

OPINION

Measuring qualifications by merit

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In 1996, California aptly decreed that the state may no longer discriminate by granting preferential treatment on the basis of race, sex,

color, ethnicity, or national origin in the operation of public employment, public education, and public contracting. That is, California eliminated affirmative action in public entities.

Eight other states have done the same, creating an interesting mix of strong blue states (California and Washington), purple states (Arizona, Georgia, Michigan, and New Hampshire), a lean red state (Florida), and a strong red state (Oklahoma) prohibiting this insidious prejudice. Arkansas has not.

During the initial application of affirmative action in the 1960s, minority candidates were given a slight bump up—"a thumb on the scale"—when they applied for jobs or to be students. As President Lyndon Johnson famously said, "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair." True enough.

But affirmative action hasn't come close to Johnson's vision for decades. It didn't take long for affirmative action to devolve into race-based quotas. And when the Supreme Court ostensibly banned numerical limits, schools and other left-leaning entities often lied by simply characterizing as "holistic" their admissions and hiring processes that still employed race quotas.

You can call admissions programs a "banana" for all I care. These Orwellian euphemisms don't alter reality. If race dominates consideration towards target outcomes, that's race-based quotas. And the problem for advocates of such smokescreens is that the overwhelming role of race is blatant.

No longer is race a thumb on the scale. It's a cinder block, crushing the weight of all other factors, chief among them merit. This awful behavior is rampant in both hiring and admissions in higher education in Arkansas. It's a travesty of law, equity, and justice.

Oh wait, I forgot—we've redefined "equity," haven't "we"? Now it means equal outcomes (quotas). Darn! I still haven't memorized that little red DEI-to-English dictionary provided "free" during one of those toothpick-assisted eye-opening re-education gavages.

The outcomes of these racialized policies are terrible. I collect and study evidence of the effects of affirmative action in law schools. In one large Arkansas dataset, the first-time bar-exam failure rate for the

largest minority group was double that of whites; 40 percent of the Black graduates failed on their first try.

That's bad for the students who weren't given refunds after being, uh, "helped" through holistic admissions. Thanks, no thanks. That's bad for the community that has access to fewer practicing lawyers. And that's bad for schools trying to entice college graduates to attend while showing weaker bar-passage rates.

Leftists complain about merit selection because they correctly observe that law-school graduates compete for jobs based in part on the stature of their schools. All else being equal, graduating from Harvard offers a leg up when compared to, say, Marquette.

But—and this is the critical step elided by race hucksters—all else isn't equal. So when minorities are given massive placement advantages, as they often are, and they attend better-ranked schools, as they often do, they do worse on average.

If a student can handle the rigor of Harvard, he's better off going there. But if he can't, he's better off going to Marquette, even if he's able to complete Harvard's program. Think of it this way; learning to swim in the middle of the English Channel is bonkers, even if you make it back to shore.

A denominated academic deeply invested in affirmative action once suggested that my research "questioned" the ability of minorities to succeed in law school and on the bar exam. Well, my research doesn't as much question as it demonstrates that, on average, minorities don't do as well in law school and on the bar exam. These are facts, not opinions—or "my truths." But this dramatic disparity is a function of race-based admissions, not race itself. And the leftists foisting these policies on the peasants looking up at the ivory towers must own these results.

This complainer went on to grouse about my objectivity if she were a student in my class— notwithstanding that I blind grade. While the dripping irony of her questioning my ability to judge merit given her preference for a non-merit system cannot be overstated, the bigger takeaway is that if one dares investigate the sacred set-aside of affirmative action, those devoted to maintaining at all costs its unfair largess attack the fact finders.

Remember the first rule of affirmative action: We don't talk about affirmative action. Violations are met as swiftly as they are unjustly. And they are swift.

Minority students are encouraged to seek preferences (and I don't blame them for doing so), but once admitted, affirmative action is the biggest dirty little secret in academia, never to be mentioned again.

And cancel culture is garrisoned just behind the gate, salivating at the potential to get a bite out of anyone who utters the Voldemortian words that affirmative action is not even good for the alleged beneficiaries, not to mention that it's rank discrimination.

That's how Marxism works. You're bullied into not speaking against whatever program (or is it pogrom?) the elites in power choose for their pre-determined "collective" good. And you better not dare ask for evidence, because you'll be canceled for not swallowing the force-fed pabulum.

And just like in communist states, these elites ignore the apt preferences of the population, given that nearly three-quarters of Americans believe higher education shouldn't consider race or ethnicity in admissions.

Leftist attacks on affirmative-action researchers are deflections. For years, conservative academics seeking truth over dogma have inquired into the effect of preferences on minorities. They've collected data, run

regressions, asked questions, and studied outcomes.

And time and time again, the results demonstrate the negative effects of affirmative action on success in law school and on the bar exam, irrespective of the DEI Stasi's propaganda, vitriol, and thuggish intimidation tactics.

The Ministry of Diversity's actions go well beyond the aforementioned gag order; they also oversee the regime in which eschewed colorblindness in admissions transforms into blind grading upon matriculation, "admitting a student body that mirrors the population" transmogrifies into demographically restricted "safe spaces" for enrollees, and the "compelling interest" in diversity during the application process results in the encouragement—and funding—of largely segregated extant-extracurricular groups explicitly denominated by race. The unrecognized irony is profound.

The conventional wisdom is that the Supreme Court will strike down affirmative action this year. But it's one thing for courts to declare unconstitutional bad practices. It's wholly another for states to implement corrective action. Think of Arkansas' Orval Faubus if you have any doubts.

My hope is that during this coming legislative session, our elected officials will stand up for what's right, against cancel culture, and make Arkansas more like, well, California. Let's restore merit as the defining characteristic by which we measure qualifications. Let's end government-sanctioned discrimination in Arkansas once and for all.

This is your right to know.

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