

however, are unlikely to be attained if, as some theorists advocate, the arts should be used primarily in furtherance of the objectives of other subject areas. Third, since all the arts possess the capacity to induce aesthetic experience, it seems reasonable to organize aesthetic studies according to one of the educational schemes that recommend grouping the arts together.

Prospects for the future of aesthetic education however, would appear to be clouded. On the one hand, analytical critiques question the viability of the concept of the aesthetic, while ideology-driven theories of art and arts education often exhibit an antiaesthetic bias. On the other hand, the endurance of the *American Journal of Aesthetic Education* (1966–), evidence of increased cooperation between aestheticians and educators (Moore 1995), the founding of a committee on education within the American Society for Aesthetics, and two essays on aesthetic education in the first English-language *Encyclopedia of Aesthetics* (Vol. 2, Oxford University Press, New York, 1998) suggest continuing interest in the subject.

4. *Definitions of Key Terms*

Aesthetics. A branch of philosophy that inquires into the nature, meaning, and value of art; or any critical reflection about art, culture, and nature.

Aesthetic point of view. A distinctive stance taken toward phenomena, e.g., works of art and nature, for the purpose of inducing aesthetic experience.

Aesthetic experience. A type of experience that manifests the savoring of phenomena for their inherent values, in contrast to practical activities and values.

Aesthetic value. A type of value, in contrast, e.g., to economic value, etc.; also the capacity of something by virtue of its manifold of qualities to induce aesthetic experience.

Aesthetic literacy. A cluster of capacities that enables engagements of phenomena, especially works of art, with prerequisite percipience.

Aesthetic culture. A distinctive domain of society, in contrast, e.g., to its political culture, and, normatively, sensitivity in matters of art and culture, as in a person's aesthetic culture.

Interrelatedness of the arts. Implies features that different kinds of art have in common; or programs that group the arts together for purposes of study.

See also: Architecture; Art, Sociology of; Community Aesthetics; Culture, Production of; Culture-rooted Expertise: Psychological and Educational Aspects; Dewey, John (1859–1952); Fine Arts; Oral and Literate Culture

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Affirmative Action: Comparative Policies and Controversies

1. Introduction

Although the phrase 'affirmative action' apparently originated in the United States in 1961, the practice of providing benefits or preferential treatment to individuals based on their membership in a disadvantaged group can be found in a wide variety of forms in many other countries. For example, India developed affirmative programs as early as 1927, and was probably the first country in the world to create a specific constitutional provision authorizing affirmative action in government employment. Other countries with more recently developed affirmative action programs include Australia, Israel, and South Africa.

2. Comparative Issues in Designing Affirmative Action Programs

Galanter (1992) identifies several issues that are critical to a comparative study of affirmative action programs: justifications, program designers, selection of bene-

beneficiary groups, distribution of benefits within a group, relations between multiple beneficiary groups, determination of individual eligibility, resources to be devoted, monitoring, and termination. This section will provide a comparative analysis of three of these issues; justifications, selection of groups, and individual eligibility.

2.1 Justifications for Affirmative Action

Affirmative action programs for racial minorities in the US typically seek to remedy harm caused to specific individuals by 'cognitive bias,' that is, harm caused by an actor who is aware of the person's race, sex, national origin, or other legally-protected status and who is motivated (consciously or unconsciously) by that awareness. Much of the current skepticism in the US about affirmative action may result from this narrow focus: many white people seem to believe themselves free of such cognitive bias and thus doubt that it is a continuing problem of sufficient magnitude to justify affirmative action. Such a focus makes affirmative action particularly vulnerable in settings like university admission, where decisions based on grades and test scores seem, to many, to be immune cognitive bias (see *Race and the Law*; *Gender and the Law*).

Although cognitive bias-type discrimination based on caste status is treated as a serious, continuing problem in India, affirmative action there is focused more on eradicating the enduring effects of centuries of oppression and segregation. There appears to be a more conscious commitment than in the US to change the basic social structure of the country. The Indian approach perhaps can be understood best using the economic theory pioneered by Glenn Loury, which distinguishes between human capital and social capital (Loury 1995). Human capital refers to an individual's own characteristics that are valued by the labor market; social capital refers to value an individual receives from membership in a community, such as access to information networks, mentoring, and reciprocal favors. Potential human capital can be augmented or stunted depending on available social capital. Economic models demonstrate how labor market discrimination, even several generations in the past, when combined with ongoing segregated social structure, can perpetuate indefinitely huge differences in social capital between ethnic communities. Since the landmark case of *State of Kerala vs. Thomas* (1976), decisions of the Indian Supreme Court have recognized the need for affirmative action to redress systemic inequality. Even though the constitutional provisions authorizing affirmative action are written as exceptions to guarantees of equality, the Court has characterized these provisions as providing instead a right to substantive equality rather than a simply formal equality.

Sunstein (1994) foreshadowed the potential value to the US of learning from India's differing justifications for affirmative action. The author proposed an anti-caste principle in order to reconceptualize the American post-Civil War 14th Amendment (that no law may be enacted that abridges the rights of citizens of the USA), which was a source of both civil rights legislation and reverse discrimination attacks on affirmative action. Under Sunstein's anticaste principle, affirmative action would not be seen as a limited exception to the constitutional guarantee of equality, but rather as a logical, perhaps necessary, method of correcting the effects of caste, which interfere with equality. '(T)he inquiry into caste has a large empirical dimension ... focus(ing) on whether one group is systematically below others along important dimensions of social welfare.' For Sunstein the key dimensions are income level, rate of employment, level of education, longevity, crime victimization, and ratio of elected political representatives to percentage of population. The range of persons who can make 14th Amendment claims would be drastically reduced from the entire population (all of whom have a race) to those who are members of a low caste. Thus, reverse discrimination claims by whites affected by affirmative action would disappear. Further, it would not be necessary to prove discrimination, either contemporaneous discrimination against an individual plaintiff or historical discrimination against that person's group, since the purpose of the 14th Amendment would no longer be interpreted as preventing or remedying discrimination but rather alleviating systemic social disadvantage. (See also Cunningham and Menon 1999, Sunstein 1999.)

India's justification of affirmative action (altering systemic inequality) can be seen as well as in several other countries' efforts to address the problems of diverse populations. Israel has developed affirmative action programs for Sephardi Jews, who typically have immigrated to Israel from Middle Eastern and North African countries, and have been socially and economically disadvantaged in comparison to Ashkenazi Jews, who typically have emigrated from Europe. These Israeli programs do not aim to combat current discrimination or to compensate for past discrimination. There is no history of Ashkenazi dominance and exploitation of the Sephardim comparable to the treatment of African-Americans in the US or the lower castes in India. Rather the programs have been justified in terms similar to the current constitutional discourse in India, recognizing that the combination of initial socioeconomic disadvantage with the continuing influence of informal networks would perpetuate a society divided along the Sephardi/Ashkenazi line, thus requiring affirmative action to counteract these social forces (see Shetreet 1987).

The new constitution of the Republic of South Africa takes the Indian approach one step further. The

very concept of equality is defined so that only unfair discrimination is prohibited. Properly designed affirmative action is thus fair discrimination. The constitution also explicitly states that 'to promote the achievement of equality, legislative and other measures designed to protect or advance persons, or categories of persons, disadvantaged by unfair discrimination may be taken.' (See Cunningham 1997, pp. 1624–28.)

Australia, in contrast, attempts to preserve principles of formal equality in its legislation designed to increase female participation throughout private-sector employment, by justifying programs as simply a 'fair go' for women and as consistent with 'best business practices.' The legislation specifically states that hiring and promotion on the basis of merit is not affected by affirmative action, which intended instead to facilitate the accurate recognition of merit among female as well as male employees (see Braithwaite and Bush 1998).

2.2 *Selection of Beneficiary Groups*

India appears to be unique among the countries of the world in the degree to which its affirmative action programs have wrestled with the problem of selecting beneficiary groups. The constitutional provisions authorizing affirmative action identify three general categories: (a) Scheduled Castes (descendants of the former 'untouchables'), (b) Scheduled Tribes (ethnic groups generally living in remote and hilly regions), and (c) other 'socially and educationally backward classes of citizens.' The greatest difficulty and controversy has focused on selection of groups for this third category, generally termed the OBCs (Other Backward Classes). In the first three decades after adoption of the Indian constitution, selection of groups for OBC designation was left largely to state governments within India's federal system of government. As a result, the Indian Supreme Court repeatedly struck down plans that seemed primarily to benefit politically powerful groups, or that were based on traditional assumptions of caste-based prejudice without knowing which groups were truly in greatest need.

In 1980 a Presidential Commission (known as the Mandal Commission after the name of its Chairperson) issued a comprehensive report and set of recommendations for national standards for OBC designation. Responding to the Supreme Court's concern about objective and transparent processes, the Mandal Commission conducted a national survey that started with generally recognized group categories (typically based on caste name or hereditary occupation) and tested each group using standardized criteria of 'backwardness' (such as comparing the percentage of group members who married before the age of 17, or who did not complete high school, with other groups in the same state). Eleven numerical factors, given varying weights, were assigned to each

group based on the survey results and those groups with total scores below a specified cut-off point appeared in a list of OBCs. The Commission then recommended that a percentage of new hires for most central government jobs be reserved for OBC members under a quota system.

The Mandal Report generated lively debate but it was not until 1990 that the national government actually proposed implementation of the Report. This announcement, by then-Prime Minister V. P. Singh, prompted widespread civil disturbance, instances of self-immolation by high-caste Hindus in protest, and litigation leading to three months of oral argument before the Supreme Court. In 1992 the Supreme Court reached a 6–3 decision, largely approving the Report and its recommendations. A majority of the Supreme Court justices approved the following basic principles: (a) Traditional caste categories can be used as a starting point for identifying OBCs but selection criteria must include empirical factors beyond conventional assumptions that certain castes are 'backward.' (b) Identification of a group as an OBC can not be based on economic criteria alone (*Indra Sawhney vs. Union of India* 1993).

In contrast to India, affirmative action programs in the US have not used consistent criteria for defining group boundaries or for selecting eligible groups. For example, one US federal court struck down a law school admission program at the University of Texas, in part because only blacks and Mexican Americans were eligible for affirmative action consideration; Hispanic Americans, Asian Americans and Native Americans were excluded (*Hopwood vs. State of Texas* 1996). Many people who oppose affirmative action programs in the United States because they use racial categories such as black, African American, or Latino claim that equally effective and more equitable programs can be developed using only class categories, such as low-income (see Malamud 1996). Economist Glenn Loury, who is African American, has suggested that affirmative action is not needed by all African Americans but instead should be focused on a distinct group whose members share the following characteristics: (a) slave ancestry, (b) rural and Southern origins, (c) current residence in northern cities, (d) current residence in ghettos. He uses the term 'caste' to describe this group (Loury 1997).

In South Africa current affirmative action programs are haunted by the categorization systems of the apartheid regime that distinguished between black Africans, coloreds (mixed European and African ancestry), and Indians (some ancestry from the Indian subcontinent). The ruling party, the African National Congress, in its earlier role as the leading opponent to apartheid, sought political solidarity among all peoples oppressed by apartheid; it used 'black' to refer to Africans, coloreds, and Indians. The 1998 Employment Equity Act, implementing affirmative action in both the public and private sector, continued this

tradition by targeting 'Black people' (combining the three Apartheid-era categories) as well as women and people with disabilities. However, this selection system exists in tension with the recognition that coloreds and Indians were differently disadvantaged compared to those designated by apartheid as 'black Africans.' For example, a South African court has upheld a medical school admission program that gave greater preference to black African applicants than to Indian applicants (*Motala vs. University of Natal* 1995).

2.3 Determination of Individual Eligibility

In the US, individual eligibility for affirmative action is usually based solely on membership in one of the selected beneficiary groups. An apparent exception is the federal Disadvantaged Business Enterprise (DBE) program, an affirmative action program affecting federally-funded contracts, in which membership of one of the designated beneficiary groups only creates a presumption of eligibility (see *Adarand Constructors vs. Pena* 1995). However, a minority-owned business is not required to provide additional evidence of disadvantage beyond group membership to be eligible; instead the presumption is conclusive unless a third party (typically a disappointed competing bidder) asserts that the individual beneficiary is not personally disadvantaged.

In India, an individual eligibility test is being implemented pursuant to the decision of the Indian Supreme Court in *Indra Sawhney vs. Union of India* 1993. This 'creamy layer' approach—as it is termed in India—addresses two different but related concerns: (a) that the benefits of affirmative action are not distributed evenly throughout a backward group but instead are monopolized by persons at the socio-economic top of the group; and (b) that benefits are going to persons who do not in fact need them, because they have been raised in privileged circumstances due to parental success in overcoming the disadvantaged status of the backward group. Interestingly, the criteria proposed by the national government after the court's decision focus more on the wealth and occupation of the individual's parents than of the individual, reflecting perhaps continuing sensitivity to the role of social capital in perpetuating disadvantage (see *Class and Law*).

3. Comparative Studies of Affirmative Action

Clearly there is a need for more comparative scholarship on affirmative action, although the last years of the 1990s saw a significant increase in published work in this area. Galanter (1984), a classic in this area, points out the need to be cautious about the comparative lessons that the United States and other countries could learn from India. Thomas Sowell, a US economist critical of affirmative action policies in the United States, has frequently made use of com-

parative materials, most extensively in Sowell (1990) which includes sections of India, Malaysia, Nigeria, and Sri Lanka. In 1991, during the transition period that led to the abolition of apartheid and the founding of the new Republic of South Africa, the Constitutional Committee of the African National Congress convened a conference on 'Affirmative Action in the New South Africa' that included subsequently published studies of affirmative action in India and Malaysia as well as the United States Centre for Development Studies (1992). A set of conference proceedings published in 1997 includes cross-national and interdisciplinary perspectives on affirmative action by public officials and social scientists from India, South Africa, and the United States (Cunningham 1997); the same year also saw the publication of Parikh (1997). An extensive section on affirmative action in India may be found in Jackson and Tushnet's law text on comparative constitutionalism (Jackson and Tushnet 1999), and Andrews (1999) includes studies of affirmative action in Australia, India, South Africa, and the United States.

See also: Affirmative Action: Empirical Work on its Effectiveness; Affirmative Action Programs (India): Cultural Concerns; Affirmative Action Programs (United States): Cultural Concerns; Affirmative Action, Sociology of; Class and Law; Critical Race Theory; Discrimination: Racial; Equality and Inequality: Legal Aspects; Equality of Opportunity; Ethnic and Racial Social Movements; Gender, Class, Race, and Ethnicity, Social Construction of; Race and the Law; Race Identity; Race Relations in the United States, Politics of; Racial Relations; Sex Differences in Pay; Sex Segregation at Work

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Affirmative Action, Empirical Work on its Effectiveness

1. Introduction

Affirmative action generally refers to a set of public policies meant to redress the effects of past or present discrimination. Affirmative action connotes active measures to level the playing field for access to education, to jobs, and to government contracts. While a wide variety of affirmative action policies have been implemented in different countries, much of the existing research concerns experience with the affirmative action directed at expanding employment opportunities for women and minorities in the United States, the focus here.

One defining characteristic of the policy in the United States is its ambiguity. The closest the US Congress has come to explicitly requiring affirmative action in employment is in the Americans with Disabilities Act of 1990, which explicitly requires that employers make ‘reasonable accommodations’ to hire the disabled. This requires that employers must do more than be blind to differences between the disabled and the able, but must actively invest to overcome these differences. It is worth noting that during a period when affirmative action policies were contentiously debated, a law explicitly requiring affir-

mative action in employment was swiftly enacted without mention of affirmative action. Affirmative action has long been a political lightning rod. To its critics, it is symbolic of quotas unfairly and rigidly imposed. To its proponents, it is symbolic of redressing past wrongs and of leveling the current playing field. An empirical basis for policies to counterbalance current employment discrimination can be sought in (a) continuing judicial findings of systematic employment discrimination, (b) statistical evidence of wage disparities across demographic groups, and (c) audit studies of employers’ hiring behavior. For reviews of this evidence, see Altonji and Blank (2000), Blau (1998) Heckman (1998), and Fix and Struyk (1993).

2. *Affirmative Action in the Shadow of Title VII of the Civil Rights Act of 1964*

Affirmative action in the United States has been implicitly encouraged by judicial interpretation of Title VII of the Civil Rights Act of 1964 (CRA), and explicitly required, but not defined, by Executive Order 11246 applied to federal contractors. From its inception, the CRA has embodied a tension between words that bar employment discrimination, and a Congressional intent to promote voluntary efforts to redress discrimination. The courts have struggled with making room for what they sometimes saw as the intent of Congress within the language of the CRA. In later cases, the Supreme Court read Section 703(J)’s bald statement that ‘Nothing in the act shall require numerical balancing’ as allowing numerical balancing as a remedy. In other cases, the court held that the act should not be read to bar voluntary acts to end discrimination. These cases left considerable if ambiguous room for affirmative action. The threat of costly disparate impact litigation under Title VII following the *Griggs v. Duke Power* case created considerable incentive to undertake affirmative action.

The extent of ‘voluntary’ (or at least non-judicially directed) affirmative action taken in response to Title VII can be roughly estimated from existing work on the overall impact of Title VII. Because firms directly subjected to litigation under Title VII represent such a small share of employment, the bulk of the black economic advance credited to Title VII must be due to its indirect effect in promoting ‘voluntary’ affirmative action. For example, Freeman (1973) shows the overall impact of Title VII in the time series of black–white earnings differentials. From this, the direct impact of Title VII litigation at companies sued for racial discrimination could be subtracted. While these impacts are substantial at the companies incurring litigation, employment at such companies makes up only a small fraction of employment. The impact on market wages from the outward shift in the demand curve for blacks at these companies can only be small