rests on a macroeconomic analysis which stresses the interdependence between different critical economic variables such as income, consumption, and employment (Keynes, 1936, pp.24-25). Assessing the global mechanisms of the market system, Keynes focuses on the systemic impact of corporate action on the individual. Against the claims of neoclassical economists that declining wages normally increase labor supply, and that therefore the waning earning capacity of consumers is reduced as labor supply itself declines, he argues that unemployment persists despite the thesis which assumes that unemployment could only be intentional (or "voluntary") since individuals tend to turn down low-wage labor (pp.9-10). Keynes rejects the "intentional unemployment" thesis and claims that the underutilization of the labor variable is almost always at the origin of high unemployment rates (p.7). Accordingly, there is normally no guarantee for enterprises that anticipation of approximate consumption levels or labor supply rates could actually be true. It is often only a matter of coincidence if they ever match (Keynes, 1936, pp.281-282). There is ultimately no reliable mechanism with which to balance out supply and demand. Therefore, unemployment could not be corrected through the market but

[6] "The contention that the unemployment which characterizes a depression is due to a refusal by labour to accept a reduction of money-wages is not clearly supported by the facts" (Keynes, 1936, pp.9-10).

through the application of rational policy able to remedy its shortcomings.

The intervention of the government is an essential requirement of Keynesian economics. To cut back rising unemployment, the government is expected to raise investment in the public sector in order to create new employment opportunities and sources of income so as to help increase consumer purchasing power. The role of the government consists essentially in mobilizing means and resources to help companies design more elaborate policies of employment by providing them with the necessary information they need for the implementation of their policies. Another major role of the government is to propose favorable monetary legislation and adopt promotional budgetary policies likely to help companies overcome their basic fear of misjudgment (Keynes, 1936, 289).

During the Great Depression, F. D. Roosevelt's administration implemented many of Keynes's policy recommendations (Fishback, 2018). By increasing investment in the public sector, the government was expected to create new demands for businesses which would in turn increase their production of goods and services while providing for a new distribution of resources concomitant with further demands for goods and services. Setting in motion a chain reaction, the government anticipates knowledge and mediates between the different layers of the mode of production, gearing resources toward a fuller use. This process of deploying resources in order to create new ones is called "multiplier" (Fishback, 2018, p.4), a major apparatus in Keynesian economics.

In the 1970s and 1980s, the Keynesian analysis lost much of its early appeal as the measures taken after the 1973 Oil Crisis had disastrous effects on foreign trade, in addition to the failure of regulatory policies to reduce the soaring inflation and unemployment rates (Hiç-Birol&Hiç-Gencer, 2014; Nielsen, 2018). Besides, increased public debts have deprived budgetary policies from really influencing economic performance. However, there is evidence today that there is a potential comeback in world economies of some Keynesian practices, the most solid of which is obviously interest in financing certain sectors which were formerly regarded as non-productive, such as education and job training programs, lowering interest rates, and tax cuts(DiLeo, 2018). An economy in which certain sectors are regarded as productive and others not is considered likely to underperform while it certainly condemns future markets by judging them to be unproductive or, worse, counter-productive.

Origins of the Welfare State

One of the most notable achievements of modern/social liberal thought was to assign the national government large legislative powers to limit the impacts of economic recession on society. By the turn of the twentieth century, the national government was already assuming substantial legislative powers over trade and commercewhile progressives, during the early 1910s and 1920s, were redefining the character and role of the government, calling for more generous public spending and active participation in shaping the education systems.

Six years after the stock market crash, Congress adopted the Social Security Act (SSA) which constituted the seeds of the modern welfare state. The new liberal vision was then taking shape through a powerful government having never before enjoyed the executive and legislative authority it now assumed. The eleven titles of the 1935 Act reflected the concern of the nation with the disaffected members of society, the aged, the disabled, and the dependent, among other socioeconomically vulnerable fringes. The 1935 Act also reflected a recognition of poverty as a national phenomenon and a new sense of responsibility toward the poor as victims of capitalist economy (Harrington, 1963, pp.3-6; Brinkley, 2003, pp.6-7).

The main fact about this new vision is that the economy was for the first time in American history held responsible for social disparities and poverty as the manifestation of larger structural mechanisms pertaining to the free-market economy. Redeeming the social effects of the economy by offering assistance to the worse-off through federal programs of insurance and assistance came to constitute the original function of the welfare state. And this assistance was carried out in joint collaboration between the national, state, and local governments, eventually transforming federal politics into what was to be referred to as "creative federalism" (Reintsma, 2007, p.110).

Coming under serious criticism, this old welfare gave way to a new one in the late 1960s. Assessing the 1935 Act, the Democratic administrations of John F. Kennedy and Lyndon B. Johnson considered that Social Security suffered from too many defects, the most serious of which was its organizational structure, meaning that it had to be administered through a complex bureaucracy which limited its benefits and increased public control(Trattner, 1999, p.xxvi).[7] The major reservation about Social Security, however, was that it required a constant flux of information which cost huge sums of money to the national government (Trattner, 1999, p.xxvi). The lack of reliable knowledge cost additional payments to parts of the population which did not deserve them.

Decentralizing welfare by delegating the follow-up and the execution of the programs to the states and to local agencies and commissions was an expedient solution to these problems. This redistribution of powers was called "rehabilitation": a transformation of state liberalism into interest-group liberalism. In 1963, community action was founded by the Johnson administration in support of the War on Poverty program (Graham Jr., 2003, p.295). Self-help was an underlying principle in the process of creating new committees to provide assistance to local populations, but the proliferation of committees and agencies meant that clear legislation was practically inexistent and that the former could set up their own regulations.

However, the change in the structure of welfare did not limit government intervention. By the mid-1990s, social security programs expanded in scope with larger budgets assigned to public spending (Marx, 1998, p.58). Larger sums are being deployed every year which constitute vast percentages of the Gross National Product. The percentage of public expenditure passed from 7,26 in 1960 to 15,64 in 1993 (Le Cacheux, 1996, pp.200-201). In 1996, President Clinton made Congress adopt measures which would transfer the entire responsibility of conferring assistance to the states (Reintsma, 2007, p.118). These measures affected previous regulations which had guaranteed automatic payments to those who were officially entitled to them while limits to the periods of entitlement would equally be strictly specified (Reintsma, 2007, p.6). Yet, despite such restrictions, findings have proved that welfare rates are still high and that the government still decides on the budgets (Levitan et al., 1998, pp.59-60).[8] At the same time, the above measures

[7] Public control was in a sense a kind of "philanthropic colonialism" as it was used, especially in the 1930s, to refer to the increased arbitrary power of social workers.

[8] According to Jerry D. Marx, one-fifth of the total federal government spending in 1995 drained down to social security programs (in Sar A. Levitan et al., *Aid of the Poor*, MD: Johns Hopkins University Press, 1998), 58.

document the extent to which the “New Welfare” has drained down to interest groups.

The character of American social liberalism has definitely changed. Yet it continues to articulate the need for government intervention in the economy. Although true to the spirit of the early American democracy, it failed to guarantee prosperity at times when recession could not be avoided, hence the need for a more efficient distribution of resources and means was deemed critical, a task that was taken over by an increasingly omniscient government by now endowed with the powers of incepting large-scale public policies.

Public policy-making eventually covered the racial and ethnic arena given the demographic transformations of late twentieth century and the increased economic importance of minority communities (Ness, 2000, p.60). Preferential treatment for minorities became a pertaining feature of American ethnic policies, while the implementation of what came to be known as “affirmative action programs” marked the extent to which race and ethnicity turned into vital concerns for the national government.

Affirmative Action: Aspects of Change and Continuity

Originally designed as a series of presidential orders under President Roosevelt to support racial and ethnic minorities in their fight against discrimination at the workplace, affirmative action has come to mean “any one of a number of strategies whose purpose is to promote and ultimately achieve equality of opportunity” not only in employment but also in “education, housing, voting - in sum, [in] every facet of life” (Fernandez, 1997, pp. 23-24). Set up against a purely racial background, affirmative action has reached beyond race to embrace a number of minority groups such as religious communities, age groups, women and national minorities. In addition, affirmative action programs were not limited to a period of time as their sponsors originally claimed, nor were they sustained only by the Democrats. Affirmative action was able to survive, if not flourish, during the Nixon and Carter administrations as well, which illustrates the continuity between contemporary liberal and conservative politics.

The Kennedy Administration and the Liberal Tradition

Well before the adoption of the Civil Rights Act of 1964, President Kennedy had set up the tone for the coming era of racial activism when, in a television address, he asked: “if an American because his skin is dark cannot eat in a restaurant, cannot send his children to the best public school available, cannot vote for the elected officials who represent him, then who among us would be content to have the color of his skin changed and stand in his place?”
(in Mills, 1994, p.12). The Kennedy administration estimated that the sociopolitical context was now favorable for the elaboration of a new sense of racial justice. The process of emancipation had already begun nineteen years before when F. D. Roosevelt issued Executive Order 8802 of 1943 which banned discrimination in the armed forces and war industries (Howell & Lewis, 2002, p. 1101). The following major step was taken by D. Eisenhower who issued a number of executive orders which forced federal contractors to take into account the diversity of races and ethnicities in their areas in their hiring policies.[9]

[9] For example, Executive Order No. 10479 (issued in August 1953) was meant to reinforce Equal Employment Opportunity provisions, forcing federal contractors to ensure that job applicants are hired without regard to race or national origin.

Kennedy was determined to give the Civil Rights Movement a new legitimacy as he lent it movement confidence and momentum. The new vision of the liberal elite was an ideal support to the mounting cadence of the struggle and an ideal frame of reference to those who needed an ideological stand. There seems to be a wide consensus today that it was the Kennedy administration which coined the phrase “affirmative action” when it issued Executive Order 10925 of 1963 which established the president’s Commission of Equal Employment Opportunity (CEEO) - in fact, another name for Roosevelt’s Fair Employment Practices Committee - and in which it recommended that “the contractor will take affirmative action to insure that applicants are employed, and employees are treated during their employment, without regard to their race, creed, color, or national origin” (Mills, 1994, p.13).

Title VII of the 1964 Civil Rights Act: the Controversy Over Equal Representation

It is important to note that the development of affirmative action into official “active legal […] efforts” with official quotas to comply with by employers and executive boards is due to a basic “misreading” of the terms of the order and Title VII of the Civil Rights Act
(Mills, 1994, p.11). Soon after the passage of the 1964 Act, civil rights activists began to see the underrepresentation of minorities in federal and state institutions as a blatant violation of the Act which had to be redressed immediately through proportional representation. Proportional representation was now controlled by the CEEO, and later by the Office of Federal Contract Compliance (OFCC), a federal committee created by the Labor Department in 1966 (Mills, 1994, p.11). The CEEO was growing more powerful while businesses holding contracts with the federal government were compelled to show that they reserved a substantial number of positions for minority applicants.

As the federal agencies and committees established their authority over federal contractors, the debate over the meaning of Title VII of the 1964 Act grew more intense. The debate turned around the legitimacy of racial balance and the real meaning and scope of Title VII. Denying that the title allows preferential treatment to minorities, the main sponsors of the bill asserted during the senate debate that “the title does not provide that any treatment shall be given to Negroes or to any group or persons” and that the Bill “would prohibit preferential treatment for any particular group” (Nieli, 2012, p.37). On the illegitimacy of racial balance, it was equally argued that “there [was] no requirement in Title VII that an employer maintain a racial balance in his work force [...] on the contrary, any deliberate attempt to maintain a racial balance [...] would involve a violation of Title VII, because maintaining such balance would require an employer to hire or to refuse to hire on the basis of race” (Nieli, 2012, p.36).

Whether they meant it or not, it was repeatedly stated that the discourse over social justice and equal opportunity should not veer into a racial discourse. But while moderate civil rights activists were trying to avoid the problem of representation, the more radical liberals were raising the controversial issue of historical wrong and past discrimination and segregation which had intimidated racial minorities for decades. “What affirmative action [was] doing,” they argued, “[was] making up for government policies - from slavery to Jim Crow to restrictive housing covenants - that were intentionally racist” (Mills, 1994, p.40). Affirmative action advocates were firmly intent on forcing the government to adopt active measures and radical policies. It was believed that race-neutral policy was inadequate to compensate the vast disparities between minorities and the white majority, an inefficacious tool to stop discrimination as “it is naive to think that after centuries of racism America can just adopt color-blind standards and expect the vestiges of racism to disappear” (Mills, 1994, p.40).

The Great Society and the Race Issue

The real thrust, however, came with the Johnson administration and the Great Society programs which squared perfectly with the spirit of the ongoing measures. Johnson believed that, after long years of deprivation and impairment, freedom was not enough for minorities to reintegrate American society. He declared that “you [cannot] take a person who, for years, has been hobbled by chains and liberate him, bring him to the starting line of a race and then say, ‘you are free to compete with all others’ and still justly believe you have been completely fair” (Mills, 1994, p.7).

This rhetoric was actually part of the President’s overall plan for his Great Society which, he said, rested on “abundance and liberty for all,” and which demanded “an end to poverty and racial injustice” (LBJ Presidential Library, 2017). Soon, the President’s integrationist philosophy was advocated by those who called for more positive government intervention and stiffer affirmative action plans. Race-neutral programs were now considered as “’a passive activity’ [which] no longer met the requirements of the federal government” (Mills, 1994, p.9). New regulations and requirements tightened even further the control of the newly created OFCC over federal contracts. Under the OFCC’s affirmative action requirements federal contractors had to provide a program which detailed “specific steps to guarantee equal employment opportunity keyed to the problems and needs of minority groups, including, when there are deficiencies, the development of specific goals and timetables for the prompt achievement of full and equal employment opportunity” (Office of the Federal Register, 1986). Although the new regulations did not specify exact quotas or numbers to be abided by, it was clear that contractors had to adopt such a policy. Formerly regarded as a criterion for exclusion, race now became “the basis for determining the extent to which inclusion had been accomplished” (Fernandez, 1997, p.9).

What was considered as a “counterrevolution” applied perfectly well to the judicial discourse of the 1970s after the Supreme Court began interpreting Title VII of the 1964 Act. Activism was already established as a basic feature of the judicial scene after the court’s decision in Brown (1954). But, as the nation’s “moral leader,” the Court saw that it should go beyond prohibition of discrimination to speed up integration. According to common criticism, however, the Court failed to provide tenable arguments in defense of its decisions which legitimized racial discrimination as when, in Regents of the University of California vs Bakke (438 U.S. 265, 1978),[10] it decided that the requirement of Title VII of the 1964 Act that “no person be discriminated against on grounds of race by institutions receiving federal funds” did not apply to discrimination against whites.

[10] University of California Regents vs Bakke: Refused admission to the University of California at Davis for two consecutive years, Allan Bakke, a white male, filed a suit against the university board on the grounds that he could have been admitted but for the university’s affirmative action plan which favored the less qualified minority applicants. The Court decided that admission quotas for minorities where unconstitutional. But in a second opinion, it stated that race, as a variable in admissions criteria, could be included. Bakke's application was nonetheless accepted.

In a series of decisions which marked the evolution of affirmative action for two decades to come, the Supreme Court maintained that racial considerations had to be taken account of in hiring programs and policies. In other words, setting aside quotas for minority applicants was not a violation of the provisions of Title VII as critics would argue. In Griggs vs Duke Power Company (401 U.S. 424, 1971), the Court ruled that an employer's admission standards could adversely affect the chances of a minority applicant to qualify for the position. Therefore, employers had to take into consideration the qualifications of minority applicants when setting their eligibility standards. This decision established the principle of "disparate impact" according to which special standards should be set up to enable minority applicants to compete for the proposed position. High standards were regarded as a sufficient proof of the employer's discriminatory policy. In defense of its decision, the Court declared that "the [1964 Civil Rights] Act proscribes not only overt discrimination but also processes that are fair in form, but discriminatory in operation" (FindLaw, 2017). When, in Bakke, the Court decided that the sixteen places reserved for minority applicants were "impermissible," it became clear that the Court was ruling according to the moods and whims of the Justices. The absence of a coherent logic behind the Court's decisions during the 1970s made a scholar declare that the Court was using "compulsory racial discrimination in the name of enforcing a prohibition against racial discrimination" while another university professor noticed that "it is increasingly difficult to pretend to one's students that the decisions of the Supreme Court are tied together by threads of logic and analysis - as opposed to what seems to be the fact that the decisions of the justices on the Court are tied together by threads of social preference and predisposition" (Mills, 1994, p.17).

Yet not until the Labor Department under the Nixon administration issued Order No.4, which redefined affirmative action, was the concept of underutilization any clearer as to the exact ratios that an employer had to adopt (Yuill, 2006, p.136). The new definition of underutilization was "having fewer minorities in a particular job class than would reasonably be expected by their availability" (Mills, 1994, p.11). The new ratios would equally be determined by "the percentage of minority work force as compared with the total work force in the immediate labor areas" (Mills, 1994, p.11). On the other hand, the qualification of affirmative action as "a set of specific and result-oriented procedures" conveyed the new approach to racial justice which was to be soon adopted by the Supreme Court. The "result-oriented" clause meant that every regulation or measure was acceptable so long as it amounted to integration. And race was an ideal weapon to get into the battle with. Shortly after, the Court declared (in Bakke) that "in order to get beyond racism, we must first take account of race" (FindLaw, 2017).

The Backlash

By the end of the 1970s affirmative action was strongly established, especially after the introduction of the Philadelphia Plan which, once and for all, established the quota system, officially requiring corporations and universities to set "numerical goals" before receiving federal funds (Premdas, 2013). But although it was an additional legal asset for liberal activists, the plan, among other legislation and programs, could not withstand the total backlash of public opinion against what came to be perceived as "institutional discrimination" (Glazer, 1987).

This was when, by the end of the 1960s, it became clear to white Americans, who initially approved the racial perspectives of the government, that the liberal democrats and the

Supreme Court were committed to expand beyond limits their visions on freedom and equality

while showing little concern with the problems affecting society as a whole. Poverty, unemployment, violence and many other social and economic problems were affecting whites as well, but the larger share of government programs, it seemed, went to the minorities (Glazer, 1987, p.13). In addition, the Court's decisions, especially during the 1970s, were growing unpopular since larger numbers of white applicants were being refused admissions to universities or certain positions although they were better qualified than minority applicants. Because of affirmative action programs, whites were becoming the new victims of institutional discrimination. The term "reverse discrimination" popularized the notion that it was now the minorities who were discriminating against whites. Despite the argument of the Kerner Report (1968),[11] an investigation on the conditions which led to the racial riots of 1967, that massive assistance programs should go to blacks and other minorities in order to reduce the social and economic disparities between them and the white population
(Haas Institute, 2017), affirmative action programs and other government programs directed at minority groups not only began to decline in number, but also the enthusiasm which accompanied their initiation began to ebb away.

The downturn began with the massive elections of Republicans to state and national legislatures, but also with the Supreme Court's reassessment of its earlier decisions. It soon appeared that the Rehnquist Court was moving toward a broader sense of social justice based on a closer reading and application of the Fourteenth Amendment provisions which prohibited preferential treatment on the basis of race, color, or religion. Overturning its decision in Griggs,[12] the Court ruled in

Wards Cove Packing Company vs Atonio (490 U.S. 642, 1989) that "instead of simply relying on statistical evidence of the reverse impact of presumed discriminatory practices," contending employees had to prove by themselves the specific cases where discrimination was practiced (Waugh, 1998, p.890). After Griggs vs Duke Power Company (401 U.S. 424, 1971), it was expected that the employer justifies his hiring policies if they had "reverse impact" on minority applicants. In Wards Cove, it was the person who claims to have been discriminated against who had to provide evidence for his claims. The Court's decision in Wards Cove was reinforced in almost all the cases that this Court considered in the nineties (Hunter &Shoben, 1998, pp.128-130). In a related case (Richmond vs J. A. Croson Co., 488 U.S. 469, 1989) which again marked the Court's position against preferential programs, the Court struck down a 30 percent set-aside plan by the City of Richmond, Virginia. In this case, the Court ruled that City Council's requirement that 30 percent of the funding for any contract be reserved to minority companies was unconstitutional.

Against the expectations of many social liberals and democrats, the Rehnquist Court's decisions in the race-conscious plans of the 1990s limited the use of preferences to two major situations: "social emergency" (to use Justice

[11] The report was issued by a presidential commission established by Johnson's Executive Order 11365.

[12] Suing Duke Power Company in a district court in North Carolina, Willie S. Griggs and a number of his black colleagues contended that employees in the company were using unlawful ways to exclude blacks from better paying positions. Black employees, they argued, were required to take a general intelligence test to gain access to certain positions. Losing their case in a district court, they raised it to the Supreme Court which held for them, declaring that the Civil Rights Act of 1964 prohibited "high school education or passing a standardized general intelligence as a condition of employment or transfer" if neither is "related to successful job performance."

Scalia's term) and/or in case there is clear evidence that the set-asides are used to compensate discrimination practiced against the potential beneficiaries. The principles of "social emergency" and "retrospective justice" were established in Croson and have been described as two versions of the "strict scrutiny" doctrine first applied by the Court in Adarand Construction vs Peňa (515 U.S. 200, 1995). In Peňa, the justices ruled that a "strict scrutiny" (Minowitz, 2016, p.148) had to be applied in cases involving race as a "positive factor" and that the use of set-asides was meant to serve a "compelling government interest" to be considered constitutional. The principle of "strict scrutiny" has determined the Court's decisions in discrimination cases since the late 1990s, such as in Grutter vs Bollinger (539 U.S. 306, 2003) and Fisher vs University of Texas (I, 2013, and II, 2016).

The late eighties also marked the government's clampdown on the federal agencies and committees, the watchdogs of affirmative action and its guardians. Unlike

Nixon, who chose to avoid direct confrontation with the activists of liberal legislation, Reagan was determined to restrict affirmative action plans and started by cutting the budgets of the federal agencies by a quarter and more (Detlefsen, 1993, p.559). President Reagan also vetoed the Civil Rights Reformation Act of 1988, which was nonetheless passed that same year (Curry, 1988). Reagan's opposition to affirmative action was taken over by Bush, Sr. who expressed his fear that affirmative action was driving the country into "years of uncertainty and expensive litigation" when employers are being unfairly obliged to adopt quotas to avoid being accused of discrimination (Devins, 1996, p.694). In effect, urgent economic issues stood behind both presidents' opposition to affirmative action. As its critics argued, affirmative action had negative effects not only on the white people immediately concerned with the refusal of their applications, but also on the economy as a whole since the employment of unqualified workers affected the competitiveness of the institution or the company.

The 1990s were a watershed for affirmative action in so far as skepticism about the wisdom and rationale behind it grew more impressive and politically more significant on both the state and national levels. Uncertainty pressured even social liberals, to reconsider their strategies in regard to the racial issue as a whole as when William J. Wilson asked in an article published in *The American Prospect* (1990): "Was the party committing political suicide by becoming too strongly identified with the aspirations of minority voters? Had America become so mired in racism that whites would desert the Democrats because blacks seemed to be running things?" (n.p.).

Questions about the wisdom behind preferential treatment are being persistently raised today by social scientists and economists who feel, now more than ever before, concerned with the issue after long decades of experimentation. In "How to Mend Affirmative Action," first published in *The Public Interest*, Glenn Loury wrote: "although departures from color-blind absolutism are both legitimate and desirable in some circumstances, there are compelling reasons to question the wisdom of relying as heavily as we now do on racial preferences to bring about civic inclusion for African-Americans" (in Mills, 1979, p.211).

Many hardline critics of affirmative action have recently acknowledged its contribution to the substantial academic and socioeconomic progress that non-white minorities have achieved over the past three decades (Kennedy, 2015, p.5). Some have even recommended preferential programs be based on socioeconomic status (Kahlenberg, 1997). It is worth noting, however, that since the early 2000s the debate on racial preferences has become significantly less intense and spirited as policy-makers gained experience and the wisdom to overcome the orthodoxies that they inherited from the ideological crusades of the sixties. For a large number of social liberals, ends no longer justified the means. Some of them were disillusioned by the decreasing popularity of racial preferences and ended up in the neoliberal camp (Lemann, 1992, p.212) while others have developed new reformist narratives centered on previously understated issues such as minority self-image and identity, the impact of favoritism on interethnic relations, and the social and economic repercussions of group favoritism on national unity.

Conclusion

Affirmative action is the brainchild of the mid-twentieth century "modern" liberals who were faced with the social, economic, and demographic challenges of the post-WWII era. The recognition of poverty and discrimination as principal causes of interethnic socioeconomic disparities was a major motivation for this generation of well-meaning policy-makers. In time, the welfare philosophy which grew out of the liberal politics of the age was to provide an ideological foundation for the this set of preferential programs which followed in the wake of the social reforms introduced during the same period.

The social liberals of the sixties centered their vision of social progress on group advancement, but because they failed to accommodate their increasingly unpopular egalitarian agenda, their political choices gradually lost much of their credibility. As affirmative action gradually lost public support, the policy architects of the Nixon, Reagan and Bush, Sr. administrations chose to ignore the coming conservative tide of the latter part of the century. For by the early nineties, it was no longer a secret for liberal decision-makers that "a majority of whites" opposed race preferences, both in academe and hiring, that the government had gone "too far in pushing equal rights" (Devins, 1996, p.698), and yet they did very little to reform their integrationist agenda.

Affirmative action could have survived the political and judicial backlash had its advocates been more attentive to their opponents' calls for reform. After all, the barriers of color and ethnicity up to the civil rights era seemed almost unsurmountable, and therefore the public policy reforms introduced by this new generation of well-meaning liberals had every reason to be encouraged. Affirmative action may have definitely been one of the most honorable attempts at redressing interethnic economic disparities in a supposedly meritocratic system, but as historian Jared Taylor (2004) has pointed out, "perhaps nowhere else in [American] society have good intentions gone so sadly wrong" (p.123).

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