Understanding the Backlash Against Race-Based Affirmative Action

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This study examines the current backlash against affirmative action policy in higher education in the courts and posits, through a Critical Race theory framework, why Whites often describe the policy as being unfair. The historical context of affirmative action policy, the views of Critical Race theorists, and the recent research on attitudes of Whites toward the policy are examined in order to draw conclusions about the policy in the current moment. Implications for educators and administrators in higher education are explored in light of this contextual research.

Introduction

In February 2012, the US Supreme Court heard a case that would reexamine the constitutionality of policies that consider race in admissions decisions at public postsecondary institutions (Richey, 2012). In a decision that resulted in little legal change on its face, the Court ruled that “strict scrutiny” must be applied to any admissions program that considers race and that the lower courts which heard the case had not applied this measure (Fisher v. University of Texas at Austin, 2013). This ruling leaves race-based affirmative action as an option for admissions in public higher education, but only under careful and detailed review by the courts and the government, which could make it more difficult to implement. In this particular case, the lower court ruled that the admissions program could stand after applying the “strict scrutiny” measure, with one of the three judges on the panel dissenting (Somin, 2014). However, in April 2014, the Supreme Court upheld a ban against affirmative action in Michigan institutions of public higher education, making similar bans in other states legal if voted on and approved by the citizens of that state (Liptak, 2014). Two years earlier, a federal appeals court rejected an attempt to remove a similar ban on considering race at all public institutions in California, a ban which was voted on by the public in Proposition 209 (Egelko, 2012). These decisions come after Supreme Court opinions in both Grutter v. Bollinger and Gratz v. Bollinger, which together made clear that public colleges and universities could use race as a determining factor in admissions decisions only in so far as it contributed to a diverse student body and after controlling for equal standards in all other categories (National Conference of State Legislatures, 2012; Richey, 2012).

Since these decisions reduced the robustness of race-based affirmative action policy in higher education and with further challenges to affirmative action policies possibly coming in the future, research has been conducted on the attitudes of Whites toward the concept of affirmative action. This research investigating the perceptions of Whites has shown that they often believe affirmative action to be unfair (Cabrera, 2011; Norton & Sommers, 2011; Shteynberg, Leslie, Knight, & Mayer, 2010; DiTomaso, Parks-Yancy, & Post, 2011; Moore & Bell, 2011; Oh, Choi, Neville, Anderson, & Landrum-Brown, 2010).

Why do Whites believe the policy is unfair? What accounts for this legal backlash against affirmative action policy? As a White graduate student studying higher education, I became interested in the emergence of a backlash against affirmative action in higher education while studying multicultural issues. From my perspective, affirmative action policy serves a great purpose in higher education and in society; yet it seems that courts are ruling as if it is no longer needed. In this study, I inspect the historical framework and the recent research on attitudes toward affirmative action in order to illuminate the progressive
perception of the policy. To understand the current backlash, especially in the perceived post-racial moment of Barack Obama’s presidency, Critical Race theory will be used to highlight the disparity between students of color and Whites in higher education (Norton & Sommers, 2011; Yosso, Parker, Solórzano, & Lynn, 2004). The employment of Critical Race theory in higher education by administrators and educators as it applies to affirmative action will also be discussed.

**Affirmative Action Policy Through a Critical Race Theoretical Lens**

According to Delgado and Stefancic (2012), Critical Race theory has two basic propositions from which all other ideas emerge. The first proposition maintains that racism is the norm in US society and that current color-blind notions of understanding race do not acknowledge the racism that exists (Delgado & Stefancic, 2012). The second proposition suggests that the perpetuation of racism benefits the dominant group, Whites (Delgado & Stefancic, 2012). Therefore, Critical Race theory proposes that race as a way of categorization is socially constructed and that the attempt to categorize people based on race is a way of assigning traits to social groups that will benefit the dominant racial group (Delgado & Stefancic, 2012). In what many people consider to be a post-racial moment, Critical Race Theorists point to research showing how race impacts contemporary US society, including a critical examination of racial data in fair housing; employment and unemployment; credit and loan applications; public suspicion; consumerism; prison population; executive power in all sectors of government, business, and academia; poverty; and health care (Delgado & Stefancic, 2012). If we are in a post-racial society, these disparities would not exist along racial lines as they do (Delgado & Stefancic, 2012).

In light of the propositions of Critical Race theory, examining the history of affirmative action policy provides a context for current attitudes. In the 1960s, Presidents Kennedy and Johnson created affirmative action policies in education through executive orders after the court decision of Brown v. Board of Education and in the midst of the Civil Rights movement (Plaut, 2011). The purpose of the policies in higher education was to recruit and admit students of color, proactively considering race as an important factor in admissions decisions (Crosby, Iyer, & Sincharoen, 2006). Affirmative action policy is distinct from equal opportunity in that the policy actively attempts to increase representation of racial minorities (Crosby et al., 2006). The policy presupposes that “structural impediments to true equality do not always take the form of overt discrimination” (Crosby, Iyer, Clayton, & Downing, 2003, p. 95).

The rulings made by the Supreme Court since Brown v. Board of Education have altered the legal arguments surrounding affirmative action policy in higher
education over time (Crosby et al., 2006). Yosso et al. (2004) contend that three legal arguments have been made both for and against affirmative action policies. In the first argument, affirmative action as a remedy and community service, the policy is important as it compensates for past and present discrimination against applicants of color (Yosso et al., 2004). This argument acknowledges the structural racism that Critical Race theory studies and illuminates. The second argument presents the notion that “color-blind” is the most equitable way to admit students, as race-neutral policies will not adversely affect any students (Yosso et al., 2004). This argument ignores structural inequities in institutions and culture that permeate the lives of both students and admissions personnel. The third argument used in legal proceedings is the idea that diversity is an important factor in educating students who will be competing in a global marketplace and working with diverse others (Yosso et al., 2004). This argument is the current legal rationale supporting higher education affirmative action policy as prescribed by the Supreme Court, allowing students to be evaluated based on race only as part of a holistic package of admissions criteria that may include test scores, G.P.A., essays, volunteer work, socio-economic status, and other factors (Crosby et al., 2006). However, the diversity rationale, when examined through a Critical Race theory lens, explains the benefits of diversity as they apply to White students, discounting the education of students of color and how they may contribute to society after college (Yosso et al., 2004). Yosso et al. (2004) make a case for the continuation of the remedy and community service argument. Affirmative action policy is still needed if racism still exists in contemporary US society and the research shows that it does. If more students of color have access to higher education, then systems of power in place that benefit Whites would be exposed, which in turn would result in changed socio-economic statuses and increased societal power for historically underrepresented racial groups (Crosby et al., 2006).

However, Whites may not be able to recognize the privilege they hold when applying to institutions of higher education, making affirmative action policy seem like “reverse racism” (Norton & Sommers, 2011). Dyer (1997) argued that images of the White race are ignored in contemporary US media and cultural representations. This absence is a result of the power dynamics in play with Whites as the dominant racial group; therefore, other racial groups are marked as raced and Whites are inherently “human” (Dyer, 1997). Dalton (1995) maintained that this disconnect is based on the power of individualism in US culture, which finds fault with social communities as categorizations that have any marked effect. He stated, “race obliviousness [for Whites] is the natural occurrence of being in the driver’s seat” (Dalton, 1995, p. 17). The consequence of this “race obliviousness” is that Whites cannot see the privileges that being of the dominant racial group confer upon them (Dalton, 1995). In a landmark work attempting to make these privileges visible, McIntosh (1988) listed privileges
that she recognized as being a result of her White race and even in her writing claimed, “I repeatedly forgot each of the realizations on this list until I wrote it down” (p. 99), making invisibility a factor even in the act of acknowledgement. In light of the concepts of privilege and Critical Race theory, attitudes toward affirmative action are situated within constructed systems where the White race is dominant and therefore invisible by Whites.

Based on these premises and the history of affirmative action in higher education, I developed several integrated ideas to guide my thoughts regarding the intersections of affirmative action, Critical Race theory, and White privilege in order to understand the current backlash against the policy. First, affirmative action policy may represent a threat to Whites, who believe the tables have turned and people of color have an unfair advantage in contemporary US society. This perceived threat may come from seeing a person of color in the most powerful position in our society, namely the US Presidency. Second, the invisible nature of White privilege can affect the attitudes that Whites have toward affirmative action policy, believing that it elevates students of color over Whites in the admissions process, primarily because people of color in power are inherently more visible. Third, Critical Race theory brings to light the implicit self-innocence that Whites may assume when arguing against affirmative action policy, determining that they may not feel implicated in the system from which they benefit. Lastly and most importantly, the factors besides race that admissions counselors take into consideration when deciding to admit a particular student exist within the constructed framework of a racist society. Therefore, if race were eliminated as a factor for consideration, students of color would likely not be represented in higher education at the rates they currently are. In states that have banned affirmative action in public higher education, this has proved true (Fessenden & Keller, 2014). However, the disconnect Whites often feel between the individual and society perpetuates the ideology that if affirmative action is eliminated any change in higher education demographics is the fault of the individual not society (Delgado & Stefancic, 2012).

**White Attitudes Toward Affirmative Action Policy**

Many research studies have been conducted on Whites to determine their attitudes toward affirmative action policies and the beliefs Whites hold about race. DiTomaso et al. (2011) reviewed the research on White attitudes toward affirmative action and summarized that the overall perspective, White comfort with equal opportunity but discomfort with affirmative action, remained clear for a White majority, but the reasoning behind this view remained unclear. In an attempt to clarify the reasoning behind Whites’ views toward affirmative action, the researchers conducted a qualitative study and found that the participants believed their circumstances to be products of their own efforts, with the
privileged position that society grants to them based on race remaining invisible. As Critical Race theory and White privilege illuminate, Whites cannot see the system from which they themselves benefit. They may not be aware of the disparities within society along racial lines, or if they are, they may determine that those disparities are a result of cultural or individual differences, not racism. DiTomaso et al. (2011) concluded that two themes emerged from their research; first, that the respondents had not settled on a position until the researchers presented them with the policy issues, not immediately seeing how affirmative action policies could be relevant to them. The second emergent theme was psychological in nature and related to the disconnect between the personal and the systemic, for the respondents and for racial minorities. The respondents in DiTomaso et al.’s (2011) study attributed their success or failure to their personal characteristics and actions and discounted the societal, systemic, or constructed factors that contributed to their life outcomes. They held these standards for people of color as well, suggesting the invisibility of the systems of power in which Whites participate. Critical Race theory points out that structural racism is by its very nature invisible, as it is not individuals who perpetuate racism but systems.

In a quantitative study of students and working adults, Shteynberg et al. (2010) found that although Whites’ reactions and attitudes toward affirmative action policies were not consistent, negative perceptions of affirmative action policies correlated to high markers regarding two beliefs. The researchers defined the first belief, modern racism, as the idea that people of color are no longer discriminated against in contemporary society and actually receive special treatment based on their race. The researchers defined the second belief, collective relative deprivation, as the notion that Whites are placed at a disadvantage in contemporary society. When taken in concert, an individual who scored highly in the research as having both of these beliefs perceived affirmative action policy as unfair. The researchers maintained that these beliefs about society cannot be separated and that trying to provide a singular explanation for White attitudes toward affirmative action policy is not possible. The idea that the tables have turned may have emerged from more prevalent cultural representations of people of color in positions of power, such as the US presidency. Because Whites see themselves as without a race as Critical Race theory and White privilege concepts suggest, people of color who have achieved substantial positions of power are more visible, and therefore, must have had advantages in order to achieve those positions.

Oh et al. (2010) examined college students of all races to determine differences between group self-interest and racism beliefs as they relate to affirmative action. The researchers found that Whites were more likely to believe that affirmative action policies were unfair compared to student participants of color. Students who believed that anyone could be the victim of racism were
similar to those who believed that racism was no longer a problem for contemporary US society in that both tended to oppose affirmative action policy. These students need to be exposed to the systems in place supporting structural racism, and higher education is the place to do this. In addition, the difference between racism and discrimination needs to be explored. When using a Critical Race theory framework, Whites hold the power and privilege in our culture, in our institutions, and in our social order. Therefore, they cannot experience racism. Any discrimination that individual Whites may experience is likely based on other factors of their identity, such as sexuality or socio-economic status, as the structures in place support and benefit them as Whites. Oh et al. (2010) found that students who had a critical consciousness of the systems at work regarding racial dominance and subordination were more likely to believe that affirmative action was needed and positive. This critical consciousness is what we need to encourage in our students.

Norton and Sommers (2011) conducted a study to test a hypothesis that Whites may perceive racism as a “zero-sum game,” meaning that as bias is reduced for Blacks it increases for Whites. The researchers asked both Black and White participants to rate anti-White and anti-Black bias through the decades of the twentieth and into the twenty-first century. Whites perceived that over time anti-Black bias declined steadily while anti-White bias increased steadily, resulting in more anti-White bias in the last ten years than anti-Black bias. Blacks perceived that bias against Whites remained fairly low and steady over time, whereas anti-Black bias decreased since the 1960s, but not at the same rate that Whites perceived. The revelation that Whites believed there to be more bias against Whites than against Blacks affects how Whites perceive policy such as affirmative action, as benefitting those who are already enjoying freedom from discrimination. This ignores the research that Critical Race theory illuminates about various social inequities along racial lines. This “zero-sum game” attitude may result in eliminating and reducing the reach of affirmative action policy, as it threatens the perceived earned resources of Whites.

Moore and Bell (2011) examined the discourses surrounding affirmative action policy among students at elite law schools. These students may have the power to create change in affirmative action policy through their future careers. They found that, through their qualitative interviews with White law students and in the legal language in affirmative action cases, White normative stories of affirmative action emerged. The notion of “color-blindness” in discussions of the purpose of affirmative action policy as it related to the “diversity” argument surfaced, revealing an implicitly racist viewpoint of the White students interviewed by the researchers. The innocence of the White individual was the second theme to emerge from Moore and Bell’s (2011) study as it related to White privilege and individualism. When Moore and Bell (2011) interviewed students of color at elite law schools, students expressed frustration with the
affirmative action narrative as limiting the perceptions of their abilities. The researchers proposed that this discomfort was not a factor of affirmative action itself but of the White reframing of the affirmative action story. This proposal, using Critical Race theory, is similar in scope to the way that the “diversity” argument benefits White students. Moore and Bell (2011) concluded that the dominant racial discourse in elite law schools had an enormous effect on affirmative action policy, as it put students of color in the position of defending their right to be in law school in the first place. Therefore, law schools perpetuated the racialized systems of dominance and subordination by not addressing the discourses surrounding the concept of affirmative action, with students or in the law. This is where these arguments originate, in our institutions of higher education, and especially our institutions of law. Yet these institutions exist within a racist society, so the discourse that law students are forced to engage in also exists within that society, not above or outside of that flawed system.

Cabrera (2011) conducted a study on White male college students regarding racial ideology. He found four themes emerge from his interviews: first, his interviewees saw Whiteness as normal; second, those he interviewed viewed racism as having little to no importance; the view that US society is a meritocracy emerged third; and the fourth theme to emerge based on the first three was that race-conscious policy is racist or unfair. Cabrera (2011) also found that White men in college showed no significant shift in racial ideology after their first year of college, regardless of whether they were in a predominantly White institution or an institution with a majority of students of color. He theorized that the enforcement of racial ideology that occurs precollege may affect White males’ participation rates in activities that promote cross-racial interaction and de-value the hierarchal racial system. The lack of ideological shift for these young men further enforces the concept of structural racism as having an extensive influence on individual attitudes. Cabrera’s (2011) research began to build the bridge from racial ideology of White men in college to implications for education that will affect students’ attitudes toward the concept of race generally and the policies of affirmative action specifically. In another article discussing the same research, Cabrera (2012) focused on those White males in his study that were struggling toward taking on an allied identity by beginning the process of critiquing the privilege they carry and becoming conscious of a racialized society. He found that although these students were particularly primed to take on social justice pedagogy because of previous experience with marginalization, multicultural education played a significant role in these students grappling with these issues. It is this multicultural education that higher education should embrace and require of its students to combat this backlash against affirmative action policies.
The research presented in this section, which has been conducted in the last several years to add to the body of research on White attitudes toward race and affirmative action policy, emphasizes that US culture is not operating currently in a post-racial framework (Cabrera, 2011, 2012). This supports my position that the factors admissions counselors consider besides race exist within a racist society, there is no “color-blind” way to admit students to institutions of higher learning. This necessitates continuing some form of affirmative action that considers race. If the courts continue to strictly scrutinize the ways in which public universities do this, we may move toward admitting fewer and fewer students of color, making multicultural education for all students difficult and perpetuating the systems of power and privilege indefinitely.

**Challenges and Implications**

The intersections of higher education, affirmative action, and what is just remain at play in the legal system, in the media, and in individuals following these cases. They also remain at play on our campuses, in the minds and hearts of our students, and for other institutional stakeholders. As the demographics of higher education shifts, so too must our conversations about what is ethical. If the goal of higher education is to foster a more just society, it is important that White students and students of color feel able to voice their arguments against and/or interests in affirmative action admissions policies. How can we create campuses where these conversations - dealing with the very fabric of our society and the ways in which people have access to education in order to improve the quality of their lives - are possible? As educators, what is the best way to negotiate our responsibility to facilitate change in these systemic inequities?

We may be able to facilitate conversations with students using Critical Race theory’s social justice pedagogy. Social justice pedagogy builds community among students while challenging social norms and listens and learns from the racialized lived experiences of all people in order to counteract racism (Solórzano & Yosso, 2002). Solórzano (1997) offered four exercises to use in classrooms based on the five core premises of Critical Race theory. He challenged educators to critically analyze with students the concepts of “race, racism, and racial stereotypes” (p. 14), being sure to include various macro and micro examples, so that students can recognize the pervasiveness of racism in our society (Solórzano, 1997). He offered a second exercise, critiquing media to bring to light stereotypes associated with race, and his third exercise suggested critiquing professional stereotypes found in print, including school textbooks (Solórzano, 1997). Finally, Solórzano (1997) asked educators to work with students to “find examples within and about Communities of Color that challenge and transform racial stereotypes” (p. 15). This type of critical analysis will assist students in seeing the constructed framework of our society, making privilege
and racism more visible, and individual circumstances less individually determined. Out of this pedagogy, both White students and students of color may see why affirmative action is still needed as a remedy for discrimination.

Hughes and Giles (2010) advocate a pedagogy they call “CRiT walking” that uses social critique, lived experiences, and history to illuminate structural racism. After analyzing with students the lived identities they hold in relation to introductory writings on Critical Race theory, CRiT walking asks instructors to physically or metaphorically walk through their campuses or communities with their students, addressing the inequities students experience or those inequities that may be invisible in application (Hughes & Giles, 2010). Using pedagogy such as CRiT walking may challenge students’ views of society and help to foster conversations across race dealing with the inherent difficulties of affirmative action for both students of color and White students.

It is also important for the leadership of an individual institution to truly engage in and provide space for the difficult conversations regarding a policy like affirmative action for admissions, and my sense is that leadership is hesitant to do so. This hesitancy may be a result of a media-driven attitude of higher education as being inherently liberal or left-leaning politically. Leadership may have concerns that any programming that encourages discussion of affirmative action may sway public opinion against the institution. However, leadership may also respond to a groundswell of students and educators demanding that they are able to voice their concerns if those concerns come with a balanced plan for discussion. Currently, there is little opportunity for students and educators of various racial backgrounds to safely address the difficulties associated with racism in college generally and affirmative action admissions policy specifically.

If more states ban affirmative action in public higher education and the courts strictly scrutinize programs in other states, Critical Race Theorists will have larger hurdles to jump in changing the attitudes and perceptions of Whites toward affirmative action policy, as the authority of the law will negate the need affirmative action now fills. Educators should keep the discourse alive regarding access to higher education for racial minorities, even as the dominant group may be silencing that discourse. This silencing comes at a moment when a person of color holds the most powerful position in our society, and I believe that this is not coincidental. President Obama’s visibility as a Black man could be the proof many Whites need, believing that people of color have the upper hand in US society. It is his race that makes him so visible, and this visibility is itself proof of structural racism.

Privilege and the systems that maintain the status quo perpetuate the idea that affirmative action is unfair. Educators who are committed to Critical Race theory maintain that it is the system of higher education admissions that is inherently unfair because it exists within an unfair society and that affirmative action policy is the current remedy for that systemic discrimination. The way to begin a
paradigm shift is to bring both ideological groups together to begin the conversation.


Fisher v. University of Texas at Austin, 113 S. Ct. 2411 (2013)


