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Affirmative Action: Quotas and Traditional University Standards with Particular Emphasis on the Role of the Department Chairman

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The higher educational institution is often an exclusive citadel. Students are selected after close scrutiny of past achievements. Teachers as merchants of ideas, virtues, and cosmic thoughts are invited to membership only after certain academic passports have been acquired. These eligibility criteria are established by the faculty who, presumably, are the only ones capable of assessing reasonable standards for those seeking admission. Colleges and universities are closed sub-communities. They practice discrimination while giving lip service to liberal thought, knowledge, and enlightenment. It comes, therefore, as little surprise to clear thinkers that the house of intellect leads the parade of culprits who perpetuate systems of discrimination against blacks and women. Such discrimination is made unique because it is inclusive of students as well as teachers. The exclusion of students, for the most part, is based on results of biased instruments; black teachers are excluded because their credentials are defective as determined in various ways by academy members. Even if the faculty gate is open to women or blacks, they are often given subjugated positions in the hierarchy.

This article analyzes equal employment and the role of the department chairman as regards affirmative action. The recent proliferation of comments concerning federal legislation and effects of executive orders in the equal employment arena, make another discussion presently superfluous. Therefore, origin, history, and validity of affirmative action are not, in the main, primary concerns of my efforts.1

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Affirmative action as the proper means of dealing with academic employment discrimination, beneficial effects of affirmative action or feasibility of federal involvement in academia are touched upon only insofar as they aid in explaining the current dilemma of the department chairman. In a word, the chairman's position, in this paper, is examined in respect of traditional concerns in the new context of equal employment as mandated by law and legislation. Different yet effective modes of performance are thereby suggested in attempting to aid the department chairman in meeting the challenge of compliance. In this regard, then, hiring practices, tenure, blacks, women, and the Ph.D. are revisited as old unhealed sores.

CHAIRMAN'S POSITION

The department chairman is comparable to the Master Sergeant in the Army. He is seemingly not needed; yet he runs the company. The enlisted men look up to him; the officers look down on him. The distasteful jobs are filtered down to him for execution. The chairman is the decision maker, enforcer, and implementer of administrative details. The position is important because these details cannot be delegated to anyone else. The chairman occupies a peculiar and anomalous position because he is perceived so differently by different segments of the university. He is viewed by many of the faculty as the shop keeper who cannot do anything else; he's the “ninety day” wonder to the busy haired neophyte who naively sees him as the master teacher, researcher or genius. The administrators harbor a dislike for him because he must be closely watched and checked to keep his aspirations from exceeding his position. He is either appointed by administrators above him or elected by senior tenured members of his department. Therefore, he serves at the whim of either the faculty or the administration; he can be retired, ousted or fired at any given moment without any semblance of due process. He performs what he perceives to be his job—specifications for it are never published—because unlike everyone else in the academy, the chairman does not have a “laundry chute.” For instance, at a recent midwest state-wide University Workshop on Affirmative Action, deans, chancellors, project directors, and presidents were in attendance. Department chairmen were neither invited, mentioned in any of the proceedings, acknowledged as members of the administrative team, nor in attendance.

The chairman's view of his position, on the other hand, is that of a pillar without which the university would disintegrate. He sees himself as controlling recruitment, hiring, salaries, teaching loads,
teaching schedules, and tenure thereby creating the fiction of wielding great power over his empire. More often than not this is a simple pipe-dream. The mundane aspects of the job are dismissed: answering the telephone, observing deadlines, refereeing fights between professors, making certain that grades are turned in before professors leave, suffering fools, and engendering happiness or satisfaction among the peacocks in the department. The chairman, then, looks at the rewards of his position as stimulating and “absolutely fascinating.”

AFFIRMATIVE ACTION

It was only natural because of hiring responsibilities of the department chairman for him to be charged with effecting the affirmative action scheme. However, the chairman is not the designer of any policy; he merely carries out its mandates. But the cancer of inequality lies very deep in the history of higher education in this country. If colleges and universities had not been hypocritical in attempting to solve previous problems and if simple canons of good faith had been observed, presumably the concept of affirmative action would not be a bugaboo to administrators today. For instance, a nexus may be made between the turbulent past and the metamorphosis of affirmative action. In response to the revolts of the 1960’s and early 1970’s black students were hurriedly admitted to white institutions. Because of prior genealogical disassociation with these institutions black students were able to view objectively many aspects of academia which were taken for granted by white students. Objectivity surfaces problems which need answers. Therefore, it was due to the many policy contradictions of multiversity and the resulting frustrations of black students that demands for the hiring of black professors and the establishment of black studies departments were made. Students cried for relevance. Appeasement instead of good faith followed. The problem, then, still remains today quite simple: administrators (white males) are not convinced that blacks should be on their faculties.

Although the chorus is singing the affirmative action anthem, which had its genesis in the 1964 Civil Rights Act in response to the revolts mentioned above, the problem has not been solved to any appreciable degree. The chart below indicates the unwillingness of the typical university to conform with the spirit of Executive Orders or legislation. Many institutions plainly refuse to publish such data thereby avoiding embarrassment. These data from the University of Maryland are indicative of the kind of full length mirror view which all institutions ought to take and make available to the public.
Notwithstanding the negligible attempts made in equal academic employment and proclamations that affirmative action signals the demise of American institutions for higher learning, the department chairman is currently in the center of the storm. Administrators can no longer puppeteer the lowly chairman, for indeed the sacred concepts in the intellect household must now stand muster. The charge is not an easy one for scholars to accept if only because it has taken 800 years for the university to achieve its exalted status. These are moments for serious business. Such troubling times were evident during the recent confrontation between Harvard, the flagship in American education, and government compliance officials. Harvard officials refused access to personnel files by compliance investigators on the grounds of academic freedom—a sacred concept in the academy. However, after several weeks of verbiage Harvard immediately agreed to comply with federal demands upon the threatened termination of its sixty million dollars in government grants and contracts. Yet, there are major institutions today without equal employment programs. The thinking, perhaps, is that somehow they will escape the hatchet of compliance. This is a foolish position, indeed, for scholars to assume. The reckoning day is not afar. And administrators cannot afford to stand aside any longer and point fingers at the department chairman in the “buck passing” fashion, tradition notwithstanding. The point is that the magnitude of equal employment is too enormous to be left to the department chairman alone. The responsibility must be shared by all administrative personnel instead of just shifting this duty to the chairman. Reluctantly, the chairman now be considered and accepted by the hierarchy as a member of its administrative team. Expediently, his job, then, shifts from impossible to difficult for it is he who, ultimately, must execute and justify the employment scheme. Hopefully, in the effort
to eliminate present effects of past employment discrimination, guidance, support, and good faith will be forthcoming abundantly from his new-found peers in the administration.

RECRUITMENT

The Higher Education Guidelines define recruitment as a process by which a department develops its applicant pool so that hiring decisions can be made. Traditionally, recruitment has been by word-of-mouth and reliance upon advice of other "respected" members in the various disciplines. Such closed conduits, by design, automatically exclude minorities. Even where qualified minorities have been located, their candidacies rarely seep into the recruitment channels.

It follows, then, that these formerly used recruitment practices must be discarded for they have served to perpetuate a distasteful practice. Other means of recruitment must be explored. Guidelines suggest:

a. advertisements in appropriate professional journals and job registries;
b. unsolicited applications or inquiries;
c. women teaching at predominantly women's colleges, minorities teaching at predominantly minority colleges;
d. minorities or women professionally engaged in nonacademic positions, such as industry, government, law firms, hospitals;
e. professional women and minorities working at independent research institutions and libraries;
f. professional minorities and women who have received significant grants or professional recognition;
g. women and minorities already at the institution and elsewhere working in research or other capacities not on the academic ladder;
h. minority and women doctoral recipients, from the contractor's own institution and from other institutions, who are not presently using their professional training;
i. women and minorities presently candidates for graduate degrees at the institution and elsewhere who show promise of outstanding achievement (some institutions have developed programs of support for completion of doctoral programs with a related possibility of future appointment);
j. minorities and women listed in relevant professional files, registries and data banks, including those which have made a particularly conscientious effort to locate women and minority persons.
Department chairmen have utilized increasingly the search committee device which is alleged to encompass good intent in both recruitment and in hiring. On the other hand reverse discrimination has been claimed by traditional academy members as an indication of the inherent evil intent. For instance, Sydney Hook\cite{hook} asserted this position when he wrote that those in charge of equality were advancing the same "racism and discrimination the Executive Order was issued to correct." However, the Supreme Court in a landmark decision, *Griggs v. Duke Power Co.*,\cite{griggs} stated that the objective of Title VII "was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees." Further, practices which appear to be "neutral in terms of intent" in that they are applied equally and not intended to discriminate, cannot be maintained if they result in discrimination. The point is that good intent, evil intent or even the absence of discriminatory intent is of no significance; also, reverse racism is of no moment for the objective of Congress was to reverse past practices. Such practices simply "cannot be maintained if they operate to 'freeze' the status quo of prior discriminatory employment practices."

Recruitment then, must now be shifted from the jealously guarded secret ritual, word of mouth referrals, inquiries to select graduate schools, and hotel-suite interviews at professional meetings, to an open and public procedure. Not only must advertisements and inquiry letters state that institutions embrace equal employment opportunity procedures but good faith and sincerity must be intertwined with these proclamations. The search committee system must not be allowed to become the culprits or barriers to total affirmative action. For instance, if "the typical black Ph.D. who teaches in a university receives sixteen new job offers a year,"\cite{typical} it can be noted that at least twelve of these offers are sent only for the purpose of "building" the inquiring search committee "affirmative action file." It thereby becomes expedient for the search committee to maintain these letters of inquiry so that they can serve as proof of effort to achieve minority-group hiring. On its face, it seems that effort is being made yet it may be that in practice it is the same traditional tactic dressed in new garb. Good faith and sincerity may be missing. To test good faith it becomes increasingly necessary to look at the fruits of recruitment. Remedies must be inherent in any program bent on eliminating discrimination.

Institutions must set employment goals and timetables to accomplish such goals in regard to appropriate remedies for the elimination of employment discrimination. Some commentators view these goals as "quotas" or "preferential treatment." What these commentators refuse

\cite{125}
to see, however, is that these numerical means are necessary vehicles for remedial treatment of the obvious fester problem of equality in employment. In fact the Court\textsuperscript{12} made this clear when it noted that if things were equal, certain remedial practices might not now be necessary or appropriate. But all things can never be equal where segregation or discrimination exists. The remedial pains may indeed be “inconvenient and even bizarre in some situations and may impose burdens on some; but all awkwardness and inconvenience cannot be avoided in the interim period where remedial adjustments are being made.”

In another case the Court\textsuperscript{13} specifically endorsed the use of a mathematical racial ratio as a starting point in a remedial process to negate the discriminatory effects of faculty assignments.

What must be realized is that where discrimination exists, it must be eliminated. The particular remedial means utilized must, therefore, be appropriate to this elimination. Unfortunately, such terms as “quotas,” “reverse discrimination” and “preferential treatment” connote many meanings to many persons. However, the fact of life presently is that discrimination means more than evil intent or inequity; it is inclusive of remediation which concerns goals, timetables, quotas or whatever fits one’s ilk.

Moreover, the sad state of affairs as regards institutional sincerity in respect of equal employment is noted in the current excessive anxiety academicians display while awaiting the Court’s decision in the pending case of \textit{Defunis v. Odegaard}.\textsuperscript{14} This case involves the use of preferential admissions policies to increase the number of minority students attending college. Marco Defunis, Jr., a white student, claimed that the University of Washington violated the equal protection clause of the 14th Amendment by refusing him admission to its law school, while admitting 38 minority students who he allege were less qualified.

This attack on the admission quotas has broad ramifications for the academic world. The case could have bearing on similar quota situations involving the hiring of faculty members. Therein lies the cause of the excess academic adrenalin. For instance, the Guidelines imply that colleges must enroll minority students so that their recruitment pool, presumably of minority student graduates, will be sufficient thereby negating the cry that minority applicants do not exist. Such move would also be in compliance with the federal mandates. If, then, the Court rules against quotas the academy may be relieved of its duty of maintaining a recruitment pool of minorities. The irony is twofold: (1) the house of intellect is praying for the Court to relieve it of its dilemma; and (2) institutions, by and large, are simply insincere in their efforts to correct past practices merely by allowing the Court to perform a Board of Trustees function.
BLACKS

There are various aspects of hiring standards that work against interests of specific groups of people. Standards such as education level and experience may well be valid if legally applied. However, standards which prohibit employment of applicants because of any prior garnishment proceedings or that an applicant not have an arrest record, invariably exclude more blacks than whites. The point is that it is unusually difficult for blacks to survive squalid ghetto life compounded by crippling educational backgrounds without avoiding contact with law enforcement agencies. Therefore, any such exclusionary standards are illegal unless it can be clearly established that the desired requirements specifically relate to job performance for the particular positions for which applicants are being sought. Moreover, to use arrest records to exclude applicants is clearly illegal unless specific job relatedness can be proved.

Simple intelligence would indicate, even to wayfaring fools, that if blacks have survived in spite of backgrounds designed for failure and have come through and reached points of eligibility for admittance to recruitment pools, the plain fact of survival denotes signs of toughness probably predictive of achieving success in employment. Further, the spin-off or residual benefits of associating with such persons can add valuable dimensions to lives of others. It comes as little surprise, then, that there are fewer than 3,000 black Ph.D.’s in the entire country. The Court, therefore, is now demanding that exclusionary standards—whatever they may be—not be used to deny equal opportunity in employment. Yet, higher educational institutions insist on “foot dragging” instead of providing leadership in this arid area of human rights. Nonetheless, this is a fertile field for the department chairman to assert his new position as drum major for equal employment opportunity. Backed by the Office of Civil Rights, judicial unrest in the area, and possible government sanctions regarding noncompliance, the chairman, assuming sincere conscience, can now shake the very foundation of multiversity into a realization of its proper role in the societal matrix.

Ph.D.

It is without question that the acquisition of a Ph.D. certifies the holder for recognition in the academic world. Without such a credential one is voiceless within the cloistered sanctuary. The credential signifies, therefore, that the holder has acquired the requisite level of competence such that his peer group view him as a “qualified” member of the faculty.

This concept of the Ph.D. is peculiar when viewed in light of recent social change. The institution, acceleration, proliferation, and final
demise of black studies programs serve as a case in point. The advent of these programs was in direct relationship to appeasement of black students during the period of social unrest. The academic community never accepted the programs because the faculty was unqualified—no Ph.D.'s. The teachers who were hired were not "qualified," therefore they were never accepted within the inner circle of academia. A few of these unqualified blacks were given subordinate positions such as "Special Assistant," "Assistant Dean," "Vice" and so on. This was necessary in order to display institutional good faith, however empty. The few black Ph.D.'s who accepted black studies positions were placed in offices which were not challenging; many were simply misplaced for more harm than good was accomplished. They did more "strutting" than changing.

Be that as it may, the *Griggs* case and its progeny will undoubtedly change the concept, role, outlook, and view of the sacred Ph.D. in the academy. If it is thought that the Ph.D. is needed to join the club of scholars, then it is a test which one must pass in order to be an acceptable member. *Griggs* is significant because it is the only testing case in which the Court has spoken. In a word, the company in *Griggs* required that applicants achieve a certain level of education and a satisfactory score on two tests. The Court held that neither test was directed or intended to measure ability to learn or perform a particular job or category of jobs. In fact, neither the test nor the diploma requirement was shown to have a demonstrable relationship to successful performance of the jobs for which it was used. The Court then struck down non-job-related tests as having a discriminatory impact. It noted that "what is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate individually to discriminate on the basis of racial or other impermissible classifications."

Moreover, qualifications which measure the person for the job are the applicable law. The test and diploma in *Griggs* can be analogized to the Ph.D. requirement for employment in higher education. It, in most if not all instances, measures the person in the abstract. It is an "unnecessary barrier" which is "arbitrary," "artificial," and has no relationship to job-performance ability. The fact that the mere acquisition of a Ph.D. "qualifies" one for almost any job in the university indicates it meaningless relationship to a job. Further, the fact that there are so few black Ph.D.'s in a population of over twenty million backs is indicative of persons being measured by abstract scales. Needless to say, race, religion, nationality, and sex are irrelevant; qualifications control.
The problem with the Ph.D. is that it is not related to job performance. If the academy insists on its acquisition it is highly probable that proof of its validity to a particular job must be shown in any action where a plaintiff alleges that it has a discriminatory effect. The burden of proof for the institution is indeed great. To avoid such a confrontation multiversity must reevaluate and reassess its valued prize—the Ph.D. It appears to have very little legal significance; therefore, it warrants discarding. Or, at best, removal of its arbitrariness. Absent such needed revision the Ph.D., much to the chagrin of traditionalists, will become a casualty. In *Griggs* the Court may have sounded the death-knell of such credential when it stated that "history is filled with examples of men and women who rendered highly effective performances without the conventional badges of accomplishment in terms of certificates, diplomas, or degrees... (therefore) they are not to become the masters of reality."

**TENURE**

Another sacred credential in academia is that of tenure. Its practice became widespread during the nineteen-twenties as a means of assuring faculty's right to teach and pursue inquiry free from pressure from administrators, trustees, politicians, and other outside groups. The process is generally referred to as the "up or out." That is, a faculty member works on probation for a specified number of years. At the end of this time, he is either granted the prize of tenure or his contract is not renewed. Once tenure is awarded, however, the faculty member holds a continuous appointment until retirement, voluntary resignation, or death.

At the outset tenure was based on credentials (Ph.D.), rank, and experience. (These criteria which the *Griggs* court said tend to perpetuate past practices.) After World War II higher education boomed and the eligibility requirements were disregarded or abandoned. Tenure, then, became automatic upon completion of the probationary period.

During the early 1970's college enrollments began to level off, while graduate schools continued to produce holders of Ph.D.'s. Liberal curriculum reforms eliminated many of the traditional courses in departments which were heavily staffed in anticipation of steady enrollments. Then, state legislatures began to trim higher education appropriations which led to cutbacks in academic programs and jobs. In light of these developments various devices were employed to halt the academy from becoming "tenured-in." Also, affirmative action had entered the scene.
Most faculties, by this time, had granted tenure to a substantial percentage of its members. This meant that affirmative action could not work for to appoint minority group persons and women to faculty positions, positions simply must be available. Tenure, then, limits turnover of faculty. Consequently, few positions remain to be filled. The ramifications of the Griggs case are many. The Court stated that practices, procedures or tests neutral on their face cannot be maintained if they “freeze” the status quo.

Tenure, indeed, does to a great extent “freeze” the status quo thereby limiting employment opportunities. Furthermore, the few available positions may well be in nonpermanent and junior positions therefore limiting promotions. Moreover, the increase of faculties in becoming unionized only serves to place them in a traditional union mold. As a result tenure is viewed, perhaps, as a seniority system related to security of jobs. In this regard there is outright discrimination and the Court may order the tenure system reformed or abandoned.

The grief, again, lies in the fact that the Court is called upon once more to serve as the Board of Governors.

WOMEN

Perhaps the most asinine, inconsiderate, and discriminatory incident in modern American politics occurred when the idea of prohibiting sex discrimination came on the scene. Sadly enough, it has been noted that when the ban on sex discrimination was introduced in Congress in 1964, it was considered to be a joke by the Southern legislator who introduced the Bill. It was viewed as a “clutter” to the Civil Rights legislation. In fact the sponsor of the Bill in the House of Representatives, Emanuel Celler (D-New York) was defeated ironically in the 1972 election by a woman. He referred to the sex amendment as “illogical, ill-timed, ill-placed, and improper.” One of the latter day advocates of sex equality Edith Green (D-Oregon), initially opposed its passage.

Nonetheless, the Amendment carried making sex discrimination as illegal as racial discrimination. Title VII, then, bars sex discrimination in any respect and makes it illegal to limit positions to one sex unless sex is a “bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise.”

There are many dimensions to the problem of sex discrimination: childbirth; child care; anti-nepotism policy; promotion; and many others. In a way, sex discrimination is more blatant than racial discrimination for the variable of seriousness of purpose is involved. And also, the ageless game of vying two disadvantaged groups (now it is
blacks vs. women) against each other for positions is being replayed. This smells of the same tactics which put poor blacks against poor whites resulting in “Jim Crow” and “White Supremacy” in nineteenth century America.

The department chairman is, therefore, charged with negating this conflict between, say, blacks and women for the few faculty positions. The fact that blacks and women have had similar degrading experiences, because they have not been white males, must be kept in mind when the department chairman reforms the university.

CONCLUSIONS

The role of affirmative action rests upon the shoulders of the department chairman. If the academy is to survive the turbulent future it will be due, in large measure, to the efforts of the chairman.

Multiversity can no longer afford the luxury of running itself. The lack of appropriations, the leveling of enrollments, the unionization of faculty, and the continued unrest of students signal the need for reassessments of the role of sanctuary institutions in society. If equal employment opportunity is to exist, then equal educational opportunity must be a prelude.

It has not been too long ago since the ministers of higher education advocated noninvolvement of federal funds in education. Strangely enough multiversity cannot presently exist without these funds, subsequent “strings” notwithstanding. But affirmative action is not overbearing. It only encompasses human dignity and human rights for individuals who, in the past, have been purposely neglected.

The president, say, of the sanctuary is too far removed. His presence in academia is respected, but his word is regarded with little import.

The dean is removed to the extent that he speaks without knowledge of the ideals of the faculty.

The department chairman who heretofore held an equivocal position between the faculty and the administration, is now the person to be consulted. It is because of affirmative action that his role has been defined to the point that he alone has ultimate responsibility for the success or failure of the equal employment opportunity program.

It goes without saying that each institution has its own peculiar fact situation. However, the lessons of the Court are far from hazy. It is high time that the cloistered halls of the intellect change steps to the beat of society.
FOOTNOTES


3. *Id.*


16. *Id.* Note 10.