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John David Skrentny. *Ironies of Affirmative Action: Politics, Culture, and Justice in America.* Chicago: University of Chicago Press, 1996. xiii + 312 pp.

John David Skrentny. *The Ironies of Affirmative Action: Politics, Culture and Justice in America.* Chicago: University of Chicago Press, 1996. xiii + 312 pp. $48.00 (cloth), ISBN 978-0-226-76178-7; $48.00 (cloth), ISBN 978-0-226-76177-0.

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Affirming Affirmative Action

John David Skrentny poses a number of ironies about affirmative action. For example, during the debates over the Civil Rights Act of 1964, mainstream civil rights groups supported a color blind approach; today, what Skrentny calls "the Right" supports the arguments made in the 1960s by Martin Luther King, Jr., and Hubert Humphrey. Skrentny also sees it as an irony that, in spite of public resistance to affirmative action based on race, law and policy regularly make distinctions between Americans. Veterans get preference; victims of disaster get special treatment; farmers get subsidies; and senior citizens are often given preference on urban mass-transit systems.

In yet another irony, affirmative action became policy without public debate. Indeed, public opinion has never supported affirmative action, "and in fact seems rather solidly against it" (p. 4). As noted, not even civil rights groups advocated affirmative action in the mid-1960s. Thus, affirmative action was "largely the construction of white male elites who traditionally have dominated government and business" (p. 5). Why, asks Skrentny, "would white males support a model of policy that is designed to confer a positive meaning on all group markers but their own" (p. 6)? And why would the Left support an unpopular policy? Further, why did the Right do virtually nothing to block affirmative action?

The author uses "new institutional" theory to analyze the process by which affirmative action moved from an option considered outside the bounds of legitimate political discourse in the 1960s to national policy in subsequent decades. According to this theory, policy derives from the operation of powerful cultural forces, rather than just the interaction of interest groups. This is, of course, something historians could have told sociologists and political scientists–and without the jargon. Nevertheless, the approach is a useful one.

Ironically, soon after the Civil Rights Act of 1964 enacted color blindness into the law, political elites began to advocate affirmative action in an attempt to manage the crisis posed by race riots in the 1960s. The crisis of the race riots served to open up the boundaries of acceptable discourse and thus made it possible for political and business elites to advocate race-conscious approaches. At the same time, the riots also posed a threat to the legitimacy of mainstream civil rights leadership. More militant leaders and black nationalists took center stage from traditional civil rights organizations and leaders. These developments pushed mainstream black leaders toward race-conscious remedies.

The cold war provided the larger context in which the Left came to support affirmative action and the Right failed to oppose it. The moral competition with the Soviet Union, combined with the emergence of newly independent states in Africa and Asia, placed American racial policies under a global microscope. This context served both to make some resolution of America's race problem more urgent and to shape the range of acceptable responses.

In addition, the administrative machinery Lyndon Johnson established to end discrimination developed a dynamic of its own. Administrators, whose careers depended on dealing successfully with a problem (in this case discrimination), turned to affirmative action because it provided an expeditious means of dealing with the problem. In their efforts to promote economic equality, bureaucrats and courts turned to statistical evidence to gauge progress. In relatively short order, "energetic recruitment and training, the original meaning of affirmative action, blended into overtly racial hiring decisions [and] the erosion of traditional ideas of merit" (p. 110).

Finally, in "perhaps the greatest irony of all," affirmative action owed "its most advanced and explicit race-based formulation to a Republican president who based much of his campaign on appealing to the racially conservative South" (p. 177). In order both to position himself within the broad consensus in favor of civil rights and to drive a wedge into the Democratic coalition, Richard Nixon's administration imposed requirements that specific percentages of minorities be hired. Nixon soon abandoned racial quotas, but not until after civil rights groups and their supporters in the Democratic party had embraced them.

The book began as dissertation at Harvard University, and there are remnants of its origin. The book is repetitious, and although written in a generally comprehensible style, it occasionally lapses into jargon.

Skrentny's historical research is occasionally spotty. For a work that relies so heavily on secondary sources, he sometimes ignores important secondary works. For example, the discussion of Whitney Young and the National Urban League contains no reference to Nancy Weiss, *Whitney M. Young, Jr., and the Struggle for Civil Rights*.

The author is not especially well versed in law or legal analysis. Skrentny maintains that "class actions embody part of the affirmative action model, in that an individual does not have to have been harmed to benefit" (p. 140). This does not accurately describe the inherent nature of a class action, which is a legal action that pertains, not just to the named parties, but to "all others similarly situated." The individual in a class action must establish membership in the class; if the class seeks redress for a specific injury, the individual must have shared the injury.

The analogy that Skrentny draws between classical liberal color blindness in employment and freedom of choice plans in public schools is a false one. Southern school districts devised freedom of choice plans specifically to thwart desegregation. School districts did not normally base assignment of pupils on free choice; they did so only to avoid desegregation. Color blind approaches to employment were embedded in American constitutional theory (at least after the Civil War) and did not spring up in opposition to affirmative action.

Clement Haynsworth was chief judge (not "chief justice") of the Fourth Circuit Court of Appeals (p. 191). Skrentny is also perhaps a bit harsh in his assessment of Haynsworth's record. When Haynsworth voted in 1963 not to bar the use of federal funds for segregated hospitals, he did so because, in passing the Hill-Burton Act, Congress expressly rejected an amendment that would have prohibited segregated hospitals from receiving federal funds. The Supreme Court later overruled that position, but as an appellate judge, Haynsworth simply deferred to legislative intent. Fred Graham, who covered the Supreme Court for the *New York Times*, got it about right when he wrote that, while Haynsworth waited for the Supreme Court to break new ground, he never attempted to thwart or delay desegregation.

Those who criticize others for a lack of tolerance should be careful. In listing the membership of the original Fair Employment Practices Commission, Skrentny identifies David Sarnoff as "a Jewish industrialist" (p. 114). One wonders why the other members are not identified as Protestant or Catholic.

Despite disclaimers, at bottom, the book is a brief for affirmative action. It presents the views of critics of affirmative action fully and fairly, but it makes sure to undercut them. To be sure, many of Skrentny's criticisms are well taken. Preferences and exceptions to the meritocratic model do exist in American society (such as preferences for veterans). However, while Skrentny never misses an opportunity to show that opponents of racial preferences are not consistent in their commitment to meritocratic principles, he neglects to point out, for example, the inconsistency of Thurgood Marshall's dissenting opinion in Personnel Administrator of Mass. v. Feeney. Marshall denounced Massachusetts's policy of preferences for veterans as being "overinclusive" because they had no expiration date. Marshall never voted to invalidate preferences for African Americans on similar grounds.

Skrentny consistently holds that color blind approaches are not effective. He maintains that "a race-conscious society and a reification of difference were not the ideological goals of the mainstream civil rights movement. Race-conscious justice was a tool that emerged when the classical liberal litigation tools failed to achieve the classical liberal goal of nondiscrimination" (p. 141). Yet, by Skrentny's own account, race neutral approaches were abandoned immediately after being adopted. Color blind approaches never had time to work and thus never had a true test.

The author's study leads him to the conclusion that opposition to affirmative action is race based. He notes that categories such as family member or veteran have justified exemptions from merit competition. On the other hand, race has never qualified as a justification for open preference in mainstream discourse. Perhaps, however, things are not that simple. Skrentny overlooks a key distinction drawn by the courts. Legislation treating

one group differently from another comes under "strict scrutiny" by the courts when it touches on "fundamental rights" or involves "suspect classifications" (such as race). To pass constitutional muster, such legislation requires a "compelling" state interest. Other distinctions require only a "reasonable basis."

All in all, Skrentny has produced a useful and sometimes interesting book. It does much to explain the origin and evolution of affirmative action, and it punctures some comfortable assumptions of both opponents and supporters. While providing neither the last nor the definitive word on the subject, Skrentny has added to the debate.

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