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Affirmative Action at Work: Law Politics, and Ethics

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AFFIRMATIVE ACTION AT WORK: LAW, POLITICS, AND ETHICS. By *Bron Raymond Taylor*. Pittsburgh: University of Pittsburgh Press. 1991. Pp. xvii, 251. Cloth, \$29.95; paper, \$14.95.

Few would disagree that affirmative action is one of the most controversial and hotly debated issues of our time. As with other issues that inflame the passions to a high degree, many people have firmly held opinions on affirmative action deeply rooted in what they consider to be inviolable principles. In *Affirmative Action at Work*, Bron Taylor¹ seeks to identify the moral and ethical principles upon which those on all sides of the debate rest their convictions. In so doing, Taylor sorts through the complicated and often contradictory arguments advanced by opponents and proponents of affirmative action alike.

The framework for Taylor's analysis is the quantitative and qualitative data compiled during a study of the affirmative action program implemented by the California State Department of Parks and Recreation. In his study, Taylor interviewed and sent questionnaires to people at all levels of the Parks Department's hierarchy, asking them to respond to a variety of questions regarding affirmative action generally and the department's affirmative action program specifically. Taylor uses this information to categorize and critique the commonly advanced arguments, and he attempts to discern why different groups of people view affirmative action differently.

Taylor's book has a different focus from the spate of recent books that argue for or against affirmative action on legal or moral grounds.² Instead of persuading the reader to take a particular position on affirmative action, Taylor's purpose is to examine the debate itself. For Taylor, the affirmative action controversy presents in sharp relief the conflict between social justice and individual rights and thus "provides an appropriate window through which to examine moral meaning in our culture" (p. 10). Further, because affirmative action has been employed in a culture adhering to philosophical liberalism,³ it necessarily

1. Assistant Professor of Religion and Social Ethics, University of Wisconsin.

2. See, e.g., HERMAN BELZ, *EQUALITY TRANSFORMED: A QUARTER CENTURY OF AFFIRMATIVE ACTION* (1991) (reviewed in this issue by Professor Robert A. Sedler. — Ed.); STEPHEN L. CARTER, *REFLECTIONS OF AN AFFIRMATIVE ACTION BABY* (1991); SHELBY STEELE, *THE CONTENT OF OUR CHARACTER: A NEW VISION OF RACE IN AMERICA* (1990); MELVIN I. UROFSKY, *A CONFLICT OF RIGHTS: THE SUPREME COURT AND AFFIRMATIVE ACTION* (1991) (reviewed in this issue by Professor Robert A. Sedler. — Ed.); PATRICIA J. WILLIAMS, *THE ALCHEMY OF RACE AND RIGHTS: THE DIARY OF A LAW PROFESSOR* (1991) (reviewed in this issue by Professor Robin West. — Ed.).

3. Taylor defines liberalism as "[t]he enlightenment philosophy that is the dominant social philosophy in the United States. Its key tenets are shared by political liberals, conservatives, and libertarians. These tenets include: rights inhere to the individual; people are self-interested, acquisitive, maximizing consumers . . ." Pp. 235-36.

tests the legitimacy of one of liberalism's central tenets: that jobs and benefits in a society of equal opportunity should be distributed on the basis of talent and merit — which Taylor refers to as the merit principle (pp. 7-9). To Taylor, then, the affirmative action debate reduces to a referendum on the larger issue of whether the merit principle is an appropriate foundation for our system of distributive justice.

In Part I of his book, Taylor provides the legal background to affirmative action. Though not a lawyer, Taylor does an impressive job of succinctly and accurately summarizing the relevant statutes and case law.⁴ Next, Taylor conducts a brief review of several major schools of ethical thought and sets forth some basic terminology used by ethical theorists.

In Chapter Two, Taylor launches into a rather esoteric ethical analysis of the various conceptualizations of the affirmative action issue. According to Taylor, ethical analyses of affirmative action fall into four basic categories: “justice as freedom, justice as fairness, justice as productive freedom, and justice as the greatest good” (p. 37). For each category, Taylor first reviews the ethical theory of one of its chief proponents, and then applies a contemporary version of the approach to the affirmative action controversy.

Taylor argues that viewing justice as freedom, as libertarians and conservatives generally do, causes one to reject preferential⁵ affirmative action because it impinges upon individual autonomy (p. 56). In contrast, a conception of justice as fairness, according to Taylor, leads one to conclude that affirmative action is morally required to counteract the disadvantages of not being a white male (p. 57). It is upon this view of justice as fairness, Taylor asserts, that contemporary liberal support of affirmative action rests. A third theory of justice focuses on productive freedom and reflects Marxist notions of distributive fairness. Because liberal equal opportunity is not considered desirable according to Marxist principles, Taylor argues, it is unclear whether such a conception of justice would sustain the use of affirmative action programs (p. 69). Equally ambiguous is whether a consequentialist view of justice, which analyzes policies in terms of their overall contribution to the good of society, would endorse affirmative action. According to Taylor, a determination whether affirmative action contributes to the overall good is inherently subjective, depending on

4. Taylor concludes his review of the relevant case law by predicting that, in light of the current conservative makeup of the Supreme Court and the logic of recent cases, “preferential, goal-type affirmative action will be further narrowed by judicial rulings but will remain a permissible remedy for specific cases of demonstrable discrimination.” P. 33. However, Taylor does not provide the reader with the specific basis for his prediction.

5. Taylor distinguishes between “protective” affirmative action, in which there is strict enforcement of antidiscrimination laws but no consideration of race or gender in hiring decisions, and “preferential” affirmative action, in which preference is given to individuals who are members of historically subjugated groups. Pp. 12-13.

which of many consequences are considered desirable and the relative values that people assign to them (pp. 69-70).

Part II of *Affirmative Action at Work* reviews Taylor's empirical research, which consisted of studying the attitudes of employees in the California State Department of Parks and Recreation toward affirmative action.⁶ At the outset of Part II, Taylor sets forth four major purposes of his research and analysis. His first objective was to determine whether and to what extent the various subgroups affected by affirmative action — white men, white women, nonwhite men, and nonwhite women — view affirmative action from different moral and ethical perspectives. Second, Taylor sought to test his prediction that, based on self-interest, white men tend to oppose affirmative action while others generally support it. The third focus of inquiry was to determine whether the ethical and moral underpinnings of various attitudes toward affirmative action “reinforce or challenge the modes of economic distribution that accompany a Liberal market society” (p. 76). In particular, Taylor wanted to know whether different socioeconomic groups bring different ethical norms to the affirmative action debate and whether such norms comport with or challenge our liberal market society's notion of distributive justice — that preferred jobs and salaries should be distributed on the basis of merit (pp. 76-77). Last of all, Taylor's research sought to determine the extent to which a person's sense of individualism influences his or her opinion of affirmative action, and more specifically, whether white men eschew group-sensitive approaches to social policies more than women and nonwhite men (p. 78).

Next, Taylor summarizes the results of his qualitative research, which consisted of about fifty confidential interviews with Parks Department employees. Taylor asked the employees specific questions about affirmative action as well as open-ended questions aimed at determining whether the respondents rested their views on any particular moral principle. During his interviews, Taylor observed considerable hostility toward affirmative action, much of it from white males who felt that their careers had been irreparably damaged by the department's program (pp. 90-91). Also, the interviews revealed that there was a great deal of fear surrounding the issue of affirmative action. Not only was there fear among white men that affirmative action would ruin their careers, but there was also fear, despite Taylor's as-

6. The department's affirmative action program, in existence since 1975, aims at increasing the number of women and nonwhite men employed by the agency. However, since the program's inception there has been a continuing debate over the purpose of the program. Some within the department argue that the program is intended to ensure that all applicants receive equal consideration by eliminating racial and gender bias from the selection process. Others contend that the program is aimed at increasing the number of women and nonwhites, and thus applicants from these groups should be hired if they are qualified, even if not necessarily the “best qualified” with regard to traditional credentials. Pp. 88-90.

surances of confidentiality, that expressing one's true feelings about affirmative action would invite reprisals by those on the other side of the issue or by the department itself (pp. 92-93).

In addition, Taylor notes that there was significant discomfort and confusion when respondents were asked to discuss the moral values most important to them. According to Taylor, "[q]uite often, long pauses suggested that a respondent rarely if ever reflected on his or her moral values" (p. 98). Moreover, between five and ten percent of those interviewed were ambivalent when asked about the legitimacy of affirmative action — although most respondents did have strong feelings for or against affirmative action (p. 99).

On the basis of the personal interviews, Taylor forges some tentative explanations of why people feel as they do about affirmative action. Taylor observed that staunch opponents of affirmative action typically adhered strongly to the merit principle and other ethical norms in which concern for individual autonomy is paramount. People strongly opposed to affirmative action commonly objected that affirmative action is essentially reverse discrimination against whites, that people should be hired solely on the basis of merit, and that past discrimination does not justify sacrifices by white males who are not personally responsible for past injustices. From the interviews, Taylor concludes that the more importance someone places on the principle of individualism, the less likely he or she is to support affirmative action and other group-conscious remedies (p. 111).

Taylor also finds that those less firm in their opposition, but nonetheless against affirmative action, generally were so because of pragmatic concerns about its consequences (pp. 103-05). Common concerns along these lines were that affirmative action leads to inefficiency by reducing the quality of employees and that such programs are not really needed, either because discrimination is no longer a problem or that the remedy, preferences based on race and gender, is worse than the problem itself. Taylor notes that supporters of affirmative action generally expressed the same individualistic principles as did its opponents but that they tempered such feelings with concern for society as a whole (pp. 107, 111). Finally, people who strongly supported affirmative action, Taylor concludes, did so because they gave "their group or society as whole a clear and strong priority over the individual" (p. 111).

Curiously, Taylor's discussion of the moral and ethical considerations underlying various views of affirmative action makes no mention of racial animus or adherence to negative racial or gender stereotypes. For Taylor, a person's position on affirmative action is largely determined by the extent to which he or she adopts the principle of individualism. While this may have been true for some of the more thoughtful employees, there is little doubt that at least in some in-

stances, other, less charitable forces were at work. Surely, among those most strongly opposed to affirmative action, some (but by no means all) felt the way they did out of unabashed hostility toward nonwhites and women. A little less obvious is the likelihood that many people who justified their strong opposition to affirmative action by relying on the merit principle may have done so on the basis of a conscious or unconscious belief that nonwhites and women are innately less competent than white men.⁷ If one subscribes, whether intentionally or not, to these traditional notions of inferiority, affirmative action programs by definition result in better-qualified white males being denied jobs. Regrettably, in his discussion of the interviews with Parks Department employees, Taylor fails to mention racism and sexism as potential factors in the debate over affirmative action.⁸

In the next two chapters, Taylor summarizes and analyzes quantitative data gathered from questionnaires completed by roughly five hundred employees at the Parks Department. As in the interviews, the respondents were asked a broad range of questions regarding affirmative action and the problems it presents. According to Taylor, [t]he most striking finding shown in this chapter is that while there was significant agreement among all groups that affirmative action is morally right, this consensus quickly broke down when affirmative action was discussed with greater specificity. When explicitly preferential types of affirmative action policies were mentioned, support dropped, and dropped most among white men. [p. 133]

Unfortunately, many of Taylor's other findings are less provocative, and thus make for less interesting reading. For example, the survey responses confirmed that nonwhites and women feel more strongly than white men that prejudice is commonplace in our society, that liberals favor affirmative action more than conservatives, and that a greater percentage of women and nonwhites approve of group-oriented policy approaches than do white males.

The book's last chapter begins with a discussion of the four principal theoretical questions the research sought to address. First, Taylor concludes that the prevalent attitudes on affirmative action do indeed reflect the various approaches taken by social philosophers (p. 184). Second, as expected, the research confirms that historically oppressed groups approach the issue of affirmative action from a different ethical perspective than white males. In his study, Taylor found that non-

7. For an excellent discussion of unconscious race prejudice, see Charles R. Lawrence III, *The Id, the Ego, and Equal Protection: Reckoning with Unconscious Racism*, 39 STAN. L. REV. 317 (1987).

8. In an effort to determine whether and to what extent a person held racist or sexist attitudes, Taylor might have asked a person being interviewed for his or her opinion as to why women and nonwhite men have not, on average, achieved at the same level as white men. Although people rarely admit — to themselves or others — to having racist and sexist beliefs, such a question might have shed considerable light on the extent to which a person subscribed to negative stereotypes of women and nonwhites.

whites and women “are more likely than white men to evaluate principles of distributive justice, or policies such as affirmative action, by emphasizing the impact on their group or upon the overall social good” (p. 185). Third, while class, political ideology, job level, age, and religion influence a person’s view of affirmative action, the principal determinant is whether the person is a member of a traditionally subjugated group (p. 185). Fourth, Taylor concludes that because “[m]ost respondents did not demonstrate any significant critical distance from the dominant norms of distribution in the Liberal culture,” the debate over affirmative action will not have a significant impact on the ethical and moral direction of our society (p. 185).

Finally, Taylor evaluates the legitimacy of the common arguments for and against affirmative action in terms of the level of acceptance among those interviewed and surveyed. According to Taylor, the common libertarian and conservative arguments against affirmative action lack support in his data (p. 188). For example, the libertarian argument that regardless of its purpose, any use of racial classifications threatens fundamental rights received little support among Taylor’s respondents. While recognizing that popular support or rejection of a particular argument is not a litmus test for moral righteousness, Taylor argues that “[t]hose who experience an aggressive affirmative action program firsthand are well placed to offer testimony as to the actual effects of the policy — and few conclude it violates fundamental rights” (p. 189). In addition, Taylor concludes that a common conservative argument against affirmative action — that it violates the merit principle — persuades few people. Despite strong support in theory for the notion that preferred jobs and salaries should be based solely on merit, Taylor finds that when given specific examples, most people do not endorse a rigid application of the merit principle and that it “is not the decisive standpoint from which most people evaluate affirmative action” (p. 190).

At the opposite end of the spectrum, Taylor finds that a frequently advanced argument in support of affirmative action — that it is needed to compensate for past injustices to racial minorities and women — had scant support among those participating in his research.⁹ Overall, Taylor observes, few people found compensatory justifications for affirmative action persuasive (pp. 176-77). Nonetheless, Taylor concludes that “[w]hen illuminated by [the] data, the arguments of liberals fare better than the arguments of libertarians and conservatives” (p. 190). For example, people generally agreed that discrimination is prevalent in the workplace, and they believed that the Parks

9. As with the “fundamental rights” issue, Taylor’s finding that the people surveyed do not support this argument is not conclusive proof that it is invalid. It may well be that most people do not understand the cause-and-effect relationship between past discrimination and present conditions and thus may not appreciate fully why compensation may be justified.

Department's affirmative action program was needed to ensure that nonwhites and women received fair consideration.¹⁰

Moreover, according to Taylor, the real-world consequences of affirmative action, often a source of considerable disagreement between supporters and opponents of affirmative action, on balance, appeared more positive than negative (p. 192). Specifically, Taylor finds that most people agreed that women and nonwhite men would not get serious consideration for jobs without an affirmative action policy, that most people did not feel that affirmative action programs exacerbated existing tensions by dividing people along race and gender lines, and that few felt that affirmative action had resulted in unqualified people being hired and promoted (p. 194). Unfortunately, however, in the book's final chapter Taylor does not buttress his conclusions with specific data — a sharp contrast from the rest of the book — thus affording those in philosophical disagreement with his findings a convenient means of dismissing his assessment of the affirmative action controversy.

In sum, *Affirmative Action at Work* provides an excellent introduction to the legal and ethical issues that comprise the current debate over the legitimacy of affirmative action programs. Moreover, the book affords the reader a rare insight into how members of the work force who, on a daily basis, see and feel the impact of affirmative action view the issue. The reader who is well-acquainted with the affirmative action controversy may find Taylor's review of his research unremarkable and little more than confirmation of intuitive perceptions of the affirmative action debate. Taylor's research may also be criticized for failing to consider the impact of racial and gender bias on how people view affirmative action. Overall, however, Taylor does an impressive job of sorting through the myriad arguments for and against affirmative action and discussing in a succinct and comprehensible manner the competing ethical and moral principles implicated in this highly charged debate.

— Michael K. Ross

10. P. 192. Taylor writes:

Most respondents saw discrimination as prevalent in society and in their workplace. Only white men were inconsistent on this point. They admitted to the existence of discrimination but did not think it was prevalent or affected chances within their own organizations. On this issue, where large majorities of nonwhites and women assert that prejudice was prevalent both in society and in their own workplace, I would submit that these traditionally excluded individuals are better situated than white men to evaluate the prevalence of discrimination.

P. 192.