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Affirmative Action and Modern Utopian Egalitarianism

Modernity is sometimes described as the era of utopias. It is true that the visions of a perfect society long preceded the seventeenth century. One could mention such classics as Plato's *Republic*, St. Augustine's *Civitas Dei*, or Thomas More's *Utopia*. However, modern utopias differ in a substantial way from their pre-modern predecessors. While the latter were simply ideal visions to which real societies could only approximate to a greater or lesser degree, the former have usually been comprehensive blueprints for the radical remaking not only of the social order but also of individual human beings. While the latter were the products of philosophy, theology, or literature, the former have been ideological and political projects pursued with utmost seriousness and all available power. Finally, while the latter were built around different guiding principles and values, the former have typically been inspired by just one ideal, namely, that of equality. That is why they deserve the name of egalitarian utopias.

Such utopias have arisen from the modern radical tradition which dates back to the French Enlightenment and the subsequent revolution. Equality is understood within this tradition in a manner significantly different from the classical liberal tradition which precedes modern radicalism by over a century. There have been many radical utopian projects in the last two hundred years. Some of them, such as Nazism or Communism in all its versions, have been easy to identify and much has already been written about them. However, some, especially contemporary, utopias have drawn little attention despite their enormous influence. This is the case because they have occurred in basically liberal countries and have been wrongly perceived as having little to do with the radical tradition. Affirmative action in the United States seems to be one of them. The aim of this essay is to show affirmative action as belonging to the tradition of modern utopian egalitarianism.

In pre-modern social and political thought the concept of equality was practically non-existent. It was rather inequality which was perceived as a natural state of affairs in all spheres of human life. Hierarchies and orders in the society were believed to be indispensable and good. Their legitimacy was very often based on religious sanction and tradition. People were unequal not only in their talents and abilities, in their wealth and social status, but also in their legal and political positions. Thus, the destiny of the major-

ity was to be obedient subjects while the usually hereditary privilege of the minority was to be rulers and lawgivers. One of the most radical expressions of this way of thinking was the post-medieval doctrine of the divine rights of kings.

It is against this doctrine that modern political thought originally defined its positions. John Locke claimed that in the state of nature all people are equal in the sense that no one has either natural or supernatural right to rule over others. On the contrary, everyone enjoys the same basic natural rights to life, liberty, and property. The founding document of the world's first modern democratic republic also proclaimed the self-evident truth that "all men are created equal." For better or worse, equality has become one of the basic values and ideals of modernity. In fact, it has even overshadowed freedom in its importance and the practical influence it has exerted on the history of the last three centuries. At the same time, the concept of equality is extremely ambiguous, vague, difficult to define, and open to all kinds of interpretations. One could argue that the history of modern political thought is, to a large extent, the history of the changing understanding of equality.

Chronologically, the first concept was equality before God. Its roots are clearly in the broadly understood Judeo-Christian tradition, although its social and political implications were most clearly articulated by the classical liberals of the seventeenth and eighteenth centuries. When the American Declaration of Independence says that "all men are created equal" and are "endowed by their Creator with certain unalienable rights," equality clearly means equality before God, or what Milton Friedman and Rose Friedman describe as personal equality (129). It is based on the conviction that all human beings possess certain inherent worth and dignity. This basic insight lies at the heart of Christianity.¹ However, centuries had passed before it became clear that equality before God implies an equal chance of every human being as a citizen to participate in the political life of the nation (the right to vote, hold an office, publicly express one's opinions, etc.) as well as his or her right to be treated equally with others by a system of impartial laws. Thus, in the seventeenth and eighteenth centuries personal equality was translated in the context of the nation and state into political equality and equality before the law. It was with the insistence on such equality as a moral claim that classical liberals attacked the *ancien régime* and especially the divine rights of kings. Political and legal equality was the foundation of the emerging liberal order in Britain and especially in the United States.²

¹ As Michael Novak puts it, "to the extent that the Enlightenment depends upon the principle of 'created equal,' it depends upon Jewish metaphysics and Christian faith" (81).

² To be precise, the classical liberals were chiefly interested in legal equality. Political equality, which is more or less synonymous with democracy, took much more time to become a standard in Western societies.

In America this original understanding of equality very soon came to be generally recognized under a different label, namely, equality of opportunity. Obviously, this has never been interpreted literally. What it essentially means is that “no arbitrary obstacles should prevent people from achieving those positions for which their talents fit them and which their values lead them to seek” (Friedman and Friedman 132). This understanding of equality is crucial for the notion of civil rights, which provide protection against arbitrary treatment of individuals by the government because of such characteristics as national origin, race, religion, or sex. As the Friedmans notice, equality of opportunity merely develops in more detail the meaning of equality before the law. Using more technical language, equality of opportunity means that outputs should be proportional to inputs in a social system. Thus, it presupposes that the vertical differentiation of a society (economic and social inequalities) is inevitable, but at the same time it insists that the channels of social mobility should be widely open. In other words, equality of opportunity is the essence of what has come to be known as meritocracy.

A meritocratic understanding of equality has remained dominant in the United States, but in Europe it has largely given way to a rather different concept of equality of condition. The Enlightenment thinkers (especially Rousseau) and their radical followers in the whole modern era have been deeply dissatisfied with the limited equality advocated by the classical liberals. Instead, they have come to believe that people should be equal in most spheres of life. Thus, economic and social inequalities have been considered as illegitimate as political and legal ones. The advocates of equality of condition have also been willing to use the coercive power of the state to redistribute resources and level whatever differences might exist among citizens or groups of citizens in terms of income, education, employment, or social status. The ideal has always been to achieve more or less equal results or outcomes in a given social system. This is, in fact, the essence of egalitarianism, a social and political principle substantially different and inherently incompatible with meritocracy, because “equality of opportunity inevitably means *inequality* of results or outcomes” (Ginsberg 696). It is this egalitarian pursuit of equality of condition that has given rise to a large number of more or less radical utopian projects in modern history. Affirmative action in the United States is one of them.

The context for the emergence of affirmative action is the American civil rights movement of the 1950s and early 1960s with its victory and culmination in the Civil Rights Act of 1964. The Act banned segregation and discrimination against any individual in public accommodations (Title 2), in educational institutions receiving federal funds (Title 6), and in employment (Title 7) because of race, color, religion, sex, or national origin. Discrimination was unequivocally understood as intentional unequal treatment of individuals based on these categories. The consensus held that all Americans

possessed the same rights and should be treated equally before the law. The sponsors of the Act took great pains to demonstrate that it was consonant with the traditional American values of equal individual opportunity and the color-blind principles of Justice Harlan and Martin Luther King. In other words, they invoked the meritocratic principle of social justice. Senator Humphrey declared, for example, that “Title 7 is designed to encourage hiring on the basis of ability and qualifications, not race or religion” (Graham 85). Explaining that the Act forbade quotas, the Senate floor managers for Title 7, Joseph S. Clark and Clifford P. Case, added: “It must be emphasized that discrimination is prohibited to any individual” (Graham 85). The Civil Rights Act of 1964 and the Voting Rights Act of 1965 were enormously successful in dismantling Jim Crow laws and practices. Racial discrimination was almost entirely eliminated during three or four years. Or at least so it seemed.

The civil rights activists apparently did not agree with such conclusions. Neither did the Johnson Administration. In his commencement speech at Howard University on June 4, 1965, the president set a new course for the civil rights movement. One excerpt from this speech is especially revealing:

Thus it is not enough just to open the gates of opportunity. All our citizens must have the ability to walk through those gates. This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and *equality as a result*. (qtd. in Roberts 47, italics added)

In August 1965, The White House Conference on Equal Employment Opportunity asserted the necessity “to move beyond the letter of the law,” meaning the Civil Rights Act of 1964, in order to destroy “deeply rooted patterns of discrimination” (Roberts 40). In 1965 Johnson also issued Executive Order 11246 requiring all Federal Government contractors and subcontractors to take *affirmative action* to eliminate discriminatory practices and patterns. At the same time, what Senator Dirksen feared during the debate over the Civil Rights Act of 1964 became reality: the liberal and minority constituencies captured the federal agencies responsible for civil rights, especially the Equal Employment Opportunity Commission (EEOC) and the Office of Federal Contract Compliance (OFCC) in the Department of Labor. Entrenched in their new governmental positions, they set out to redefine the meaning of discrimination, equality, and civil rights.

This process occurred in several stages and involved both the federal bureaucracy and the courts. Alfred W. Blumrosen, the EEOC’s first compliance chief, was the first prominent figure who advocated a new theory of discrimination. He sought to redefine it in

terms of statistical disparity. Any measures which had what came to be known as a “disparate impact” (Roberts 46) on the races, e.g., employment tests, regardless of intent or any other considerations, amounted to discrimination. Moreover, any imbalance between whites and blacks employed in a given institution was also the evidence of discrimination. The logical inference flowing from this approach was that in order to eliminate discrimination, it was necessary to achieve a racial balance or parity of representation by means of affirmative action. What affirmative action precisely meant was specified by the subsequent sets of guidelines issued by the EEOP and the OFCC. The evolution was from “goals and timetables,” “representation,” “results-oriented procedures” through racial quotas (Sowell, “*Weber and Bakke*” 1313-14). By 1971 the prospective concept of equal opportunity had already given way to the retrospective concept of statistical parity of results. Lowi and Ginsberg put it more mildly, defining affirmative action as “an effort to introduce consideration of inequality of *results* along with inequality of opportunity” (725). Nevertheless, they still admit that “affirmative action has caused special difficulties because it conveys a sense of inconsistency with the American tradition of concern for equality of opportunity above all other definitions of equality” (725-26).

It is very important to understand fully the fundamental difference between equal opportunity and affirmative action. One of the best and shortest explanations of this difference is provided by Thomas Sowell:

“Equal opportunity” laws and policies require that individuals be judged on their qualifications as individuals, *without regard* to race, sex, age, etc. “Affirmative action” requires that they be judged *with regard* to such group membership, receiving preferential or compensatory treatment in some cases to achieve a more proportional “representation” in various institutions and occupations (*Civil Rights* 38).

Thus, the difference is that between equal individual *opportunity* and equal group *results*, which corresponds to the two distinct and fundamentally different concepts of equality discussed earlier, namely, equality of opportunity and equality of condition, and, consequently, to the two different social and political principles: meritocracy and egalitarianism. Moreover, the adoption of the egalitarian perspective inevitably means that the meritocratic principle has to be violated so that equal outcomes could be obtained. Thus, affirmative action seems to undermine equality before the law, denying equal treatment and rights to certain individuals and, consequently, sacrificing their freedom for the advantage of others. According to its critics, affirmative action amounts to reverse discrimination,³ and at least some of the civil rights activists seem to be aware

³ One of the most influential critics of affirmative action, Nathan Glazer, entitled his book *Affirmative Discrimination*.

of this, as testified by the remark made by Justice Marshall, the first African American on the Supreme Court, and reported in Justice Douglas's autobiography: "You guys have been practicing discrimination for years. Now it is our turn" (qtd. in Roberts 48).

Affirmative action is built on a certain specific vision of the world. In his *Civil Rights: Rhetoric or Reality*, Thomas Sowell undertakes to uncover its underlying premises. In this way he attempts to throw some light on what he elsewhere calls the presuppositions of affirmative action.

The first premise analyzed by Sowell concerns statistical differences between groups (ethnic, racial, sexual, etc.). It assumes that statistical disparities in incomes, education, employment, etc., on the one hand and in delinquency, drug abuse, poverty, etc., on the other represent moral inequities and are caused by "society." The key word here is discrimination. The advocates of affirmative action presuppose that large statistical differences between groups do not usually arise and persist without discrimination. If representatives of a given group do less well than representatives of another group (especially one constituting a majority) in any particular sphere of social or even personal life, it means that they are discriminated against. Especially social pathologies common among members of certain minorities are thought to be a clear indicator and result of discrimination. Thus, statistical disparities signal, imply, or even measure discrimination. Other factors which cause these differences, such as culture, history, geography, demography, or government policy are simply ignored (Sowell, *Civil Rights* 15-20; "Weber and Bakke" 1314-18).

This leads us to the second presupposition underlying affirmative action. Sowell demonstrates that the supporters of preferential treatment dichotomize potential group differences into discrimination and innate inferiority. Because the latter is rejected as racist, the former apparently becomes the only explanation for such differences. Moreover, those who merely reject discrimination as the sole explanation are automatically accused of believing in innate inferiority. Sowell indicates that, paradoxically, this approach – what he calls the "equal representation" doctrine – has a lot in common with the innate inferiority doctrine. Both presuppose that "one can go from innate ability to observed result without major concern for intervening cultural factors" (*Civil Rights* 23). Thus, the supporters of affirmative action are, in a way, "racists" as they exalt the role of race at the expense of cultural inheritance. The complexity, richness, and diversity of the social world are mechanically reduced to simple formulas. Group behavior is believed to be "shaped" by the society through its discriminating practices. And group characteristics become nothing more than mere "stereotypes" which should be eliminated by "changing the public's 'perceptions' or raising the public's 'consciousness'" (Sowell, *Civil Rights* 29).⁴

⁴ For more discussion on these points see Sowell, *Civil Rights* 20-29.

The third premise of the world vision shared by the supporters of preferential treatment logically follows from the other two. If statistical disparities are social inequities caused by the society practicing discrimination in its institutional policies and individual decisions, then political activity is the key to solving the problem. Legislatures, administrative agencies, and courts are believed to be capable not only of removing all discriminatory practices and the resulting statistical disparities but also of destroying the deeply rooted patterns of discrimination (the public's attitudes, perceptions, consciousness, and behavior). The role of the central federal government is especially important in achieving such fundamental and comprehensive goals. However, politics is defined very broadly in this case and includes also private institutional activity. The changes, after all, must be radical and deep (Sowell, *Civil Rights* 29-35).

Sowell's penetrating analysis of the presuppositions of affirmative action and its crucial difference from equal opportunity policies is primarily the work of a sociologist and economist. He subjects the premises of the civil rights/affirmative action vision of the world to empirical verification and proves that they do not stand up as general principles and fail in the face of the concrete social reality. Moreover, he shows the devastating effects that the affirmative action policies have had on their supposed beneficiaries as well as on the whole society and accuses the advocates of preferential treatment of a fundamental disregard for the truth.⁵ At the same time, although he clearly shows some cultural and philosophical sensitivity, Sowell does not delve more deeply into the questions of ideology and political philosophy. And this is exactly what seems worth doing, since the specific vision of the world which he identifies and which underlies affirmative action is part of a larger ideological whole.

Affirmative action and the world vision of its advocates is, in fact, part of the modern radical tradition which dates back to Rousseau and the French Revolution. This fact should not be obscured by the supposedly limited radicalism of this utopian egalitarian project in comparison with other modern utopias, such as Soviet Marxism or the Maoist Cultural Revolution. Neither should it be obscured by the basically meritocratic political culture of the United States. Affirmative action policies are, after all, nothing less than a direct assault on traditional American meritocracy.⁶ The key to understanding affirmative action is to look at this phenomenon as the contemporary embodiment of modern radicalism with its tendency to create and to implement egalitarian utopias.

⁵ The bulk of Sowell's *Civil Rights* is devoted to the empirical verification of affirmative action's premises and effects. As their presentation is not relevant to my argument, these data are omitted here.

⁶ Most Americans, however, still resist the infusion of radical ideas and policies based on them into their society. Public opinion polls and surveys have indicated for years that the Americans consistently distinguish between equal opportunity and preferential treatment. The former is overwhelmingly accepted while the latter is decisively rejected (McClosky 83-98; Sowell, *Civil Rights* 119; Roberts 36).

The central belief of the modern radical tradition and utopian thinking holds that the primary causes of evil and suffering are not rooted in the nature of human existence but originate in the structure of society, in its institutions and practices, and especially in all kinds of social inequalities (Miller 97). This conviction is shared by the proponents of affirmative action. The failure of different minority groups to achieve adequate representation in highly valued economic, political, and cultural positions as well as the relatively high percentage of pathological behavior within those groups is attributed exclusively to the corrupting influence of the society. This vision depicts Americans as a nation of notorious racists and bigots who stubbornly practice discrimination both in their institutions and in private life. The extreme radicalism of this conviction consists not in pointing to the fact that discrimination has adverse effects on the achievement of those discriminated against, which to some extent is true, but in treating broadly understood discrimination as the only major factor explaining the problems of certain racial and ethnic groups. It is a typically radical way of approaching complex social reality: to find one all-explaining cause of a given problem while at the same time ignoring others, and then to proceed to eliminate it quickly and thoroughly.

The central radical belief in the natural goodness of man and the corrupting influence of society has serious and far-reaching consequences. It determines other characteristics of the radical worldview as well as, even more importantly, the crucial features of radical politics. Thus, radicalism is characterized by a gnostic hostility to the concreteness of the human being's existence. In the search for some "higher reality" of an egalitarian utopia the concrete social reality is rejected or ignored as unsatisfactory. This radical dissatisfaction with the human predicament usually leads to the demand for "instant 'liberation' from this condition, an immediate transformation of all social and economic circumstance, a prompt achievement of an altogether 'better life' in an altogether 'better world'" (Kristol 241). This in turn entails contempt for the irreducible complexity and mystery of human life in all its dimensions. Narrowing uniformity and equalitarianism are preferred instead and they are imposed on society (Kirk 43).

Gnosticism is clearly present in the whole affirmative action project. It is most obvious in its advocates' fundamental disregard for residual cultural differences between groups. The reality of group patterns that go back for centuries and transcend any given social and political institutions is totally rejected. The idea that groups might differ in terms of work habits, discipline, sobriety, or cooperative attitude is an anathema to the affirmative action ideologues. They even ignore such apparently "neutral" group characteristics as geographic distribution or demographic features. One can notice here the pervasive hostility to what Russell Kirk refers to as the "proliferating variety" of human existence which cannot be explained in simple rationalistic formulas. Extreme rational-

ism often goes together with modern gnosticism.⁷ The established institutions, ways of thinking, and patterns of behavior are treated as irrational products of custom and tradition which should be rejected (Miller 98). In the affirmative action vision such traditional attitudes and behavioral habits are often dismissed as the expressions of “stereotypes,”⁸ prejudice, and blind irrational thinking. What is needed instead is true knowledge which can only be discovered by reason in its capacity of abstract thinking. Social life should then be organized according to this knowledge.

In the case of the affirmative action project the abstract ideal to which institutions and practices of the society should correspond is “equal representation,” or, to use more technical language, statistical parity of retrospective results. This ideal should be reached as quickly as possible because such an immoral and irrational thing as discrimination, which statistical disparities inevitably imply, must be immediately eliminated. However, the problem with affirmative action and, in fact, with radical thinking as such is that abstract utopian ideals are unattainable. Empirical data indicate that preferential treatment does not change much in the position of minorities and may even harm its supposed beneficiaries (Sowell, *Civil Rights* 48-53). In a typically gnostic fashion, the affirmative action ideologues simply ignore such data and advocate even more intensified and comprehensive preferential treatment policies. This inevitably leads to a vicious circle of radical social engineering.

This brings us to the next characteristic of radical belief systems and of affirmative action, namely, unlimited politics and centralism. Radicals typically believe that the tension characteristic of the human condition can be resolved by political action, usually through a root-and-branch change in the structure of society. In this way, practically illimitable progress can be achieved (Miller 97; Kirk 43). If classical liberals strove for the depoliticization of human life, their radical heirs do exactly the opposite, because they find the classically limited sphere of politics too confining for their ambitions (Kristol 246). Thus, a radical movement is, according to Kristol, both metapolitical and subpolitical – it is above and below politics: “Metapolitically, it is essentially a religious phenomenon, seized with the perennial promise of redemption. Subpolitically, it is an expression of the modern technological mentality, confident of its power to control and direct all human processes as we have learned to control and direct the processes of nature” (246). Hence the quasi-religious fanaticism of radicals, in whose hands politics

⁷ Originally the word *gnosis*, which means knowledge, referred to a certain kind of spiritual illumination. In the modern secular version of gnosticism knowledge has become associated with reason.

⁸ The way affirmative action ideologues use the word “stereotype” is a clear example of their gnosticism. “Stereotype,” after all, is something which exists only in the human mind as the irrational product of a false and unjustified generalization. Thus, treating group characteristics as mere stereotypes makes them entirely insubstantial.

becomes an all-embracing ideological crusade against evil (Miller 98). This is typically accompanied by the belief in the perfectibility of human beings, which can be achieved through a politically enforced change in their way of thinking, perceptions, and behavior.

The above discussion of the presuppositions of affirmative action clearly shows that this radical utopian project is characterized by unlimited politics. It politicizes race, ethnicity, culturally determined patterns of behavior, and people's whole way of thinking. It aims to substantially affect those spheres of life in a mechanistic way through such political means as legislative acts, executive orders, and court decisions. Political action, directed from above by the federal government, is believed to be capable of solving all the racial and ethnic tensions in the United States and to eliminate discrimination, prejudice, and intolerance by raising people's consciousness and changing their perceptions of different groups. These aims are indeed pursued with quasi-religious fanaticism when almost all opposition is silenced, doubts and sound arguments are ignored or straightforwardly rejected, and opponents are publicly stigmatized as bigots, racists, or even fascists.

Affirmative action is pursued in the United States by the people who describe themselves as liberals. This might be one of the important reasons why it is often misinterpreted as a basically liberal phenomenon. This essay has attempted to show that actually the affirmative action project has little to do with liberal meritocracy. On the contrary, it remains wholly within the radical tradition of egalitarian utopian thinking. It shares with this tradition its understanding of equality as well as its belief that society is the chief cause of evil and suffering. It is also characterized by gnosticism, extreme rationalism, unlimited politics, centralism, belief in the perfectibility of human beings and illimitable progress, and quasi-religious fanaticism. It seems that the analysis of affirmative action from the point of view of political philosophy adds a very significant dimension to the study of this phenomenon. It shows that the mere sociological and economic analysis of the social world, although necessary, is clearly insufficient. It is in itself unable to explain many things which escape the confines of empiricism. On the other hand, culturally sensitive sociological and economic analysis of the kind Thomas Sowell conducts provides some substantial material for a more culture- and philosophy-oriented study. This kind of interdisciplinary approach has been employed in the discussion of affirmative action in this essay.

WORKS CITED

- Friedman, Milton, and Rose Friedman. *Free to Choose*. San Diego: Harcourt, 1980.
Ginsberg, Benjamin, and Theodore J. Lowi. *American Government: Freedom and Power*. New York: Norton, 1990.
Glazer, Nathan. *Affirmative Discrimination*. Cambridge, MA: Harvard UP, 1987.

- Graham, Hugh Davis. *Civil Rights and the Presidency*. New York: Oxford UP, 1992.
- Kirk, Russell. "The Idea of Conservatism." *Keeping the Tablets: Modern American Conservative Thought*. Ed. William F. Buckley, Jr. and Charles R. Kesler. New York: Harper, 1988. 42-45.
- Kristol, Irving. *Neoconservatism: The Autobiography of an Idea*. New York: Free, 1995.
- McClosky, Herbert, and John Zaller. *The American Ethos*. Cambridge, MA: Harvard UP, 1984.
- Miller, David, ed. *The Blackwell Encyclopedia of Political Thought*. New York: Blackwell, 1987.
- Novak, Michael. *On Two Wings: Humble Faith and Common Sense at the American Founding*. San Francisco: Encounter, 2002.
- Roberts, Paul Craig, and Lawrence M. Stratton, Jr. "Color Code." *National Review* 20 Mar. 1995: 36-51, 80.
- Sowell, Thomas. *Civil Rights: Rhetoric or Reality*. New York: Quill, 1985.
- _____. "Weber and Bakke, and the Presuppositions of "Affirmative Action." *Wayne Law Review* 26 (1980): 1309-36.