The Patriotic-Pragmatic Argument: A Politically Feasible Case for Affirmative Action

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Abstract

This paper examines the major arguments for and against affirmative action as practiced in the U.S. The arguments are presented, critically analyzed and rebutted. Ultimately, this paper argues that the best politically feasible argument for affirmative action, the patriotic-pragmatic argument, focuses on empowering the U.S.'s military, educational, and economic institutions. While the traditional arguments for affirmative action focus on abstract zero-sum game scenarios largely based on issues of moral fairness and social justice, the patriotic-pragmatic argument focus on the concrete "win-win" scenarios of safety and national actualization, educational attainment, and economic prosperity

Introduction

The United States of America embarked on an ambitious effort to eliminate job market discrimination in the 1960's. Title VII of the Civil Rights Act of 1964 made discrimination in employment illegal and established the Equal Employment Opportunity Commission (EEOC) to monitor fair employment practices at the national level. Executive Order 11246 required federal contractors to take "affirmative action" to employ and promote members of protected groups. These efforts sought to raise the relative economic position of persons of color and Caucasian women. Government agencies, schools, and private industries were required to enlarge their pool of applicants and make sure that persons of color and Caucasian women were given consideration. Utilizing such tools as goals, timetables, preferential treatment, and the utilization of multiple measures to determine qualifications, public and private sector institutions sought to provide equal opportunities for persons of color and Caucasian women. Having originated in Lyndon Johnson's Executive Order 11246, this major government initiative escaped the intense scrutiny of the American public. Though controversial since its inception, the public debate over affirmative action took center stage with the Republican takeover of Congress in 1994. With referenda banning affirmative action in California, Texas, Michigan, and Washington, during 96, 97, 98, and'06 respectively, the survival of affirmative action is questionable. While it is more than clear that the outcome of this debate is pivotal for the opportunities afforded persons of color and Caucasian women, one of the arguments of this essay is that the outcome may be even more pivotal for the future success of our nation.

The purpose of this essay is to explicate and to critique the common arguments for and against affirmative action. The critique seeks to explore the strengths, weaknesses, and assumptions that are put forth to either affirm or mitigate the worthiness of affirmative action. Finally, the essay puts forth an uncommon argument for affirmative action, a patriotic and pragmatic one. The case is made that the patriotic and pragmatic argument, because of its appeal to the basic needs for protection, honor, and gain, stands a good chance of garnering the type of consensus that is needed to gain popular support for affirmative action. It is essentially the rationale of the Grutter v Bollinger (2003) decision where the court narrowly upheld (5-4) a narrowly tailored program of affirmative action.

Arguments for affirmative action abound in the popular and scholarly journals. They are featured as op-ed pieces in all manner of newspapers. Chief among these arguments are the following: (1) affirmative action provides an equal opportunity for all[1]; (2) affirmative action is a group compensation, a form of reparations, for the ground lost due to slavery, Jim Crow, and the residuals of segregation and discrimination[2]; (3) affirmative action seeks to remedy the serious inequalities of American society by providing opportunities which would not ordinarily exist[3]; and (4) affirmative action levels the playing field for protected groups by mitigating the racial and gender bias which are often factors in hiring and admissions[4]. For a full appreciation of these positions, it is imperative that there is some appreciation for the unique discriminatory sojourn of African Americans, as well as the discriminatory experiences of other people of color and Caucasian women in the United States of America.

The Africans who arrived in Jamestown in 1619 were not slaves—they were indentured servants. By 1642, being an African was synonymous with being a slave. Several factors led to this

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[1] William J. Clinton. "Statement on the Supreme Court Decision on Affirmative Action." Weekly Compilation of Presidential Documents, 6/19/95, Vol. 31, Issue 24; Christopher Edley, Jr.. Not all black and white: Affirmative Action, Race and American Values. New York: Hill and Wang; Lawrence J. Hanks. "Affirmative Action Helps United States Use Talents of All." The Atlanta Constitution. September 14, 1989.

[2] Jack White. "Sorry Isn't Good Enough." Time. June 1997, Vol.149; C. Krauthammer. "Reparations for Black America." Time. December 31, 1990, Vol. 136, Issue 28; Ez ola Foster. "What Do People owe People?" Headway. December 1997/98, Vol. 10, Issue 1.

[3] Barry L. Goldstein. "The Historical Case for Goals and Timetable." New Perspectives. The US Commission on Civil Rights. Summer 1984. Pp. 20-28

[4] Barbara Bergmann. 1996. In Defense of Affirmative Action. New York: Basic Books.; Gerald Horne. Reversing Discrimination. The Case for Affirmative Action. New York: International Publishers. 1992; "America for All", Christian Science Monitor. January 24, 1997, Vol. 89, Issue 41.

transformation. Perhaps the most salient factor was the need for cheap labor. Given that the Africans were different in color, language, religion, and other customs, it was easy to impute negativity to these differences for the goal of acquiring cheap labor. Unlike the Native Americans who knew the terrain and could potentially get back with their nearby tribe, the Africans were in a strange land and far away from their native tribes. Unlike the white indentured servants, they could not run away and blend in with the majority population. Thus, this confluence of factors made the Africans consummate slave candidates[5].

Even with the aforementioned confluence of factors, the lynchpin of slavery was the propagation of the notion that Africans were subhuman, somewhere between the intelligence of an ape and the white man, with a childlike predilection towards felicity. Thus, before there was a civil rights movement for African Americans, there had to be a movement to convince majority America that the Africans were actually human. The notion of the inhumanity of Africans provided the foundation for slavery, Jim Crow, separate but equal, white supremacy, and the white privilege that continues to exist in contemporary America. Caucasian women, Latinos, Asians, and Native Americans also have their story of legalized state sanctioned discrimination. It is against this background that arguments for affirmative action are put forth[6].

Proponents argue that historic racism and sexism have denied people of color and Caucasian women the opportunity to optimize their talents. They argue further that although state sanctioned discrimination on the basis of color and gender is now prohibited, racial and gender bias continues to manifest itself in hiring and admissions decisions. Affirmative action, via a variety of methods, seeks to provide equal opportunity for all citizens; it seeks to level the playing field; it seeks to mitigate the serious inequalities created largely by the historic discrimination while it also endeavors to provide some measure of compensation for the discrimination leveled upon the now protected group. While there are numerous quibbles that are voiced against the proponents' arguments, the most serious conflicts of vision occur around the strategies, i.e., preferential treatment, "goals, timetables, and quotas," and the use of multiple measures to decide upon qualifications.

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[5] Lawrence J. Hanks. The Struggle for Black Political Empowerment in Three Georgia Counties. Knoxville: The University of Tennessee Press, 1987. Chapter 1.

[6] Ibid.

The notion of affirmative action defined as "equal opportunity" had widespread support following the issuance of Johnson's Executive Order 11246. Equal opportunity simply meant that employers and universities would have to cast their nets far and wide as they searched for employees and students respectively. Employers and universities would make it known that they no longer discriminated and were interested in providing career opportunities for all people; they would advertise in venues likely to be used by protected groups. However, their standards would remain the same. The affected institutions would not be pressured to hire or admit students from the protected groups. There were no goals, timetables, or quotas. Under this definition, results were not required. If affected institutions provided evidence that they had shown good faith and good works, they would be deemed in compliance even if there were no members of the protected group hired or admitted[7]. Affirmative action proponents fought for a stronger manifestation of the concept.

The Philadelphia Plan, a plan for construction contractors formulated during the Nixon administration established the notion of goals and timetables[8]. If the goals and timetables were not met, the Office of Federal Contract Compliance Programs (OFCCP) would make a note for the record that Company X failed to meet its goal. While the OFCCP had no clear policy of punishment for violators, the notion of goals and timetables led opponents to argue that many companies felt undue pressure to meet them. Thus, they argued that many companies would create a de-facto "quota" system to avoid being out of compliance. Moreover, individualism and meritocracy would be lost in order to meet these quotas.

One would be hard pressed to argue against the notion that everyone deserves an equal chance to acquire the requisite skills that facilitate upward mobility. Moreover, once these skills have been attained, individuals deserve an equal chance to utilize these skills. Herein lies the strength of the affirmative action proponents' case. The notion that affirmative action will have a serious impact on inequality, especially when one takes into account the disproportionate low socio-economic status of the African American and Latino community, is a pipe dream at best. Affirmative action, as group compensation (and as a form reparation for over three hundred years of slavery and over three hundred years of government sanctioned discrimination) is an

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[7] Barry L. Goldstein. P. 20.

[8] Ibid. p. 20.

insult of the highest order. Moreover, to seek a change in the way merit and qualifications are measured, which appears to mitigate the status and power of the majority, without ostensibly offering some tangible benefit, is to seriously miscalculate the power of self interest. In other words, as long as affirmative action arguments primarily appeal to reason, conscience, and morality, there will be few converts. Herein lie the weaknesses of the traditional arguments for affirmative action.

Although affirmative action, as it relates to the question of equal opportunity for Caucasian women and persons of color, has its genesis in Title VII of the Civil Rights Act of 1964 and in Johnson's executive order of that same year, the Republican controlled Congress of 1994 foisted the public discussion of this issue onto the American public. Arguments that seek to demolish affirmative action abound in the scholarly and popular journals, newspapers, and other printed materials. Furthermore, given the proliferation of conservative talk shows during and after the Reagan-Bush era, the anti-affirmative action arguments are decidedly more accessible. Chief among them are the following: (1) affirmative action is reverse discrimination[9]; (2) affirmative action violates the cherished American values of individualism and meritocracy -- racial categories are created and qualifications are lowered[10]; (3) affirmative action violates the notion of a color blind Constitution[11]; (4) affirmative action, although it claims to impact the serious racial and gender inequalities that exist, does little to help the masses of poor women and people of color[12]; (5) affirmative action create ill will -- white men, as well as white women who perceive that they have lost a job because of their whiteness, resent having their whiteness work against them[13]; (6) the beneficiaries of affirmative are stigmatized -- they are plagued by self-

[9] Nathan Glazer. Affirmative Discrimination: Ethnic Inequality and Public Policy. New York: Basic Books, 1975; Herman Belz. Equality Transformed: A Quarter Century of Affirmative Action. New Brunswick, NJ: Transaction Publishers. 1994.

[10] Barbara Ehrenreich. "Planet of the White Guys." Time. March 13, 1995, Vol. 145, Issue 10; S. Monroe. "Does Affirmative Action Help or Hurt?", Time. Vol. 137, Issue 21; Thomas Sowell. "Phony Arguments for Quotas." National Minority Politics, July 1995, Vol. 7, Issue 7.

[11] Miguel Perez. "A Color Blind Society is nice in theory but fiction in reality." San Antonio Business Journal. Vol. 11, Issue 45, p.51.

[12] Richard D. Kahlenberg. The Remedy: Class, Race and Affirmative. New York: Basic Books. 1996; Jack Forbes. "Alternative Voices." The Humanist. Nov/December 1997, Vol. 57, Issue 6; Richard Kahlenberg. "Need-based Affirmative Action". Christian Science Monitor, Vol. 88, Issue 238.

[13] Paulette V. Walker. "Justified or not, white resentment grows." Army Times, June 12, 1995, Vol. 55, Issue 46; B. Drummond Ayres, Jr. "The Race to Win over the angry white male." New York Times, June 4, 1995, Vol. 144, Issue 50082, Sect. 4, p.2; Mitchell Pearlstein. "Angry white males not crux of affirmative action debate."

doubt because of the role race played in their selection[14]; and (7) the existence of affirmative action implies that Caucasian women and people of color need special help in order to compete, they are not capable of meeting the Caucasian male standard[15].

Affirmative action is often criticized because it does little for the underclass and masses of poor Caucasian women. The major problem with this criticism is that affirmative action was never intended to be a panacea for the employment and admissions ills of protected groups. Before the advent of affirmative action, there were members of the protected groups who were about the business of doing all of the right things in order to have various opportunities for employment and admissions. Nonetheless, these opportunities were not being afforded at any type of appreciable level. Thus, the purpose of affirmative action was to make sure that qualified members, those with the demonstrated requisite skills, would have a fair opportunity to procure appropriate opportunities. Nonetheless, affirmative action does provide an indirect benefit for the masses who may not have the requisite skills: with affirmative action, they know that if they acquire the requisite skills, they will have access to a variety of opportunities which were not available before the institutionalization of affirmative action. To argue that affirmative action is ineffective because it has not eliminated poverty is analogous to saying that aspirin in not an effective medicine because it does not cure cancer. Like aspirin, affirmative action does a fine job at what it is supposed to do; eliminating poverty is beyond its scope.

The "ill-will" argument posits that the policy creates anger, resentment, and hostilities, emotions that clearly are not conducive to the goals of goodwill and consensus. This argument highlights one of the problems which created the need for affirmative action in the first place: that the feelings of Caucasians, and Caucasian males in particular, are given greater weight than the feelings of people of color and Caucasian females. The ill will argument validates the anger of Caucasians and males while minimizing the feeling of women of color and other people of color. It does not address the issue of anger from these protected groups. Is the assumption that these

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Minneapolis-St. Paul City Business, Vol. 13, Issue 10; Shelby Steele, "How to Grow Extremist". New York Times. March 13, 1994, p.17.

[14] Madeline heilman and Carolyn Black. "Presumed Incompetent? Stigmatization in Affirmative Action Efforts." Journal of Applied Psychology. Vol. 77. Issue 4. P. 536; Stephen Carter. Reflection of an Affirmative Action Action Baby. New York: basic Books. 1991. P. 2.

[15] "A Collection of Views to Black Conservatives on Affirmative Action ." The Journal of Blacks in Higher Education. Summer 1998. Number 20. P. 9.

groups will not be angry, or is it that they will be more accommodating to the Caucasian male anger? In any event, while it is not clear regarding what members of protected groups should do with their anger, it is clear that there is an expectation that somehow the anger of Caucasians must be addressed.

The "self-doubt, stigmatization, special needs" arguments is an intriguing trilogy. It asserts that affirmative action creates self-doubt on the part of the recipients -- they doubt their ability since they know race and or gender was a factor in their selection. Thus, the recipients are stigmatized because of their inability to meet the white male standard without special help. There are a number of weaknesses with this argument. First, and perhaps foremost, there is virtually no scientific data to substantiate the self-doubt claim[16]. Secondly, Caucasian women and people of color are accustomed to stigmatization, it is one of the reasons that the policy exists. Thirdly, affirmative action does not exist for the purpose of providing a special need. It seeks to remove the "special" negativity that has been meted onto the members of the protected groups. Thus, existence of affirmative action takes nothing away from the worthiness of members of the protected group. The policy exists as an acknowledgement that racial and gender discrimination exists and that such discrimination keeps protected group members from optimizing their career potentials.

The Reverse Discrimination-Preferential Hiring Quagmire

A good deal of the fervor regarding affirmative action derives from the issues regarding the legitimacy of preferential hiring and the notion of affirmative action. Preferential hiring may be defined as the hiring policy used when two candidates for a position are judged virtually equal on all counts. When this phenomenon occurs, race, gender, veteran status, legacy status, athletic or artistic ability, etc., maybe deemed the deciding factor in tipping the balance in one of the candidate's favor. It is important to emphasize the **equal qualifications**. Those who charge "reverse discrimination" maintain that Caucasians and males are discriminated against on the basis of race and gender when race and gender are used to tip the balance.

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[16] Bowen and Bok are perhaps the only scholars who have quantitatively studied this hypothesis. See their The Shape of the River: Long Term Consequences of Considering Race in College and University Admissions. Princeton, NJ: Princeton University Press. 1998.

Those who object to "reverse discrimination" argue that there are two forms: a strong form and a weak form[17]. The former gives preference to protected group members who are less qualified than others while the latter is giving preference to protected group members who are equally as qualified as other candidates. "Weak reverse discrimination" is clearly not "reverse discrimination". And, although it may not be as clear, neither is "strong reverse discrimination."

"Weak reverse discrimination" is merely preferential hiring. For example, if a veteran and a civilian were deemed equally qualified for a job, and the veteran was awarded the position because of his veteran status, this practice would be called "preferential hiring". This practice has occurred for decades without controversy: why is this same practice called "reverse discrimination" when the preferred candidate is a Caucasian female and/or a person of color? Why is it that preferences based on state residency, athletic or other artistic ability, donor status, and legacy status are largely *not only* unchallenged *but thoroughly* ensconced in the admissions and hiring policies of most selective institutions? If it is not discrimination to give preferences in the fore-stated case, reason dictates that it is not discrimination to give preferences when race and gender are the categories[18].

"Strong reverse discrimination", by contrast, is giving preferences to "less qualified" members of the protected groups[19]. This argument rests on the premise that one can be "more qualified" than someone else. Under close examination, this concept has shown to be of little practical consequence. Agencies and universities set a certain level of efficiency which is expected from their employees and students. Once an individual is deemed qualified to perform at that certain level of efficiency, it becomes problematic to determine who is "more qualified" than some one else. One might possibly think that experience would make a candidate "more qualified" but is it valid to assume that an applicant of ten years work experience is "more qualified", than an applicant with two years of work experience? One could reasonably argue that this is not a valid assumption as duration of experience does not necessarily correlate with the ability to perform a job better.

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[17] Alan H. Goldman. "Affirmative Action", Philosophy and Public Affairs, Vol. 5, No. 2, p. 179.

[18] John Larew. "Why are Droves of unequalified , unprepared kids getting into our top colleges." The Washington Monthly. June 1991. PP. 10-14

[19] Ibid. Goldman. P. 179.

If an employer has set the level of efficiency for a certain job and has two candidates whose qualifications meet this minimum, it is not discrimination if the employer does not choose the candidate whose qualifications exceed the minimum by the most. On the other hand, if he chooses a candidate whose qualifications do not meet the minimum, this would be discrimination. As things generally stand however, the employer simply makes a choice between two qualified candidates. Given the problems that go into deciding the validity of the "more-qualified-than-thou" concept, it becomes increasingly less clear as to how anyone can call the practice of preferential hiring "reverse discrimination."

The strong type of alleged "reverse discrimination" is said to be found on the campuses of universities where racial minorities are granted admission into graduate and professional schools with lower predicted averages than their Caucasian counterparts. Many view this as a clear example of "reverse discrimination." Upon closer scrutiny, this clearness becomes rather cloudy.

A student's predicted average is a function of their college grades and aptitude test scores (GRE, LSAT, MCAT, etc), which ostensibly serve to predict how well a student will do in a graduate or professional school. While Latinos and African Americans tend to do less well on these tests, it has also been acknowledged that these tests are poor indicators of the actual ability of these applicants. The averages of African American and Latino students suffer a great deal due to their inability to do well; the result is that their averages oftentimes do not reach the minimum cut-off point for further consideration. Since it has been established that standardized tests are poor measures of whether student of color will succeed in graduate or professional school, many schools place little, if any, weight on the part of the predicted average which is determined by the standardized test(s). This sets the stage for the charge of "reverse discrimination" since some racial minorities are admitted on the basis of different criteria which have been deemed "less exacting." It has been argued that these students are "less qualified." This characterization is inaccurate. Thus, it is inappropriate.

Apparently the source of the problem lies in the logic behind the two sets of qualifications. This logic appears to be that standardized tests are good indicators of how well a Caucasian student will do in graduate or professional school but they are not good indicators of how well students of color will do. Hence, the standardized scores are either not used at all or they are given less weight in computing the predicted averages of some students of color. A test which measures

everyone's ability equally would be most useful for this situation, however, the tests that are used are biased towards some students of color. Thus, when the argument is made that less qualified students of color are admitted with lower predicted averages due to "reverse discrimination," the charge is unfounded since they are "less qualified" by a criterion which has been shown to be an inadequate indicator of how well all persons will do in a graduate or professional school[20]. Nonetheless, it is implicitly assumed that the ability to do well on the appropriate standardized exam makes one more qualified. If and when a test is developed that is a true indicator of how well any individual will do in a graduate or professional school, and admission boards continue to allow some students of color to enter with lower than the minimum predicted average, it is at this time that the charge of "reverse discrimination" will be on more solid ground.

Affirmative Action and Agents of Influence

While most are prepared to acknowledge that affirmative action is another public policy about which reasonable persons can differ, few are prepared to acknowledge that there are numerous factors which influence our position on affirmative action as well as other observable phenomena. Chief among these factors are emotional attachment, ideology, values, socialization, race, gender, one's protected group status, and perhaps most importantly, one's own construction of reality.

Caucasian women and members of the racially protected groups generally tend to favor affirmative action; Caucasian men and Asians tend to be disproportionately anti-affirmative action. One might reasonably argue that self-interest plays a role in bringing individuals to these respective positions. If one views the USA as a place where racial and gender discrimination is a thing of the past, and thinks that universities, private industries, and the public sector are fair in their judgement with respect to race and gender, then these individuals are decidedly anti-affirmative action and tend to focus on the alleged negative consequences. If one, on the other hand, sees the USA as a place where racial and gender discrimination continues to exist, either consciously or unconsciously, then these individuals usually are decidedly in favor of affirmative action. Save for the OJ Simpson verdict and the question of Clinton's impeachment, one would

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[20] For an excellent analysis of factors which lead to success other than I.Q., see Daniel Goleman Emotional Intelligence. New York: Bantam Books. 1995.

be hard pressed to find a more divisive issue. Given this divisiveness, is there any hope for a mandate, or even a consensus regarding the role of affirmative action in American life? My suggestion is that hope lies in the patriotic pragmatic argument.

The Patriotic Pragmatic Argument: A Win-Win Solution

For most of its history, the United States of America has had the luxury of being able to discriminate against Caucasian women and people of color and still maintain its status as a world leader and super power. Given the demographic changes that are presently occurring -- the shrinking percentage of Caucasian males participating in the labor market -- this luxury must be placed in the dustbins of history if America is to remain a world leader. In 1987, WORK FORCE 2000 reported that between 1987 and the year 2000 two-thirds of the new entrants into the workforce would be women. Persons of color will constitute 29% of the new entrants[21]. This is more than double the 1987 figure of 14%. As early as 2010, the non-Hispanic white population will drop from 76% to 68%. National census data predicts that by 2050, people of color will comprise 50% of the U.S. population. By 2056, people of color will outnumber Caucasians[22].

During America's period of world dominance, efforts that sought to empower people of color and women were viewed in terms of a zero-sum game, i.e., if people of color and Caucasian women gained, then it followed that Caucasians and males lost. Thus, affirmative action and other policies which sought to empower people of color and Caucasian women were portrayed in moral terms--it was considered "the right thing" to do although Caucasians and men might be disadvantaged. Diverse human development, i.e., making sure that talent from all races and both genders is optimized, is now clearly an obvious "win-win" situation. The excellence required for the USA to compete globally must be expanded beyond the shrinking pool of Caucasian men. Caucasian men benefit since they can continue to live in a super power country which competes to set the pace in technology and other innovations which enhance the advancement of human

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[21] "The Browning of America". Newsweek. February 23, 1981. Vol. 97. P. 26.

[22] William B. Johnston and Arnold E. Packer. Workforce 2000: Work and Workers for the Twenty-First Century. Indianapolis. Hudson Institute, 1987. P. 95; Mitchell Bloom. "The Next Generation: A U.S. Forecast for the year 2020." Journal of Business Forecasting. Winter 1994-95, Vol. 13, Issue 4.

existence. Caucasian women and people of color benefit by having the unbridled opportunity to optimize their talents.

Individuals tend to support policies that they view as meeting their needs, be it material, spiritual, or some other aspect of self-actualization. It also helps if the need is perceived as (both) being immediate and pressing, knocking on the front door if you will. Moreover, Caucasians have generally manifested higher levels of patriotism than African Americans and other citizens of color. Thus, the strength of the pragmatic patriotic argument is that it speaks to values which the majority group, which has a major impact on public policy, can appreciate. From the Caucasian majority perspective, the weakness of the argument is that few see the goals of affirmative action as immediate and pressing--it is hard to concretize the notion of "America as weakened" and how they will be the lesser because of this weakened status. Thus, passionate and strong support might be difficult to materialize.

From the perspective of the persons of color and the protected group members, the argument weakness lies in it failure to acknowledge the legitimacy of the claims which support affirmative action. For these advocates, the argument is analogous to Lincoln freeing the slaves because of pragmatism, saving the Union, rather than morality, freedom for slaves because it was the right thing to do. Despite the weaknesses, given the limits of human understanding, leaders from both camps should be comfortable making this argument.

Arguments for and against affirmative action abound. They all have their strengths and weaknesses -- they all accept certain realities and reject others and they all tend to support one set of values while minimizing or rejecting another set. Nonetheless, the life of our nation continues. America is at a crossroad. A crucial decision must be made: leaders in all sectors of American life must decide whether to optimize the talents of all Americans via affirmative action and remain competitive, or continue to allow much of the talent of people of color and Caucasian women to remain less than optimal, thereby becoming a nation of losers and followers. While reasonable persons, and surely ones who are largely driven by emotion, will continue to argue about what is "fair," it seems likely that a public consensus is possible for support of affirmative action based on pragmatic and patriotic grounds despite a Supreme Court which is decidedly more conservative than the court which upheld affirmative action in Grutter v Bollinger (2003).

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