The Ethical Case for Affirmative Action

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ABSTRACT. Affirmative action has been a particularly contentious policy issue that has polarised contributions to the debate. Over recent times in most western countries, support for affirmative action has, however, been largely snuffed out or beaten into retreat and replaced by the concept of ‘diversity management’. Thus, any contemporary study that examines the development of affirmative action would suggest that its opponents have won the battle. Nonetheless, this article argues that because the battle has been won on dubious ethical grounds it is important that we do not allow affirmative action to sink unnoticed. This article explores and challenges the ethical and philosophical underpinnings of opponents’ views and finds their cases against affirmative action are not ethically sound. The article concludes there are strong ethical grounds for those organisations which seek to do well, to reassert affirmative action programmes in the global efforts to eradicate systemic discrimination and disadvantage.

KEY WORDS: affirmative action, ethics, diversity management

Introduction

Affirmative action (AA) has been all but driven to retreat in the so-called liberal democracies of Australia and the United States (Bacchi, 2000; Tahmindjis, 1997; Thornton, 2001) where the concept has been misshapen, derogated and even shamed by accusations of hypocrisy, inequity and ineffectiveness (Tahmindjis, 1997; Thornton, 2001). In this article, we argue that it has been through the use of co-option and distortion of an ethical rationale, that the opponents of affirmative action have laid claim to a questionable “moral” victory. In our arguments to counter the stigmatisation of affirmative action, we explore the ethical and philosophical underpinnings of the opposition to affirmative action.

Our conclusions from this analysis find the case against affirmative action to be without ethical basis. This article concludes that there are strong ethical grounds to reassert the value of affirmative action programmes in global efforts to eradicate systemic discrimination and disadvantage.

It has been recently proposed (Libertella et al., 2007), that the need for affirmative action policies were more likely to emerge in nations such as the United States because of its “lack of homogeneity” in its population. These proposals display a naïve denial of the extent of injustices occasioned by the powerful on the less powerful in terms of gender, ethnicity, religion or nationality, thereby suggesting that in other parts of the world there are other reasons for the emergence of affirmative action programmes. Take for instance the situation in the United Kingdom, where it has been argued (Teles, 1998) that there has been no take up of affirmative action programmes, despite what could be reasonably assumed to be a culturally heterogeneous country. In Northern Ireland, a country that is still within the domain of the United Kingdom, there are circumstances where the contribution of affirmative action policies cannot be challenged, and have indeed even been strengthened. Although Northern Ireland is not a region that is particularly noted for its cultural heterogeneity, any resolution of “The Troubles” that has torn apart the country for decades has demanded the implementation of strategies to legitimise and entrench efforts that maintain peace. One of these strategies has been the use of affirmative action policies. Confronted by the imperative to attract Catholic candidates into the constabulary and police force, recent developments in United Kingdom law and policy suggest there is a “growing acceptability” of affirmative action (McHarg and Nicolson, 2006, p. 3) in that jurisdiction. Similar affirmative action programmes currently in force in
South Africa and Malaysia (see Jain et al., 2003) highlight the felt need of the respective legislators to correct past injustices through the targeted hiring of members of groups significantly under-represented in higher education, meaningful employment, the civil service and so on.

Notwithstanding the pragmatism of some governments’ policy in their commitment to the principles of affirmative action, there are, as mentioned earlier, signs elsewhere that affirmative action no longer has legitimacy as a social policy. For instance, in the United States, significant propositions were passed by voters and landmark court decisions made in various states (Texas and California most notably) brought about the “final decisive defeat” of affirmative action (Menache and Kleiner, 1999, p. 41). This defeat appears to have been reinforced in June 2007 in the case Parents Involved in Community Schools v. Seattle School District No. 1 with the US Supreme Court holding that state entities may not engage in affirmative action programs. An extraordinary feature of this case is that one of the contributing factors underpinning the court’s decision that school boards may not make decisions on the basis of race appears to be the general untrustworthiness of these institutions’ intentions, and the damage that affirmative action may wreak. Thus the policy instrument designed to remedy invidious discrimination and eradicate its effects has been cast as a weapon against this very goal.

In Australia, the review of the Affirmative Action (Equal Opportunity) for Women Act 1986 and the emergence of its successor, Equal Opportunity for Women Act 1999, saw a “shift from regulation to voluntarism” (Bacchi, 2000, p. 64). Described previously as a form of affirmative action that was “already limited” (Tahmindjis, 1997) and “extremely modest” (Thornton, 2001), the emergence of this new “ultra [timid]” (Thornton, 2001, p. 89) version merely “[suggests] that employers initiate ‘appropriate action’ in their workplaces … to eliminate discrimination” (Thornton, 2001, p. 90). Goals and targets against which companies’ progress might be measured have been removed and “the emphasis on collection of employment statistics weakened” (Strachan et al., 2004, p. 198). This, together with the absence of any “adequate enforcement mechanism” (Strachan and Burgess, 2000; Thornton, 2001, p. 90), has rendered the legislation toothless. This shift in the Australian legislation is in keeping with “reforms” to affirmative action legislation in some other Western countries (Strachan et al., 2004; Tahmindjis, 1997).

Signalling the general demise of affirmative action, “the rhetoric of diversity has emerged” across many Western democracies (Agócs and Burr, 1996; Bacchi, 2000; Sinclair, 2000; Strachan et al., 2004; Thornton, 2001). ‘Managing diversity’ has developed as the “new equity discourse, rapidly supplanting ‘equal opportunity’ and ‘affirmative action’” (Bacchi, 2000, p. 68). It is said to have arrived in Australia around 1990 (Bacchi, 2000), having originated in North America in the mid-1980s (Agócs and Burr, 1996). Managing diversity serves the interests of the more dominant, all-encompassing discourse of the market by locating it in the domain of management (Bacchi, 2000; Sinclair, 2000; Thornton, 2001). Embraced by proponents of human resources management (e.g. Kramar, 1998), diversity is corralled into a sanitised space where the issues of power, disadvantage and inequality are cleaved from any context that might provide them with the traction to command attention. It “blurs the issue of inequality” and expunges highly political, emotive words such as “‘racism’, ‘sexism’, ‘anti-racism’, ‘feminism’ and ‘discrimination’”, replacing these with the less contentious language of “‘diversity’, ‘multiculturalism’ and ‘ethnicity’” (Agócs and Burr, 1996, p. 38).

At a surface level it is hard to find fault with ‘diversity’. It appears an admirable aim and conjures images of harmonious complementarity and the hearty acceptance of difference. However, there is a fundamental philosophical difference between the concept of affirmative action and that of diversity. Thornton captures the difference succinctly, when she states that affirmative action “[begins] from the implied premise that there is an injustice or an inequality that needs to be remedied, such as sexism, racism, homophobia or disablism: diversity obscures the issue of inequality which is at the heart of the matter” (Thornton, 2001, p. 94). Diversity management also ensures that decisions are made at the discretion of management, and business interests are served without compromise, constraint or interference from external agencies. In addition, “managerial control of diversity ensures that we hear nothing of diversity within the ranks of management.