

WHY I OPPOSE THE MICHIGAN CIVIL RIGHTS INITIATIVE*

Thomas E. Weisskopf

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“Should a Free Society Allow Affirmative Action Preferences in Higher Education?” –
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We all aspire to the ideal of a color-blind society, in which individuals “will not be judged by the color of their skin but by the content of their character” – as MLK Jr. put it in his “I Have a Dream Speech” at the March on Washington in 1963.

A color-blind society is surely one in which one’s life chances do not depend on one’s race, ethnicity, religion or gender. And for a society to be truly “free,” it must also be “just” in assuring equality of opportunity irrespective of race, ethnicity, religion or gender. Otherwise we have a society in which members of some groups are a whole lot freer than members of other groups, which undermines a fundamental element of the ideal of a free society.

We all know that, for a long time, American society has fallen well short of the color-blind ideal. A variety of forms of negative discrimination – and worse – have in various ways limited the opportunities available to members of particular identity groups, such as African Americans, Hispanic Americans, Native Americans, and female Americans.

Passage of the Civil Rights Act of 1964 represented an important step forward in the struggle for equal opportunity for members of groups whose opportunities had been limited because of the color of their skin – or other markers of group identity. In particular, the Act has helped to reduce overt discrimination against members of such groups in public arenas, such as education, employment and housing.

Equally obviously, however, the Civil Rights Act – and other measures designed to root out discrimination on the basis of morally irrelevant group characteristics like skin color and gender – have not succeeded in making such characteristics empirically irrelevant when it comes to equal opportunity in our society.

This is especially true for “racial” minorities, for reasons that are specific to such minorities; the situation for women is different, though also far from equalized.

Consider, for example, the following facts about our society: [see Christopher Edley, Jr., *Not All Black and White: Affirmative Action and American Values.*]

- Almost two-thirds of the incarcerated population is African-American

- most victims of Hurricane Katrina were African-American
- the African-American poverty rate is three times the White rate; and one of every two African-American children lives in poverty
- African-Americans own 2.4 % of the nation's businesses (mostly small ones)
- 0.6% of senior management is Afr-Am; 0.4% is Hispanic-American; a negligible percentage is Native-American
- The median income of African-American Households is 62% of that of Whites
- The median wealth (net worth) of African-American households is 8% of that of Whites

It is important to understand that these kinds of inequalities are not simply a reflection of group-wise inequalities in socioeconomic status. Consider the following:

- The US Federal Government receives almost 100,000 complaints of employment discrimination every year – almost all from people of color
- Job-tester studies show that Whites get a much better hiring response than African-Americans
- Housing-tester studies show African-Americans and Hispanic-Americans get much less favorable access than Whites
- Job-application studies show that applications with identical job-relevant characteristics win interviews more often when the names are white-sounding than black-sounding
- African Americans and Hispanic Americans – irrespective of social class – are far more likely than Whites to be questioned by police or other law enforcement authorities.

Clearly, unequal opportunities in the U.S. result in part from membership in different racial and ethnic identity groups.

The examples I have just given involve current negative discrimination at the individual level. More important in explaining group-wise inequalities is the legacy of past negative discrimination (e.g., slavery, Jim Crow laws), leading to current disadvantages in socioeconomic status.

Such negative discrimination was substantial not only in the distant past but also relatively recently – e.g. in the 1930s-1940s-1950s. [See Ira Katznelson, *When Affirmative Action was White: An Untold History of Racial Inequality in 20th-Century America*.]

One major consequence of past negative discrimination is the high degree of racial residential segregation – especially prominent in MI! – that has generated highly unequal access for most people of color to public goods and services (such as education) and to the useful networks & connections known as “social capital.”

The essence of the problem is captured very well by President Lyndon Johnson's famous words in his commencement address at Howard University in 1965, that:

“You cannot take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, ‘You are free to compete with all the others,’ and still justly believe that you have been completely fair.”

So what does all this imply about affirmative action?

All of us who strongly believe that group identity must not be permitted to influence individual opportunity in a free and just society are therefore confronted with a challenge: what further measures – beyond the Civil Rights legislation of the 1960s – should be taken to achieve our common goal?

One response to this challenge has been to pursue policies of “affirmative action” – now understood to mean: preferences accorded to persons belonging to identity groups whose members have historically been denied equal opportunity and who remain highly under-represented in society’s most desirable and esteemed positions.

Recall Harry Blackmun’s statement (in his opinion in the 1978 Bakke case):

“In order to get beyond racism we must first take account of race...and in order to treat some persons equally, we must treat them differently.”

Let me first make a confession: I don’t much like policies of affirmative action, neither here in the United States nor in other nations where they have been implemented. I recognize that they do have some adverse consequences. The magnitude of these adverse consequences depends on where and how they are implemented (“the devil is in the details”); but I admit that in every case there are at least some unwelcome effects.

Why then am I speaking today as a supporter of affirmative action and an opponent of the MCRI, which would ban affirmative action in important public spheres in the State of Michigan?

My answer is twofold:

1. affirmative action policies can help to reduce inequalities of opportunity associated with color and other markers of group identity;
2. there is really no other policy available to do so.

[WHAT AFFIRMATIVE ACTION CAN DO:]

Affirmative action, if properly implemented (an important proviso), can help to reduce inequalities of opportunity for members of disadvantaged identity groups – and thus serve a very important goal of a free and just society. Affirmative action is especially helpful in integrating elite positions in society (with consequent benefits in economic efficiency as well as democratic vitality) and spreading access to social capital (with consequent benefits in economic efficiency as well as social harmony).

Note: the MCRI would prohibit all forms of affirmative action preferences, including some that are much less controversial than racial preferences in admissions.

For example, MCRI would prohibit not only racial, ethnic and gender preferences in public college & university admissions, but also:

- outreach programs, developmental programs and financial aid oriented to members of groups significantly under-represented in prestigious colleges and universities (Afr-Am, Hisp-Am and Native-Am);
- programs designed to help students to enter fields where members of their group are significantly under-represented – such as women in math, science & engineering; men in nursing; racial minorities in math, science & engineering.

[THE UNAVAILABILITY OF ALTERNATIVE COLOR-BLIND POLICIES:]

Alternative policies to promote greater equality of opportunity, without taking account of people's identity group membership, are very costly and – largely for that reason – highly unlikely to be adopted.

Examples of alternative policies:

- class-based affirmative action in university admissions and in targeted programs;

NOTE: class-based affirmative action must involve much more financial aid if you want to help the same number of students (because the preferential admits will on average be much poorer), and it must involve many more preferential admits if you want to reach the same number of minority students.

- massive investment of resources to bring inner-city schools catering primarily to students of color up to par with suburban schools catering primarily to white students;

NOTE: it takes much more than equal funding to equalize the quality of education;

- massive reparations to members of disadvantaged identity groups – as in Charles Krauthammer proposal (*in TIME magazine; see Dalton p. 142*):
“It is time for a historic compromise: a monetary reparation to blacks for centuries of oppression in return for total abolition of all programs of racial preference. A one-time cash payment in return for a new era of irrevocable color blindness.”

I would be happy to substitute any of these policies for race-based preferences in admissions and support programs.

But is anybody prepared to advocate and pay for such policies?

Proponents of the MCRI – as far as I am aware – have shown no interest in exploring, much less advocating, such policies.

My preferred affirmative action policies would focus on the SPHERE OF EDUCATION and take the form of preferences in admissions to educational institutions as well as in outreach and support programs for members of under-represented groups...

so as to maximize (a) the potential to develop the talents, skills and abilities of the student beneficiaries and (b) to provide these beneficiaries with greater access to the social capital that they tend to be denied because of their membership in a disadvantaged identity group.

Passing the MCRI, without simultaneously adopting any alternative policy to address the persistence of racial, gender and other group-wise inequalities of opportunity, would send the message that the majority of Michigan voters don't think these inequalities really matter.

The counter-argument – that the elimination of preferences based on race, ethnicity and gender will itself help to reduce group-wise inequalities of opportunity and tensions between members of different identity groups – is simply not credible. Consider, for example, what is happening right now in France – a country where MCRI principles have been more systematically pursued than just about anywhere else in the world. In France there has been not only no affirmative action, but not even any enumeration of racial, ethnic and religious identities in official population statistics! Yet France is undergoing urban riots on the part of disadvantaged minority youth comparable to those of Detroit, Watts and other US urban areas in the 1960s – before affirmative action policies were introduced in this country.

I submit that the effect of passage of the MCRI will NOT be a reduction of consciousness of race and other markers of group identity.

Instead, I fear that it will be an exacerbation of tensions based on race and identity – as members of groups that have been and continue to be victimized by discrimination, and resultant inequalities of opportunity, will rightly conclude that the majority of Michiganders simply do not care if such inequalities are perpetuated.