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**Affirmative Action in United States Higher Education:  
Moving Forward or Falling Back?**

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## **Abstract**

This paper presents a review and discussion of affirmative action in the United States. It begins with a brief history by introducing relevant legislation and moves into a discussion of the changing dynamics of affirmative action from the initial enthusiasm (and the initial resistance) of the 1960s and 1970s to the “backlash” of the 1990s to the rather ambiguous undercurrents of the first few years of the new millennium. The main focus of the discussion is the consequences of affirmative action and an assessment of the positive and negative implications of those consequences.

The perceived effects of affirmative action on women in United States higher education are varied and difficult to clearly identify; more research is needed to clarify the link between university affirmative action policies and women on campus. Specific examples of the impact of affirmative action on individual universities are also included to add depth and detail to the more general discussion.

## **Section 1: Introduction**

When I was growing up, my mother always told me that anything boys can do girls can do better. She was a single woman supporting herself and a child in the 1970s and fought hard to make ends meet in what she called a “man’s world.” Perhaps because of her struggles, I felt very supported in my education and was encouraged to complete tasks and think big; I believe this encouragement and support would have stayed constant whether I chose to study mechanical engineering or modeling or anything in between. Over time I began to realize that I was lucky and not all children are so supported and encouraged. Some lives are full of missed opportunities and abandoned goals. Inequality, whether perceived or real, breeds discontent and the United States has a long history of protest, debate, and legislation which I have heard and read about but do not really understand. It seems that this is common, and many university-educated men and women form opinions about policy initiatives like affirmative action without much background knowledge.

In 1995, a group of researchers from the Higher Education Research Institute at the University of California Los Angeles drew survey responses from over 200,000 freshman students at colleges and universities nationwide (Sax, et. al., 1996, p. 3). A definition of affirmative action was not provided and student respondents were confused about the issue, regardless of gender and ethnicity. Ambiguous responses to questions about affirmative action seem to indicate that “students may not clearly understand what affirmative action means or what it is intended to do” (Sax, et. al., 1996, p. 21). The confusion of student respondents in this study may indicate a larger problem of policy initiatives going forward without informed support or informed opposition. In the absence of clear definitions and boundaries, the issue of how affirmative action will impact and shape higher education in the United States is central to the discussion presented here. Equally important is how affirmative action began and has been extended in scope with implications for women, particularly women in U.S. institutions of higher education.

## **Section 2: What is Affirmative Action?**

The American Association for Affirmative Action offers a definition: “Affirmative Action refers to positive steps at increasing the inclusion of historically excluded groups in employment, education, and business. Such steps are not designed to offer preferential treatment to, or exclude from participation, any group. To the contrary, Affirmative Action policies are intended to promote access for the traditionally underrepresented though heightened

outreach and efforts at inclusion” ([www.affirmativeaction.org](http://www.affirmativeaction.org)). This is only one of many definitions floating around; some incorporate more direct language and refer specifically to women and minorities as groups that have been historically underrepresented. Individual institutions of higher education are responsible for establishing their own programs and policies, which operate under the very broad umbrella of affirmative action.

Affirmative action can take many forms. Some colleges and universities appoint special offices and staff for equality and equal opportunity issues; others do not. Programs that operate with affirmative action in mind may include quota systems, earmarking of employment openings, and fund allocation. There is surprisingly little information available about affirmative action policies at individual institutions; the policies themselves are relatively transparent, but the details of how the policies take effect and work within the structure of the institution are unclear, as is their impact on women. It is on the basis of perceived “preferential treatment” mentioned in the definition above that affirmative action is so often under attack.

## **Section 2.1: Historical Overview**

It was President John F. Kennedy in 1961 who signed the first order containing the words “affirmative action,” but the application of the order was limited to issues of employment based on “race, creed, color, or national origin” (Glazer-Raymo, 2007, p. 162). Kennedy’s successor, President Lyndon B. Johnson, spoke at Howard University in Washington, DC in 1965. His speech reinforced affirmative action in the wake of the Civil Rights Movement. “You do not take a person who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, ‘you are free to compete with all the others’ and still justly believe that you have been completely fair...” (VanBurkleo, 2001, p. 272). Despite his choice of words, did President Johnson intend for women to also to run in this metaphorical race? Apparently so: in 1965 and 1967, President Johnson signed Executive Orders 11246 and 11375 which added sex “to the list of groups singled out for scrutiny and protection” (VanBurkleo, 2001, p. 272). The orders still applied only to employment and the workplace, but activists for women’s rights saw an opportunity to open other doors.

Title VII of Executive Order 11246 was extended in 1971 to include higher education employees and the Equal Employment Opportunity Commission (EEOC) was given “investigative authority” over college and university affirmative action plans (Glazer-Raymo, 2007, pp. 163-164). But it was Title IX, signed into law in 1972 and enacted in 1975, that allowed affirmative action policies into the lives of female students on college and university campus. “No person in the United States shall, on the basis of sex, be excluded from

participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving Federal financial assistance” (Glazer-Raymo, 2007, p. 164). This, of course, includes all public and most private institutions of higher education in the country. Even though the effects of affirmative action are much more far-reaching than the realm of higher education, it is on the basis of Executive Orders 11246 and 11375 and subsequent Amendments that legislation regarding affirmative action policies at United States colleges and universities is still being argued and decided.

## **Section 2.2: Legislation**

Perhaps surprisingly, the first case before the Supreme Court that tested the legal boundaries of affirmative action policies in United States higher education was brought by a white male student. In 1978, Allan Bakke “claimed that he was wrongfully denied admission to medical school at the University of California to make room for less qualified minority applicants” (Garrison-Wade and Lewis, 2004, p. 24). The Court ruled that quotas violate the Fourteenth Amendment and are thus unconstitutional; it also ruled that institutions of higher education may take race into account when considering applicants for admission (Garrison-Wade and Lewis, 2004, p. 24). This is extremely controversial because it has paved the way for “tailoring undergraduate and graduate minority admission policies” (Glazer-Raymo, 2007, p. 164). If colleges and universities are, in some cases and under certain conditions, permitted to consider race as a factor for admission, might they also be permitted to consider gender? While this possibility does not seem likely and has never been legally tested, the Bakke case could be viewed as a rather dangerous precedent; even more potentially dangerous is the fact that the Bakke decision has been re-affirmed more recently.

In 2003 Barbara Grutter, a white female, filed suit against the University of Michigan Law School. “Like Allan Bakke more than twenty years earlier, Grutter based her case on the fact that she had achieved higher grades and test scores than other minority applicants who gained admission” (Douglass, 2007, p. 238). The Court decided that a point-based admission system is unconstitutional and in violation of the Fourteenth Amendment, but upheld the law school’s “holistic” approach to the admissions process, in which race and ethnicity are taken into consideration (Douglass, 2007, p. 238). Although higher education policy is usually a state affair, the United States Supreme Court continues to uphold affirmative action policies at the federal level. The autonomy of state governments and individual colleges and universities to enact and retract their own affirmative action policies is causing a clash with the federal

government. This is exemplified in a separate section by the affirmative action situation at several universities in California.

### **Section 3: Support and Opposition**

“At least initially, affirmative-action policies within America’s vast collection of public and private colleges and universities had a profound effect on the socioeconomic mobility of minority groups and women” (Douglass, 2007, p. 153). Affirmative action started out looking like a good solution to a very big problem and was even considered the “inverse” of discrimination (Verba and Orren, 1985, p. 6). Initiatives went forward and the presence of affirmative action measures became an integrated part of university policy. With the view that diversity enriches learning environments, many colleges and universities still consider race as an admission factor; this practice has been upheld by the Supreme Court in the Bakke case (1978), the Grutter case (2003), and other similar cases. Unfortunately, this has created a nasty backlash propelled by those who believe that “affirmative action is no longer appropriate in today’s society and claim reverse discrimination against white students” (Garrison-Wade and Lewis, 2004, p. 25).

From a feminist point of view, the problem is not with affirmative action policies but with the entire higher education system and how that system is structured. Also from this point of view, so-called “reverse discrimination” is symptomatic of the higher education system rejecting affirmative action. “The purpose of affirmative action is to undo a preferential system of positive discrimination not to create a preferential system of positive discrimination” (Roberts, 1984, p. 212). One danger of vigorously embracing affirmative action from the beginning is that “progress may actually be slowed down once a few rapid changes have occurred in the spotlight of attention” (Roberts, 1984, p. 214). It is suggested that this may have happened as early as the late 1980s when many public and private universities “expanded programs and staff to recruit and retain underrepresented minority groups” and yet “enrollment of these groups reached a plateau” (Douglass, 2007, p. 153). Affirmative action plans may need to be re-thought in order to remain effective.

In the midst of statistical evidence that seems to demonstrate the effectiveness of affirmative action and undercurrents of negativity about the direction and purpose of existing policies, a whispered and cautious question has emerged: Is affirmative action working? Among the possible implications of the 1978 Bakke decision was the idea that “affirmative action programs seemed to be in trouble” (VanBurkleo, 2001, p. 280), which could be slowly proving true. Most United States colleges and universities continue to invest time, money, and personnel in affirmative action programs and policies. If these programs and policies have become

accepted as a “given”, complacency and monotony may be replacing the initial momentum and enthusiasm.

In the early to mid-1980s, affirmative action measures seemed to be having a positive effect on the recruitment of women, although salary and rank were “unequally rewarded” (Roberts, 1984, p. 216). Government attempts to enforce affirmative action at the time were not very effective and it has always been suggested, and is still being suggested today, that affirmative action is not the best framework for the advancement of women in higher education. Although affirmative action measures are typically aimed at minorities of both sexes, affirmative action policies as they affected women were viewed as better than nothing, “but by no means as successful as one might hope” (Roberts, 1984, p. 216). So, affirmative action policies and programs might not be the most direct or positive solution for gender equality, but what if they suddenly disappeared and affirmative action was overturned?

### **Section 3.1: Affirmative Action Inaction in California**

The affirmative action student opinion study outlined in the introduction may have been conducted with an ulterior motive. The year the study took place, 1995, was the same year that California was preparing to vote on controversial Proposition 209, which if passed would effectively overturn affirmative action. Anger and protest about the Prop 209 decision came from two places: California’s universities and the public community. The point of contention in the community outside the universities was the use of information. Regent Connerly, a businessman and University of California governing board member, spearheaded the Prop 209 campaign and “focused exclusively on the morality of using race in admissions decisions and on any data that showed affirmative action was essentially a misguided policy” (Douglass, 2007, p. 159). There was growing concern in the academic community that those who would decide the fate of Prop 209 and affirmative action in the state of California were only being told half the story. Was the public misinformed and would the vote be fair?

Inside California’s universities, the storm of controversy caused by Prop 209 blew the dust off affirmative action and caused individual institutions to examine their own policies and programs. Equality and affirmative action committees existed at each university but in some cases met only once a year (or never), were made up of faculty who were only “remotely aware” of the committee’s purpose, had no authority to implement or run programs and only “marginal influence” (Douglass, 2007, pp. 159-160). Evaluating their affirmative action policies for the first time in years led California’s universities to come together and speak for the strength, diversity, and success of the various programs at each institution. “The affirmative action

programs undertaken by the University of California have made the University a better institution by making it a more diverse institution in terms of gender, racial, and ethnic makeup of its faculty, students, and staff” (Douglass, 2007, p. 173).

Under threat, universities in California renewed interest in affirmative action measures but renewal was unfortunately not the goal of the public debate. With different motives and more public support, perhaps the outcome could have been different. California’s universities were too late or too quiet to put out the fire caused by Prop 209 and it passed. Affirmative action ended in California and several other states have followed the precedent set by the state. It is not clear what effect this will have on women in California’s universities, but the need for research is apparent and the situation should be monitored.

#### **Section 4: Conclusion**

Former President George W. Bush appointed two very conservative justices “tipping the judicial balance of power away from women’s rights, gay rights, and civil rights” (Glazer-Raymo, 2007, p. 165). Despite this, the Supreme Court has voted to uphold affirmative action policies at individual institutions of higher education more than a few times. The Supreme Court has also ruled quotas unconstitutional many times over, yet they continue to be mentioned in association with affirmative action and even used to define it (Verba and Orren, 1985, pp. 83-85).

Now several states have voted to overturn affirmative action and the role of the federal government is called into question.

How will the Supreme Court vote if faced with a decision about gender in the admissions process? Will the Bakke (1978) precedent continue to be upheld? Will the federal government interfere with individual state votes and enforce affirmative action at the federal level? If not, what will be the next step for women and activists who view the end of affirmative action as the beginning of the end for equality measures? Challenges for future institutional research include evaluating and breathing new life into existing affirmative action policies *before* public attention is drawn away from the possible benefits to women and toward measures like Prop 209. It will also be necessary to monitor the effects and implications of Supreme Court decisions at individual colleges and universities.

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