

The Conundrum of Equality

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The Occasional Papers of the School of Social Science are versions of talks given at the School's weekly Thursday Seminar. At these seminars, Members present work-in-progress and then take questions. There is often lively conversation and debate, some of which will be included with the papers. We have chosen papers we thought would be of interest to a broad audience. Our aim is to capture some part of the cross-disciplinary conversations that are the mark of the School's programs. While members are drawn from specific disciplines of the social sciences—anthropology, economics, sociology and political science—as well as history, philosophy, literature and law, the School encourages new approaches that arise from exposure to different forms of interpretation. The papers in this series differ widely in their topics, methods, and disciplines. Yet they concur in a broadly humanistic attempt to understand how—and under what conditions—the concepts that order experience in different cultures and societies are produced, and how they change.

Joan W. Scott is Professor of Social Science at the Institute for Advanced Study, and one of the School's three permanent faculty members. A social historian who specializes in modern France, Scott was a Member in 1978-79, and joined the faculty in 1985. *The Conundrum of Equality* is a paper that Scott gave in the Faculty Lecture Series for the Institute for Advanced Study in February 1998. The Faculty Lecture Series is an important part of the Institute's program of community outreach: every year, one member of each of the four Institute faculties gives a public lecture to the larger community. Like the Thursday seminars, these lectures make time for questions and discussion. A reception follows in which Institute and community members meet for more individualized conversations. In presenting this *Occasional Paper*, we have maintained the more informal style of Professor Scott's talk.

Scott's recent work has focused on the history of the women's movement in the context of economic development and on the history of feminism. Her current research project compares the emergence of international feminist movements at the end of the nineteenth-century with the global feminism of the late twentieth-century. Scott is an active member of the American Historical Association and the American Association of University Professors; she is chair of the latter's Committee on Academic Freedom. In this capacity, she has written and testified about affirmative action, particularly as it pertains to universities. She will direct the School's 1999-2000 academic year project on the universalism of human rights.

—Debra Keates, Series Editor

The Conundrum of Equality

I'd like to begin with a quotation from Olympe de Gouges, an early feminist who wrote a great number and variety of remarkable things during the French Revolution. She is most famous for her *Declaration of the Rights of Woman and Citizen* of 1791, which argued that all the rights of men enumerated by the revolutionaries in 1789 also belonged to women. But for me her most memorable lines are to be found in a long treatise she wrote in 1788. It was her version of the *Social Contract*, which she unapologetically deemed the equal if not the better of Rousseau's. In it she offered dozens of proposals for social and political reform as well as long critiques of her contemporaries' attitudes and practices. At one point, she interrupted a lengthy diatribe with an unusually astute observation. "If I go any further in this matter," she commented, "I will go too far and attract the enmity of [those] who, without reflecting on my good ideas or appreciating my good intentions, will condemn me pitilessly as a woman who has only paradoxes to offer and not problems easy to resolve." (All references to de Gouges can be found in Scott 19-56.)

I come before you today, risking "pitiless condemnation," "as a woman who has only paradoxes to offer and not problems easy to resolve." In fact, my argument will be that there are no simple solutions to the hotly debated questions of equality and difference, of individual rights and group identities; that to pose them as opposites misses the point of their interconnection. It is, rather, in recognizing and maintaining a necessary tension between equality and difference, between individual rights and group identities that we achieve the best and most democratic results.

I think you are aware of the extent to which current debates about equality and difference, individual rights and group identities take polarized form. I'll give you a few examples, though they're not exhaustive and I'm sure you can think of more.

Affirmative action has been attacked as a form of "group preference" that discriminates against individuals; gay anti-discrimination laws have been repealed on the grounds that they confer special rights that individuals don't need and don't enjoy; the push to make university, law, or medical school faculties more diverse has been resisted on the grounds that attention to group identity will undermine evaluations of the objective merit of any individual candidate; proponents of multiculturalism insist that identity groups be represented in all their diversity in the educational curriculum while opponents worry that separate histories of racial and ethnic groups will promote what one scholar has referred to as "the virus of tribalism" and another "the disuniting of America." Pressure to hire representatives of minority groups to teach about minorities has been resisted on the grounds that there is no necessary correlation between one's ethnicity, race or gender and one's scholarly expertise. Must one be a woman to teach women's history? black to teach African-American literature? Jewish to head a Jewish Studies program? There has been bitter dispute, as well, about the question of whether separate schools are warranted for men and women, boys and girls. Does equality demand the same conditions for everyone regardless of sex? When are separate facilities—the Citadel or Virginia Military Institute—detrimental (as the Supreme Court ruled they were last year)? And when are they advantageous, as the supporters of

prestigious women's colleges or the founders of the all-girl school in Harlem argue their institutions are? The question of when, whether, and how to recognize identity groups and when to ignore them extends to economic and political realms too. Does calling pregnancy a disability for health insurance purposes put women on an equal footing with men in the workplace, or does it devalue an experience (and social function) that is unique to women? Redrawing the boundaries of electoral districts to increase the number of minority representatives elected to office has been rejected not only for its "race consciousness" but because it undermines the principle that any individual can—and should—be able to represent the diverse interests of his or her constituency. Representative democracy, it is argued, is not about the proportional representation of groups. These questions about groups and their representatives have extended to the theater—the realm of illusion and imagination where literal issues are supposed to be transcended. Should blacks be cast in white roles or vice versa? Can Caucasians play Eurasians? Controversy about that last question nearly caused the canceling of the Broadway production of the musical *Miss Saigon* in 1990. (I have based this paragraph on Martha Minow's book *Not Only For Myself: Identity, Politics, and the Law*.)

Groups or individuals? These days the question is posed as a clear choice. If you pick one, you rule out the other. Some argue that groups preclude treating someone as an individual. Individuals must be evaluated for themselves, not for the characteristics attributed to them as members of groups. Equality can only be implemented when individuals are judged as individuals. That's one position, most often legitimized by strict interpretations of the Constitution and Bill of Rights which take equality to mean simply the presumed equality of individuals before the law. The other side says that individuals won't be treated fairly (in law and in society at large) until the groups they are identified with are given equal value. As long as bias, prejudice, and discrimination exist, this position argues, individuals will not all be evaluated according to the same criteria; to eliminate discrimination requires attention to the economic, political, and social status of groups. But which groups? Is black or African-American large enough, or too large a category to address the specific needs and experiences of bi-racial Americans? Under which category should gay and lesbian people of Irish descent march in the St. Patrick's Day parade? Is any category large enough to hold all the different kinds of people it contains? It is in these terms that philosopher Anthony Appiah worries about the politics of group identity:

Demanding respect for people as blacks and as gays requires that there are some scripts that go with being an African-American or having same-sex desires. There will be proper ways of being black and gay, there will be expectations to be met, demands will be made. It is at this point that someone who takes autonomy seriously will ask whether we have not replaced one kind of tyranny with another. (See Minow 56)

Appiah poses the problem in terms of groups versus individuals, but he does not, cannot choose one position or the other. The possibility of individual autonomy for a black, gay man, he says, depends on securing respect for those groups. At the same time, individual autonomy is curtailed by the scripts the groups provide. Appiah's comment lays bare what in another context the legal theorist Martha Minow has called "the dilemma of difference" and what I want to think about in terms of paradox.

There are several definitions of paradox. In logic, a paradox is an unresolvable proposition that is true and false at the same time. The classic example is the liar's statement: I am lying. In rhetorical and aesthetic theory, paradox is a sign of the capacity to balance complexly contrary thoughts and feelings, and thus of poetic creativity. Ordinary usage employs

“paradox” to mean an opinion that challenges prevailing orthodoxy, that is contrary to received opinion. In a sense, my paradoxes partake of all of these meanings, for they challenge what seems to me to be a widespread tendency to polarize debate by insisting on either/or choices. I will argue, instead, that individuals and groups, equality and difference, are not opposite but rather interdependent concepts which are necessarily in tension. The tensions play out in historically specific ways and need to be analyzed in their specific political embodiments, not as timeless moral or ethical choices.

I’ll list my paradoxes for you now to give you a sense of what’s to come in this talk. At this point they may seem terribly abstract, but I think they’ll make more sense as I go on and give you concrete historical examples of what I mean.

1. Equality is an absolute principle **and** an historically contingent practice.
2. Group identities define individuals **and** deny the full expression or realization of their individuality.
3. Claims for equality involve the acceptance **and** rejection of the group identity attributed by discrimination. Or, to put it another way: the terms of exclusion on which discrimination is premised are at once refused and reproduced in demands for inclusion.

* * *

Equality is an absolute principle and an historically contingent practice. It is not the absence or the elimination of difference, but the recognition of difference and the decision to ignore it or take it into account. R.R. Palmer, writing in the *Dictionary of the History of Ideas*, puts it this way:

Equality requires an act of choice, by which some differences are minimized or ignored, while others are maximized and allowed to develop. (139)

At the time of the French Revolution, equality was announced as a general principle, a promise that all individuals would be considered the same for purposes of political participation and legal representation. But citizenship was conferred initially only on those who held a certain amount of property; it was denied to those who were too poor or too dependent to exercise the autonomy thought to be required of citizens. Citizenship was also denied (until 1794) to slaves because they were the property of others and to women because their domestic and childbearing duties were said to preclude political participation. “Since when is it permitted to give up one’s sex?” thundered the Jacobin Pierre-Gaspard Chaumette, when confronted by women’s demands to participate in political clubs. “Since when is it decent to see women abandoning the pious cares of their households, the cribs of their children, to come to public places, to harangues in the galleries, at the bar of the Senate? Is it to men that nature confided domestic cares? Has she given us breasts to feed our children?” (Levy et al. 219). Differences of birth, rank, and social status among men were considered at that moment not to matter; differences of wealth, color, and gender did matter. The Marquis de Condorcet (whose death in 1792 deprived women of a forceful advocate) wondered at the grounds for excluding women from citizenship when, he said, they shared the moral and rational capacities of men. “It would be difficult to prove that women are incapable of exercising the rights of citizenship. Why should individuals exposed to pregnancies and other passing indispositions be unable to exercise rights which no one has dreamed of withholding from persons who have the gout all winter or catch cold quickly?” (98). While Condorcet was certain that women should enjoy citizenship, he was less sure about whether

blacks should—the question for him, as for other revolutionaries, was which differences mattered and which did not for purposes of granting equal political rights.

According to the Oxford English Dictionary, in mathematics equality means identical amounts of things, exact correspondences, but equality as a social concept is less precise. Although it suggests mathematical identity, in practice it means “possessing a like degree of a specified or implied quality or attribute; being on the same level in rank, dignity, power, ability, achievement, or excellence; having the same rights or privileges.” The relationship among qualities, social positions, and rights has varied over time. Since the democratic revolutions of the eighteenth century, equality in the West has most often referred to rights—rights that were deemed the universal possession of individuals regardless of their different social characteristics. In fact, the abstract notion of the individual was not as universally inclusionary as it sounded. The individual was usually thought to possess, in Stephen Lukes’ description, “a certain set of invariant psychological characteristics and tendencies” and these functioned to exclude those who did not measure up to the standard (146). In the late 18th century there were psychologists, doctors and philosophers who argued that physical differences of skin or bodily organs, qualified some as individuals and others not. The anatomist Jacques-Louis Moreau offered as his own Rousseau’s comment that the location of the genital organs, inside in women, outside in men, determined the extent of their influence: “the internal influence continually recalls women to their sex....the male is male only at certain moments, but the female is female throughout her life” (Knibiehler 835). Men were individuals because they were capable of transcending sex; women could not cease to be women, and thus could never attain the status of individual. Lacking this likeness to men, they could not be considered men’s equals, and thus not citizens. It is interesting to note here (and important for what I will discuss later) that in these arguments equality pertains to individuals and exclusion to groups; it was because they were thought to belong to a category of persons with specific characteristics that women were not considered men’s equals. The Italian criminologist Cesare Lombroso put it this way at the end of the 19th century: “All women fall into the same category, whereas each man is an individual unto himself; the physiognomy of the former conforms to a generalized standard; that of the latter is in each case unique” (See Gelfand).

The specified or implied attributes that set the standard for equality have changed in the more than two hundred years since the announcement that “all men are created equal and endowed by the Creator with certain inalienable rights.” There are few places—if any—in the world now that prevent people from voting on the grounds of race or sex, although there are still differences that matter when it comes to access to education, jobs, or other social resources. And these differences are the subject of great political contestation—political contestation that is enabled both by the universal promise of equality—an equality that will know no difference—and by the historically specific standards that at different times take different differences into account.

To put this point another way: the idea that all individuals could be treated equally has inspired those who found themselves excluded from access to something they and their societies considered a right (education, work, subsistence wages, property, citizenship) to claim inclusion by challenging the standards upon which equality was granted to some and denied to others. Democratic-socialist workers demanding universal manhood suffrage in France in 1848 insisted that “there will not be a citizen who can say to another ‘you are more sovereign than I.’”

But—and this leads to the next set of paradoxes—it was as workers and not as individuals that these men demanded recognition of their individual rights.

* * *

Group identities are an inevitable aspect of social and political life, and the two are interconnected because group differences become visible, salient and troubling in specific political contexts. It is at these moments—when exclusions are legitimated by group differences, when economic and social hierarchies advantage some groups at the expense of others, when one set of biological or religious or ethnic or cultural characteristics are valued over another—that the tension between individuals and groups emerges. Individuals for whom group identities were simply dimensions of a multi-faceted individuality, find themselves fully determined by a single element: religious or ethnic or racial or gender identity. The political process is described in an article on “Minorities” in the *International Encyclopedia of the Social Sciences*:

Groups are not ‘naturally’ or ‘inevitably’ differentiated. Cultures must *define* them as differentiated before they are so. People of different races, nationalities, religions or languages can live among one another for generations, amalgamating and assimilating or not, *without* differentiating themselves. Like everything else that is social, minority groups must be socially defined as minority groups, which entails a set of attitudes and behaviors. (And is not necessarily a question of numerical representation in the population.) [...]

A minority need not be a traditional group with long-standing group identification. It can arise as a result of changing social definitions in a process of economic or political differentiation. Language or religious variation can be considered unimportant for thousands of years, but a series of political events can so sharpen the religious or linguistic distinctions that the followers of one variation without power ... become a minority. (Rose 365-71)

(I would add that it is because of differentials of power between men and women that feminists have referred to women as a minority, even though they usually make up more than half of the population. I would also add—and this is key point—that the events that establish minorities as minorities attribute minority status to some inherent qualities in the minority group, as if those qualities were the reason rather than the rationalization for unequal treatment. For example, maternity was often given as the explanation for the exclusion of women from politics, race as the reason for the enslavement and/or subjugation of blacks, when in fact the causality runs the other way: processes of social differentiation produce the exclusions and enslavements that are then justified in terms of biology or race.)

The heightened sense of identification that comes with the reduction of an individual to a category is both demeaning and exhilarating. As the object of discrimination, one is subsumed in a stereotype; as a member of an embattled movement, one finds sustenance and solidarity. Yet even the rewards of fellowship have their limits. Long before the notion of political correctness was available—early in the 19th century—French workers sought ways to escape the confining terms of class identity, whether these were offered by their social superiors or by their comrades in the labor movement. In response to the characterization by employers and politicians of workers as dangerous and undisciplined, rootless and improvident, labor leaders insisted that workers loved their trades and found personal fulfillment in them, they wanted nothing more than the right to work and to be paid a wage that recognized the social and personal value of their work. If workers endorsed this vision as a matter of political expediency, however—making the right to work the triumphant slogan of the Revolution of 1848—they did not always feel it adequately expressed their aspirations or the

fullness of their lives. The historian Jacques Rancière has documented the activities of some remarkable men who earned wages but did not love their work, who defined themselves as “workers” even as they chafed at the reductive effects of the category. These men gathered after work in cafés or garrets reading novels and writing poetry. It was literary labor, not manual work, that was their preferred *métier*—a *métier* that did not fit easily under the rubric of the “working class.”

You ask me what my life is like right now. It’s pretty much the same as always. At the moment I look at myself and weep. Forgive me this bout of puerile vanity. It seems to me that I have not found my vocation in hammering iron. (Rancière 3)

So wrote Jérôme-Pierre Gilland, who nonetheless identified himself as a “worker locksmith” when he signed the piece.

I offer this example not to damn collective identities, but to suggest that they are inescapable forms of social organization, that they are inevitably politicized as a way both of discriminating and of protesting discrimination, and that they are a means through and against which individual identities are articulated. Gilland, who became one of the first worker-representatives in the legislature in 1848, takes all this into account as he continues his musing:

It seems to me that I have not found my vocation in hammering iron, although there certainly is nothing ignoble about that calling. Far from it! From the anvil comes the warrior’s sword that defends the liberty of peoples and the plowshare that feeds them. Great artists have caught the ample, manly poetry of our bronzed faces and our robust limbs, sometimes rendering it with great felicity and energy: our illustrious Charlet, above all, when he sets the leather apron alongside the grenadier’s uniform and tells us: “the common people are the army.” As you can see, I know how to appreciate my craft [...] (Rancière 3-4)

But for Gilland craft identity was a necessary and insufficient form of self-identification.

Another example of the necessity and inadequacy of group identifications comes from feminism, which poses different kinds of problems and yet follows the same logic. When asked at the turn of the century for her definition of what feminism would achieve, the French psychiatrist Madeleine Pelletier answered that it would allow her “not to be a woman in the way society expects.” And yet, of course, it was as a woman, and in the name of the group—women—that Madeleine Pelletier and other feminists fought their battles for equal rights. (All references to Pelletier can be found in in Scott 125-60.)

Which brings me to my final paradox: the terms of protest against discrimination both refuse and accept the group identities upon which discrimination has been based. Put another way, we might say that demands for equality necessarily invoke and repudiate the differences that have denied equality in the first place. Pelletier insisted that women, like men, could be individuals if only the law recognized them as such. (“Give to a woman, even an inferior one, the right to vote, and she will cease to think of herself exclusively as a female and feel herself instead to be an individual.”) But Pelletier nonetheless argued that in order for this to happen women as a group had to be given the right to vote. Her feminism, and that of her predecessors and successors, was caught in the problem of sexual difference.

When the exclusion of women from citizenship was legitimated by reference to the different biologies of women and men, ‘sexual difference’ was established not only as a natural fact, but as an ontological basis for social and political differentiation. In the age of democratic revolutions, women were marked as political outsiders because of sexual difference.

Feminism was a protest against women's political exclusion; its goal was to eliminate sexual difference in politics. But it had to make its claims on behalf of women. To the extent that it acted for women, feminism produced the sexual difference it sought to eliminate—drawing attention to exactly the issue it wanted to banish. Listen to Olympe de Gouges, valiantly balancing the two positions. She designates herself a man of state, Rousseau's imitator and his better. She points to her femininity: "Oh people, unhappy citizens, listen to the voice of a just and feeling woman." She concludes the preamble to her *Declaration of the Rights of Woman and Citizen* with the stunning assertion that "the sex superior in beauty as in courage during childbirth recognizes and declares, in the presence and under the auspices of the Supreme Being, the following rights of woman and citizen." One of her pamphlets was titled, *The Cry of a Wise Man; by a Woman*. When she put herself forward to defend Louis XVI during his trial, she suggested both that sex ought not to be a consideration ("leave aside my sex") and that it should be ("heroism and generosity are also women's portion, and the Revolution offers more than one example of it.") In a pamphlet denouncing the crimes of Robespierre she signed herself with the anagram Polyme, described as "an amphibious animal." "I am a unique animal; I am neither man nor woman. I have all the courage of the one and, sometimes, the weaknesses of the other." She was neither a man nor a woman, but also both a woman and a man. "I am a woman and I have served my country as a great man." The point was to argue that women qualified for citizenship, that the difference of their sex made no difference. But it was precisely as a woman—that is as someone marked by her sexual difference—that de Gouges had to make the case.

Of course one can hear overtones of irony in de Gouges' invocation of womanhood, just as one could hear it in Dick Gregory's book *Nigger* or in the appropriation of epithets as terms of endearment by members of minority groups: blacks, witches, bitches, queers. But that serves more to illustrate my point than to deny it—for the irony is a comment on the futility of cleanly separating negative and positive, defamation and affirmation. Irony is a way of dealing with the fact that the group one is relegated to becomes for purposes of social differentiation and political contestation the group of one's affirmative identification.

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My argument has been that the tension between group and individual identity cannot be resolved; it is a consequence of the ways in which difference is used to organize social life. It follows from this observation that attempts to enforce policies that choose one position or another—groups or individuals—are not only ill-advised, but impossible to implement. This brings me to current debates about affirmative action. Although there are criticisms to be made about the ways affirmative action has been implemented in its thirty-year history and questions to be raised about how categories of identity were determined—like any policy, affirmative action was not perfect—I want to argue that the assumptions underlying it took the problem I have been analyzing into account in a way that critics of the policy, who insist that merit (an elusive concept at best) be the only ground for including or excluding individuals from jobs or schools or politics, do not. In the rest of this talk I want to analyze the presumptions upon which supporters and opponents of affirmative action have built their respective cases.

From its inception in the early 1960's as an executive order prohibiting discrimination to its articulation as "affirmative action" in the early 1970's, affirmative action offered not

only a set of policy mandates, but a theory about the relationship between individuals and groups, political rights and social responsibilities. This was a theory based on liberalism's notion that the individual (conceived of as a singular, disembodied abstraction) was the universal category of the human. Affirmative action addressed the fact that social practices had prevented some people from being included in this universal category and it sought to remove the obstacles to the realization of their individual rights. These obstacles took the form of group identities, the characteristics of which—over some course of history—have been defined as antithetical to individuality. The point of affirmative action was to make it possible for individuals to be treated as individuals, and so as equals. But in order to do this, they had to be treated as members of groups. This posed the question of the relationship between group membership and individual, personal identity in deeply difficult ways. To what extent was the ascription of group identity to an individual the effect of discrimination, erasable by the force of law? To what extent were such identities the essential properties of individuals, at the very center of their physical, cultural, and social being? Could a policy aimed at ending discrimination avoid reifying the social existence of groups, stripping them of their historically contingent political determinations? Once identified as a member of a fixed group, could an individual be perceived apart from it? And at what costs? These were the questions opened by affirmative action policy, and they could not be definitively resolved. Nor can they be resolved by dismantling the policy. It is only by accepting the fact that the relationship between groups and individuals is a matter of a constant process of negotiation in changing historical contexts that we can come to terms with these questions.

Affirmative action was from its first articulation a paradoxical policy. In order to end discrimination, it not only called attention to difference, but embraced it. In order to make group identity irrelevant in the treatment of individuals, it reified group identity. There was no other choice. The terms of the liberal contract refer to individuals. The fiction of the disembodied, abstract individual is the great virtue of liberal democratic theory; it is supposed to guarantee complete equality before the law. In society, however, individuals are not equal; their inequality rests on presumed differences among them, differences that are not uniquely individualized, but taken to be categorical. Group identity is the result of these attributed categorical distinctions (of race, gender, ethnicity, religion, sexuality,... the list has varied according to time and place, and has proliferated in the political climate of the 1990's). Ascriptions of group identity have made it difficult for some individuals to receive equal treatment, even before the law, because their presumed membership in a group precluded perception of them as individuals. (For evidence, we need only look at the discussions in this country of why women could not vote or serve on juries and of why blacks could not qualify as citizens or serve in integrated units of the armed forces.) The problem has been that "the individual," for all its inclusionary possibilities, has been conceived in singular terms and typically figured as a white man. In order to qualify as an individual, a person has had to demonstrate some sameness to that singular figure. (The history of civil rights and women's rights has involved arguing about what this sameness might mean.) The difficulty here has been that the abstraction of the concept of the individual has masked the particularity of its figuration. Only those unlike the normative individual have been considered different. The relational dimension of difference—that it is established in contrast to a norm—has been masked as well. Instead, difference has been represented as a fundamental or natural group trait while the standardized norm (the white male individual) is considered to have no collective traits at all.

Affirmative action took as its premise the abstract individual and the fiction of its universality. It attempted to bridge the gulf between the legal and the social, the rights of indi-

viduals and the limits placed upon them because of their presumed membership in a group. But in order to end the problem of exclusion, inclusion had to be aimed at individuals as members of these groups—a tricky proposition. The word “affirmative” was meant to acknowledge and correct the problem: to recognize individuals one had to identify them as members of groups, to reverse discrimination, one had to practice it (but with a different—a positive—end in view). An exchange, which took place at one of the founding moments of Federal affirmative action policy, illustrates the tremendous conceptual difficulty involved in this reversal of discriminatory practice. In 1969 Richard Nixon’s Secretary of Labor George Schultz defended the Philadelphia Plan (which established targets for hiring minorities in the building trades) in reply to hostile questioning from North Carolina Senator Sam Ervin:

Sen. Ervin: And your affirmative step is...not to hire people without regard to race, but to hire them on the basis of race.

Sec. Schultz: Not to hire them on the basis of race but to take affirmative steps to see to it that you expose yourself to people of various races, and you give them an equal chance at employment, and if you have a system that does not provide you with that kind of choice, and it is possible through recruiting and other methods in the community to give yourself a wider range, you must take affirmative steps to do so, and as I said earlier, I quite agree with you that this means that you pay attention to race.

Sen. Ervin: In other words, an affirmative action program within the purview of the Philadelphia Plan is that in order to achieve hiring without regard to matters of race, a contractor must take into consideration matters of race in hiring. (Skrentny 200)

If Senator Ervin was objecting to the substitution of blacks for whites in construction jobs, he did not consider the exclusive hiring of whites to be a “matter of race.” And Secretary Schultz never actually said that the federal government was intervening because employers (backed by unions in the building trades) had long used racial preferences for whites. Hiring whites was not seen by these men to involve racial preference, but hiring blacks was; not hiring blacks constituted discrimination against them, but it seemed to have nothing to do with racial preferences for whites. Whites were hired as individuals; only blacks were taken to be members of a racial group (and their membership, not their skills and training, disqualified them). Affirmative action understood that blacks would never be hired as individuals (because they weren’t white), so it took up their cause as a group. Still the stated goal was to detach group identity from the consideration of an individual’s qualifications for a job. In order to make race not an issue, however, race had to be named as the problem; in order to be sure that race wasn’t an issue, the racial composition of the labor force (in this case) had to be monitored. As a result, in the application of affirmative action policies, race remained an issue of blackness not whiteness (just as gender was a question of women, not men). But there was another, contradictory dimension to this as well: although affirmative action advocates did not directly attack the association of universality and individuality with white men, their policies had the effect of particularizing the norm. White men became visible as a statistical category and a social group, and in the different climate of the 1990’s began to claim that they, too, were victims of discrimination!

This claim could only be made by disregarding the power relationships that affirmative action sought to modify and it is important to note that affirmative action had built into it an analysis of power. It addressed the power to discriminate as a structural issue, not as a conscious individual motivation, but as the unconscious effect of these structures. It ana-

lyzed power as the result of a long history of discrimination that had produced institutions and actors who took inequality for granted. Affirmative action used the force of the federal government to rectify social inequalities and to guarantee individuals access (to jobs and education) that previously had been denied them on the basis of their gender, as well as their race.

While it sought to improve opportunities for individuals, affirmative action was also premised on a vision of social justice. This vision preferred inclusiveness to discrimination, even if that meant the loss of traditional privileges for some individuals. It endorsed equality of opportunity and some of its leveling implications: communities more homogeneous and less hierarchically organized along the lines of gender and race. I don't mean to be naively idealistic here and to deny the sheer opportunism that could be involved in some of these programs. Sociologist John David Skrentny shows quite clearly that Richard Nixon cynically endorsed the Philadelphia Plan as a way of undermining the Democratic Party's constituencies, aiming to split black and white workers and to pit civil rights groups against the organized labor movement, race against class. But I do think that despite calculations of this kind (and I'm sure there were many) notions of fairness, justice, and collective responsibility were appealed to, evoked, and implemented. From this perspective, the paradoxical aspects of affirmative action could be taken positively as an effort to hold in balance competing interests: of rights and needs; of individuals, groups, and the collective good of the nation.

Almost thirty years later, in another political climate (characterized by economic constraint and heightened individualism), this positive reading has been called into question, but the paradoxes affirmative action exposed are still very much in evidence. When the regents of the University of California abolished affirmative action in admissions, hiring, and contracting in 1995, they claimed to be acting in the name of fairness. Governor Pete Wilson called affirmative action a shameful policy: "Racial preferences," he said, wiping out all considerations of power and history, "are by definition racial discrimination" (*New York Times* 19 January 1996). And the Federal Appeals Court majority in the Hopwood case (which declared unconstitutional the University of Texas Law School's affirmative action admissions policy) used similar language. The justices found that there was no compelling state interest in achieving racial or ethnic diversity in a student body and that race was a trivial consideration ("the use of race...to choose students simply achieves a student body that looks different. Such a criterion is no more rational on its own terms than would be choices based upon the physical size or blood type of applicants"). They found further that no clear case of past discrimination (equivalent, for example, to the Japanese internment during World War II) existed at the Texas Law School to justify the policy; that individual rights were violated when minorities were treated "as a group"; and that there was no difference between "benign" and "invidious" racial classification. Most tellingly, the judges rejected the Supreme Court's acknowledgment, in its 1978 Bakke decision, that redressing the effects of discrimination required balancing opposites.

While Justice Blackmun [in Bakke] recognized the tension inherent in using race-conscious remedies to achieve a race-neutral society, he nevertheless accepted it as necessary. Several Justices who, unlike Justices Powell and Blackmun, are still on the Court, have now renounced toleration of this tension....

Aside from the stunning notion that the judiciary has the power to renounce toleration of a structural tension, this passage is striking for its knowing abandonment of the project of race-neutrality. The tension is left standing in the Court's discussion. It cannot be resolved

because a tension between race-consciousness and race-neutrality (groups and individuals) is integral to the remedy. For achieving equity (genuinely ignoring difference according to the tenets of liberalism) requires naming the groups that have been excluded (recognizing difference) and treating them differently in the future. By refusing to tolerate the tension then, the Court declared its lack of interest in a remedy and, by extension, its lack of belief in the existence of discrimination.

Another aspect of the Hopwood case deserves mention. That is the fact that Cheryl Hopwood, a white woman, brought the case to claim her rights as an individual. Here was a member of another of those groups whose interests had been advanced by affirmative action and she was refusing the protection of that policy. Gender, her complaint suggested, was irrelevant; she stood not as a woman, but as an individual. Cheryl Hopwood was taken to represent all individuals injured by a policy of group preference, thus demonstrating the capaciousness (and neutrality) of the category of “individual”—but also its whiteness (whiteness as the absence not only of color, but of gender.)

In the university envisioned by Hopwood, there are only individuals. The heterogeneity of the community follows inevitably from the uniqueness of its individual members. The Court’s opinion recognizes that choices among applicants must be made and that diversity of some kinds is permissible:

A university may properly favor one applicant over another because of his ability to play the cello, make a down field tackle, or understand chaos theory. An admissions process may also consider an applicant’s home state or relationship to school alumni. Law schools specifically may look at things such as unusual or substantial extracurricular activities in college, which may be atypical factors affecting undergraduate grades. Schools may even consider factors such as whether an applicant’s parents attended college or the applicant’s economic and social background.

These are taken to be profound differences because they are individualized (and not readily visible), in contrast to the superficial qualities of race which would “simply achieve a student body that looks different.” The notion that the experience of different treatment based on race might affect an individual’s thinking or behavior was explicitly rejected by the Court in these terms:

Social scientists may debate how people’s thoughts and behavior reflect their background, but the Constitution provides that the government may not allocate benefits or burdens among individuals based on the assumption that race or ethnicity determines how they act or think.

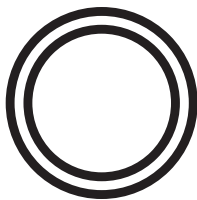
By insisting that assessments of individuals be “color-blind,” the Court allows discrimination to continue since it explicitly rules out the possibility that racial preferences for whites might inform admission decisions. In the Court’s version of color-blindness, white is the absence of color and a student body that looks all the same is not evidence of unfairness. A cartoon by Mike Peters in the *Dayton Daily News* conveys the point really well. In a sea of white faces, one student comments to another, “Gosh, it works! Since we ended affirmative action here on campus, I never notice anyone’s skin color anymore.” The Hopwood decision (and laws like Proposition 209 in California) now set the stage for protests against the admission of any black students by whites who believe that blacks by definition lack the “merit” to get into universities or law schools. The appearance of students who “look different” becomes—perversely—a sign of discrimination.

If group identities are a fact of social existence and if the possibilities for individual identities rest on them in both a positive and negative sense, then it makes no sense to try to do away with groups or to willfully ignore their existence in the name of the rights of individuals. It makes more sense to ask how processes of social differentiation operate and to develop analyses of equality and discrimination that treat identities not as eternal entities, but as the effects of these social and political processes. In what circumstances did the difference of their sex come to matter in the treatment of women in politics? How did race come to justify forced labor? In what contexts has ethnicity become a primary form of identity? How have laws and other institutional structures produced or transformed boundaries among social groups? What have been the individual and collective forms of resistance to group identities?

These questions presume that identity is a complex and contingent process susceptible to change. They also imply that politics is the negotiation of identities and of the terms of difference among them. Indeed, I would argue—inconclusively and enigmatically, some of you might think—that it is precisely where problems are most intractable, least susceptible to clear resolution, that politics matter most. Politics has been described as the art of the possible; I would rather call it the negotiation of the impossible, the attempt to arrive at solutions that—in democratic societies—approximate principles of justice and equality, but that can only always fall short, thus leaving open the opportunity for new formulations, new social arrangements, new negotiations. The best political solutions these days will recognize the dangers of insisting on a final, totalizing solution (either groups or individuals, either equality or difference). In a way, I'm saying that paradoxes of the sort I've been describing are the very material out of which politics are constructed and history is made.

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