The Tension Between Opportunity and Outcome: The University of Michigan's Supreme Court Cases on Affirmative Action And the Implications of Cultural Expectations

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Thesis submitted to the faculty of
Virginia Polytechnic Institute and State University
In partial fulfillment of the requirements for the degree of

Masters of Arts
in
Communication

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June 20, 2005
Blacksburg, Virginia

Keywords: Affirmative action, Cultural Theory, Supreme Court, University of Michigan, Cultural Topoi, Framing

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ABSTRACT

America is diverse in its culture of ideas and ways of life. This makes for a complex negotiation of issue positions and justifications when attempting to resolve public issues. It is essential therefore, that organizations not only understand but also cater to and adapt to the variety of cultural expectations and interpretations that may guide their various stakeholder publics when creating messages about controversial issues.

One of the most controversial issues our society faces today is affirmative action. The rationales for the different stances people take on this topic vary greatly, revealing both opportunities and barriers to resolve a long-standing, contentious political issue. This thesis describes and analyzes reactions to two 2003 Supreme Court cases that examined the University of Michigan's affirmative action admissions policies: *Gratz, et al. v. Bollinger, et al.* and *Grutter et al v. Bollinger, et al*. The cases were the first time the Supreme Court had addressed affirmative action since the 1978 Bakke case. It was also the first time that the Court would debate whether or not diversity is truly a compelling state interest and what constitutes a fair and legal process by which to achieve it. Mediated accounts of the debate were examined in order to offer insight into contemporary interpretations of a recurring issue. By looking at how the media framed the issue, policymakers, politically-involved citizens, public relations practitioners can better understand the political climate in which they work, and thereby allowing them to better craft their communication efforts. Cultural Topoi, developed from Cultural Theory was used as a lens through which to examine the complexity of American political principles in these cases and values in this changing landscape of social expectations and public policy.

ACKNOWLEDGEMENTS

I would like to offer my sincerest gratitude to my advisor, Dr. Rachel Holloway for all of her help and guidance throughout my graduate education. Her support has been invaluable. I would also like to thank my committee members, Dr. John Tedesco and Dr. Beth Waggenspack for helping me to refine my writing and enhance my research by sharing their insights and advice throughout this process. Finally, I would like to thank my parents, Jerry and Theresa Gaines, as well as my family and friends. Their love and encouragement has always been a blessing.

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CHAPTER ONE - INTRODUCTION

The quintessential American melting pot is not only diverse in its ethnicities, religions and customs; it is also, by necessity, varied in its culture of ideas and ways of life. This makes for a complex negotiation of issue positions and justifications when attempting to resolve public issues. Fundamentally, public relations involves constant adjustment of the relationship between organizations and their environments (Leichty & Warner, 2001). A major component of an organization's environment includes the ways in which stakeholder publics interpret their individual and social worlds. Several scholars have suggested that when issues are being negotiated between an organization and its publics, it is in fact political culture that is being adjusted (Ellis, 1993; Holloway, 2000; Leichty, 2003; Leichty & Warner, 2001). The practice of public relations is primarily concerned with interpretations, which are manipulated by the framing of meanings. For instance, what precisely does it mean for a firm to be socially responsible? Because of the variability of interpretations, the answer to this question could span a broad continuum, depending upon the cultural political outlook of the individual offering a response. Organizations promote and affiliate with evocative symbols in order to achieve and maintain organizational legitimacy, thereby garnering the social support necessary for their survival and success (Leichty & Warner, 2001). Thus, it is essential that organizations not only understand but also cater to and adapt to the variety of cultural expectations and interpretations that may guide their various stakeholder publics when creating messages about controversial issues.

One of the most controversial issues our society faces today is affirmative action. The rationales for the different stances people take on this topic vary greatly, revealing both opportunities and barriers to resolve a long-standing, contentious political issue. This thesis will describe and analyze reactions to two Supreme Court cases that examined the University of Michigan's affirmative action admissions policies: *Gratz, et al. v. Bollinger, et al.* and *Grutter et al v. Bollinger, et al*. The cases were the first time the Supreme Court had addressed affirmative action since the 1978 Bakke case. It was also the first time that the Court would debate whether or not diversity is truly a compelling state interest and what constitutes a fair and legal process by which to achieve it. Mediated accounts of the debate will be examined in order to offer insight into contemporary interpretations of a recurring issue. By looking at how the media framed the

issue, policymakers, politically-involved citizens, public relations practitioners can better understand the political climate in which they work, thereby allowing them to better craft their communication efforts. Cultural Topoi will be used as a lens through which to examine the complexity of American political principles in these cases and values in this changing landscape of social expectations and public policy.

The purpose of this thesis is to explain the ways in which people are encouraged to think about affirmative action, race, gender, and privilege by examining the dominant political cultural frames present within popular media at the time of the Supreme Court ruling. By exploring the dominant ways in which people with dissimilar social and political values are led to understand this issue, it is possible for public relations practitioners dealing with affirmative action issues to better craft their messages and negotiate issues according to common cultural values of their stakeholder publics. This is important, because given the nature of the court's ruling, affirmative action is an issue that will likely be revisited in the not too distant future. Furthermore, these findings may point out opportunities for cooperation and constituency-building on a divisive and entrenched issue. To date, public relations scholarship and theory offers limited approaches by which to explore the underlying social, political, and cultural forces that shape public expectations of organizations and institutions. This study tests the value of an approach introduced by Leichty and Warner (Cultural Topoi) as a means to analyze the impact of underlying orientations in a major issue controversy. Understanding these types of differences is the first step in discovering how to transcend our differences to find commonality.

The remainder of this chapter will outline the legal context in which the U.S. Supreme Court rendered its judgment in the University of Michigan cases. Chapter Two will place the University of Michigan case decisions within the theoretical and rhetorical context of American political culture, describing the method through which the media accounts will be analyzed. Chapter Three will describe the different positions and justifications against and in support of affirmative action present within the selected media. This chapter will also include an analysis of these positions and justifications as they pertain to cultural topoi. Finally, Chapter Four will examine ways to generate cross-cultural understanding about the roles of affirmative action, merit, and diversity in American society.

Affirmative Action and the University of Michigan Supreme Court Cases

Much of the controversy surrounding the implementation of affirmative action is owed to the fact that people argue over the modern purpose of affirmative action. Is its purpose to balance the scales of justice by redressing the past wrongs of slavery, Jim Crow, and segregation? If so, when is that debt paid? And, is such a thing even possible? Others argue that the modern purpose of affirmative action is to promote a level of equality that our society is perceived to be incapable of achieving on its own. Some cite diversity initiatives as yet another purpose of affirmative action.

Though its modern purposes may have changed, originally the concept of affirmative action was intended to promote equal opportunity. President John F. Kennedy first mentioned affirmative action as one of the objectives of the Committee on Equal Employment Opportunity; however, the concept did not emerge as a stable federal policy until President Johnson launched his Great Society initiatives (Goode, 2003). In a speech at Howard University in 1965, Johnson declared affirmative action to be "the next and more profound stage of the battle for civil rights. Not just freedom, but opportunity. Not just legal equity but human ability. Not just equality as a right and a theory, but equality as a fact and as a result" (Zarefsky, 1980, p.89). It was in this speech that Johnson was able to shift the understanding of the concept of “equal opportunity” from nondiscrimination to affirmative action. Johnson’s redefinition was justified in the form of the following analogy, “You do not take a man who has for years been hobbled by chains, liberate him, bring him to the starting line of a race, saying ‘you are free to compete with all the others,’ and still justly believe you have been completely fair” (Zarefsky, 1980, p. 89). Executive Order 11246 followed not long after the momentous speech, requiring federal contractors to institute affirmative action policies in order to ensure equal employment opportunities for persons of color. In 1967, gender was also added to affirmative action criteria (Goode, 2003). Since then, these policies have been both praised as the answer to racial and sexual inequality and pilloried as a means of reverse discrimination and white male victimization (Pincus, 2003).

Though access to employment was the initial focus of the federal mandate, many colleges and universities recognized similarities between the exclusion of minorities from certain careers and their very limited enrollment in many universities. Thus, universities began implementing their own versions of affirmative action through a variety of efforts. These initially focused on admissions, but later expanded to include recruitment, retention, counseling, and a host of other

curricular reforms that laid the framework for the various programs that grew significantly throughout the 1970s (Goode, 2003).

There are a variety of ways in which affirmative action is implemented in different organizations. Pincus (2003) outlined each. “Quotas” generally require race or gender to be a major factor in the final decision to hire, promote, or accept an individual. The “goals/timetables” approach, however, requires strong outreach to underrepresented groups with the final decision being based on merit. Finally, “race/gender-plus policies” permit race and/or gender to be one among many factors for consideration in the final decision as long as it is not the primary factor. Since the late 1970’s the under representation of African Americans, Hispanics, and Native Americans in higher education has led colleges and universities through the United States to use the “race-plus” principle which was first articulated in the 1978 Bakke decision as a means to promote diversity on their campuses (Pincus, 2003).

Throughout its history, the equal protection clause within the Fourteenth Amendment has guided the Supreme Court’s decisions regarding affirmative action. It stipulates that no state shall deny any person equal protection under the law. However, the U.S. Constitution does not contain a provision exempting affirmative action from this universal equality doctrine.

Earlier Supreme Court decisions determined important aspects of the constitutional provision. At a basic level, the equal protection clause allows the government to differentiate among the beneficiaries or victims of its actions when this type of categorization serves to advance initiatives that fall within the scope of governmental authority. Therefore, the government may only use race as a means of classification when its goals are limited to those that are, in the words of the doctrine, “compelling.” Racial classification must also be an exceptionally effective means of advancing those compelling interests and a program using race must be “narrowly tailored” so as to advance the compelling interests (Tushnet, 2004).

Regents of University of California v. Bakke, 1978 was the first case in which the Supreme Court decided on the merits of a particular university admissions program. This case involved the affirmative action policy at the UC Davis medical school. The program operated under a two-track system in which 16 seats in its 100 person class were reserved for racial minorities (Tushnet, 2004). The Court held this system unlawful. Justice Lewis F. Powell, Jr. wrote the majority opinion. The plaintiff in the case argued that the Constitution prohibited governments from using race as a means of classifying individuals. Justice Powell refuted this

argument. He agreed that affirmative action could not be justified as a means of compensating for discrimination within society. However, as he saw it, universities could use affirmative action to achieve the educational benefits of a diverse student body (Tushnet, 2004).

Between 1978 and the close of the century, tensions between affirmative action proponents and detractors steadily escalated. In *Hopewood v. Texas, 1996*, a lower federal court held that public universities could not consider race in their admissions policies. The Justices in that decision held that Justice Powell's opinion represented only his personal views and not that of the majority of the court. This was done as a means to reject Justice Powell's position without actually "overruling" a Supreme Court decision (Tushnet, 2004). Still, other lower courts also upheld affirmative action programs. Despite the controversy, many universities remained committed to their affirmative action programs.

The Supreme Court finally agreed to review two University of Michigan affirmative action programs that had been the target of conservative public interest litigation groups. Two admissions policy lawsuits were filed against the University of Michigan in federal district court in 1997. The first, *Gratz, et al. v. Bollinger, et al.* was filed on October 14, 1997. It contested the university's use of race in its admissions policy to Michigan's largest undergraduate college, the College of Literature, Science, and the Arts. Jennifer Gratz, a white applicant denied admission for the 1995 fall term, and Patrick Hamacher, also an unsuccessful white applicant for the fall term of 1997 brought the suit against the university ("Press kit," 2003). The second case, *Grutter, et al. v. Bollinger, et al.* was filed on December 3, 1997. It challenged the use of race in admissions to the University's law school and was brought by Barbara Grutter, an unsuccessful white applicant for the entering class of 1997. The plaintiffs sued the university as well as specific university officials in their individual and official capacities. Each case was certified as a class action suit in order to force a review of the current policy. In both cases, the Center for Individual Rights (CIR) represented the plaintiffs. CIR is a Washington D.C. based law firm that has been conducting a national campaign of lawsuits with the goal of invalidating affirmative action ("Press kit," 2003).

In both cases, groups of students and citizens attempted to intervene on behalf of and in opposition to the university and its right to continue its affirmative action program. Although their efforts were denied initially by district courts, the Court of Appeals for the Sixth Circuit allowed the intervention and in August 1999 made the student and citizen groups full parties in

the case. In addition, professional associations, universities, national education organizations, retired military leaders, Fortune 500 companies, and over 14,000 law school students filed 75 amicus briefs with the Supreme Court in support of the university in both cases. However, less than half that number filed briefs in support of the plaintiffs ("Press kit," 2003).

The plaintiffs argued that Michigan's admissions practices unlawfully discriminated against them because the university took race and ethnicity into account as an additional plus factor in selecting which individuals were and were not admitted. In general, they sought injunctive relief and monetary damages. The university held that the Constitution and civil rights statutes, as interpreted by the Supreme Court in the 1978 *Bakke* decision, permit the consideration of race and ethnicity in admissions in order to create a diverse student body. They argued that a diverse student body offers educational benefits because of "the current state of segregation and separation along racial lines in America" ("Press kit," 2003).

The U.S. Supreme Court handed down decisions on the two cases on June 23, 2003. In *Grutter, et al. v. Bollinger et al.,* the Justices held that diversity is a compelling interest in higher education and that race is one of a number of factors that can be taken into account to achieve a diverse student body. By a 5-to-4 majority, the court found that the individualized, whole-file review used in the Law School's admissions process was "narrowly tailored" to achieve diversity ("Press kit," 2003). Justices Ginsburg, Souter, Stevens, Breyer, and O'Connor voted with the majority, and dissenters included Justices Kennedy, Rehnquist, Scalia, and Thomas. As the swing vote, Justice O'Connor wrote the Court's opinion in the law school case. Her majority opinion was joined by a brief concurring opinion written by Justice Ginsburg. Chief Justice Rehnquist wrote the principal dissenting opinion representing all four of the justices, but Justices Thomas and Kennedy wrote separate opinions as well (Greenhouse, 2003b).

In *Gratz, et al. v. Bollinger, et al.,* the court held that race is one of a number of factors that may be considered in undergraduate admissions. However, Michigan's automatic distribution of 20 points to students from underrepresented minority groups was not found to be "narrowly tailored" to achieve that purpose and was therefore deemed unconstitutional by a 6-to-3 vote ("Press kit," 2003). In the undergraduate admissions case, Justices Kennedy, Thomas, Rehnquist, Breyer, Scalia, and O'Connor voted with the majority and Justices Ginsburg, Souter, and Stevens dissented. Justices Ginsburg and Souter dissented because they said the majority opinion was incorrect on the merits. Justice Stevens dissented because he said the plaintiffs, two

white students who were not granted admission under an earlier version of the undergraduate admissions policy, lacked standing to challenge the current policy that the university adopted in 1998 (Greenhouse, 2003b).

On August 28, 2003 Michigan announced that the previous points system had been discarded. At that time, officials unveiled a new process for undergraduate admissions designed to comply with the June 23 U.S. Supreme Court ruling and intended to gather more information about student applicants and include levels of highly individualized review ("Press kit," 2003).

Given the somewhat equivocal and divided ruling and intense interest in the case in academic, corporate, and political circles, national news media coverage of the decision was extensive and provides a window into contemporary understandings of issues of race, power, and privilege. The positions expressed within the pages of these publications by journalists, columnists, students, the Justices and a host of others employed predictable patterns of American political discourse and persuasion. The next chapter provides the theoretical foundation and method through which the contemporary affirmative action debate will be analyzed and placed in a larger rhetorical context.

CHAPTER TWO -THEORETICAL FOUNDATIONS AND METHOD

In a political system built on democratic principles of freedom of expression and majority-rule, the ability to build broad-based constituencies through persuasion is essential to political influence. Political actors strategically describe and interpret different situations and problems in order to gain support for their cause. A rhetorical analysis of their discourse may reveal the guiding values and principles prevalent at a moment in time and available to political rhetors in their attempts to build support for their cause. This process of interpretation and persuasion is called "framing".

Framing

"Framing is a critical activity in the construction of social reality because it helps shape the perspectives through which people see the world" (Hallahan, 1999, p. 207). Any description of a situation draws attention to some factors and downplays others. As Kuypers (2005) notes, "Framing involves taking some aspects of our reality and making them more accessible than other aspects" (p. xx). Framing effects people's understanding of reality by priming values differentially and emphasizing the importance of one value or the other. Frames are powerful because they lead people to filter their perceptions of a multidimensional world in specific ways by making some aspects of our reality more salient than others. According to Entman (1993):

> To frame is to select some aspects of perceived reality and make them more salient in the communicating text, in such a way as to promote a particular problem definition, causal interpretation, moral evaluation and/or treatment recommendation for the item described. Frames, then, define problems – determine what a causal agent is doing and costs and benefits, usually measured in terms of cultural values; diagnose causes – identify the forces creating the problem; make moral judgments – evaluate causal agents and their effects; and suggest remedies – offer and justify treatments for the problem and predict their likely effects (p. 55).

Frames may be found within the communicator, the text, the receiver, and the culture at large. Frames are the fundamental guiding ideas within a narrative account of an event or issue. They serve to translate cues within otherwise impartial data. People need ways to categorize and digest the wealth of information that they encounter each day and they use frames to more easily

negotiate the variety of issues vying for their attention. Individual acceptance or rejection of an issue frame is shaped by personal experience, attitudes, and beliefs. Individuals give voice to their cultural biases (a type of frame) when they interact with their surroundings by sharing their insights and observations of various circumstances as well as their own conclusions and personal experiences (Holloway, 2000). For this reason, it is particularly useful to examine rhetorical artifacts, particularly mediated communication, through a framing analysis (Kuypers, 2005) as a means to explore social and political forces in a public debate.

Similarly, a primary function of public relations is to influence how stakeholders interpret issues. Therefore, a principal objective of the public relations practitioner is to provide frames by which issues can be interpreted to benefit his or her organization. Studies on political cultures seek to extend rhetorical approaches to public relations by explaining the warrant structures used in value-based conflicts (Leichty & Warner, 2001). The Cultural Topoi are broad, value-based worldviews through which situations are interpreted and evaluated.

Cultural Topoi and Issue Frames

Several authors focus on cultural worldviews as a means of explicating the tensions of diametrically opposed expectations (Douglas, 1978; Ellis, 1993; Leichty, 2003; Leichty & Warner, 2001). The framework of political cultures offered by Ellis (1993) and others model the variety of rationalities that are called upon to generate and interpret messages. This framework may also be used to anticipate how different audiences will perceive the same message. Leichty's application of this perspective to issue analysis integrates Douglas and Wildavsky's development of cultural theory and Fiske's theory of elementary structures of social relationships (Leichty & Warner, 2001, p. 62).

Cultural Theory presumes that people's preferred patterns of socialization within which they live their lives shapes their worldviews and, consequently, their attitudes and behavior in predictable configurations. Some social scientific and psychological observation and research supports the notion that people are influenced by their social experiences. Sociologist Mary Douglas (1978) provided the foundation for this theoretical construct. Douglas theorized only two dimensions of social relationships support the patterns of human social interaction. She further postulated that these dimensions generate four distinct worldviews. The cultural theory equation then suggests that social relationships (measured on grid-group dimensions) lead to a worldview (Cultural Topoi), which then affects human behavior (Boyle & Coughlin, 1994).

Group and Grid

Group and grid, the two dimensions of cultural theory, are intended to capture individual differences among various peoples' involvement in social life. Group represents the degree to which individuals define themselves as members of a group and conform their behavior to adhere to the norms and conventions of the group. It is essentially the degree of division between insiders and outsiders of a group or society. This dimension taps the extent to which a person's life is consumed and sustained by membership within a particular group (Boyle & Coughlin, 1994). "The greater the incorporation, the more individual choice is subject to group determination" (Thompson et al, 1990, p.5). A high group affiliation indicates more than simple membership in a club or organization. The further one moves along the group dimension, the more an individual places the welfare of the group above his or her own interests and differentiates between those inside the group and those outside it (Boyle & Coughlin, 1994). Someone who lives in a group setting or perhaps shares work, resources, and recreation would be assigned a high group rating. Examples include a close-knit family, a campus fraternity or sorority, or even a religious commune. The further an individual moves along the group dimension, the greater the control over admission and acceptance into the group and the more stringent the boundaries distinguishing members from non-members. In a low group society, due to the lack of group mentality, people are not incorporated into a bounded social unit and social classifications are negotiable, meaning that people can shift social position freely.

Grid, the second dimension, refers to the degree to which an individual's actions are constrained by rules or "externally imposed prescriptions" (Thompson et al, 1990, p.6). The broader and more compulsory the scope of the restrictions, the fewer life decisions an individual is free to negotiate independently (Thompson et al, 1990). A high-grid social context denotes an "explicit set of institutionalized classifications [that] keeps [individuals] apart and regulates their interactions" (Thompson et al, 1990, p.6). In a high grid context, rules and prescriptions guide human behavior. There are distinct differentiations or ranks among group members based on explicit classifications such as race, sex, or lineage. For example, in a high grid culture, a man would not perform anything widely considered to be "woman's work." Another example of a high grid culture would be a caste society. By contrast, in a low grid society, access to different roles is dependent upon personal ability or skill and individuals have the opportunity to compete for position.

"Modes of social control are the focal point of grid-group analysis" (Thompson et al, 1990, p. 6). Individual choice is constrained in this form of examination in two ways. Individuals may be bound by either group decisions or an expectation that individuals follow the rules established for their role in life (Thompson, 1990). Social control is a type of authority and influence. "In the grid-group framework individuals are manipulated and try to manipulate others. It is the form of power – who is or is not entitled to exercise power over others – that differs (Thompson, 1990). The combination of grid and group dimensions leads to five political worldviews or cultures as presented in Figure 1.

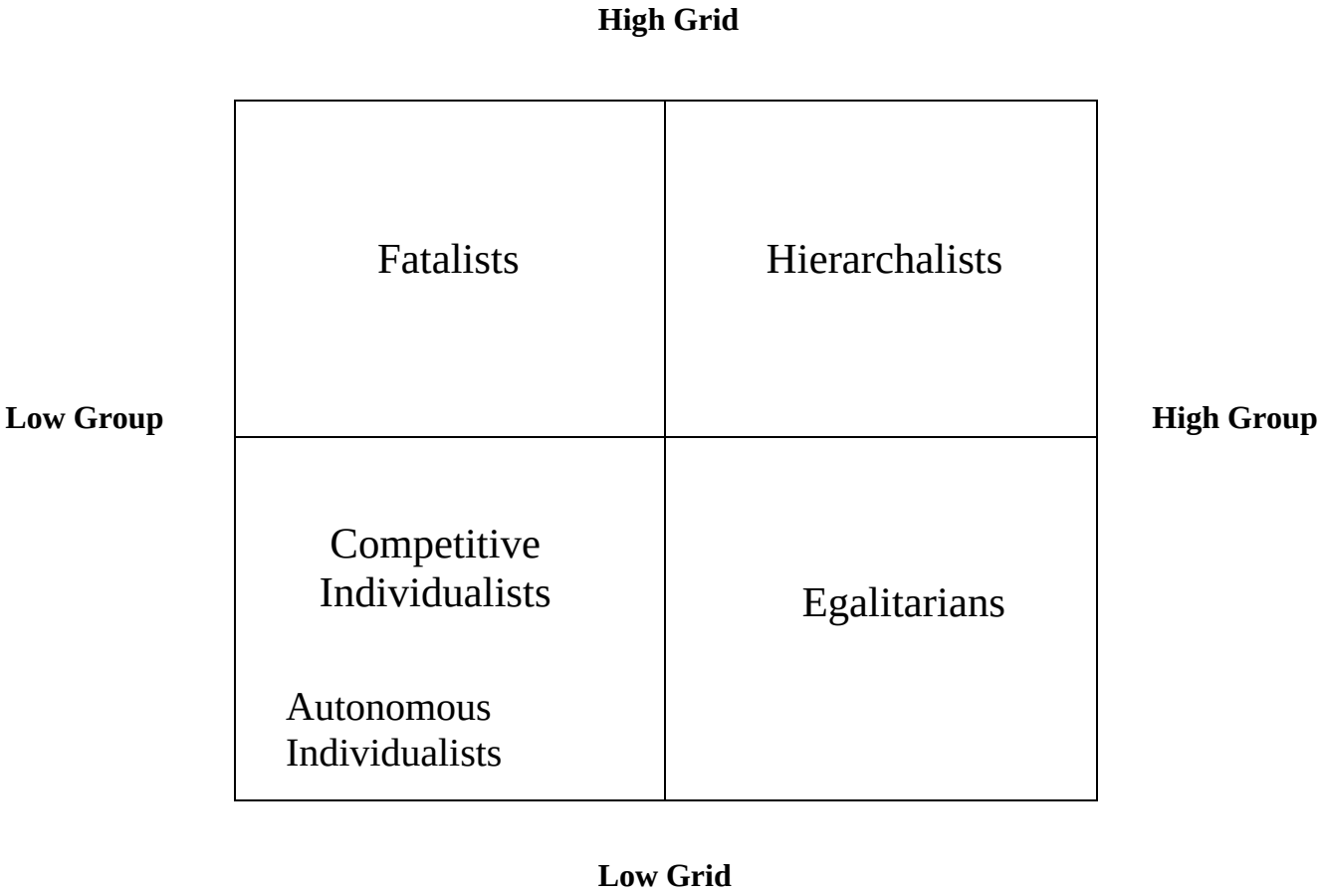

Figure 1 Grid-Group Typologies

A cultural bias is a worldview that supports cognitive ideas about the organization of social relations (Leichty, 2003). Each cultural bias carries an accompanying set of argument frameworks or cultural topoi. A topos is a topic or premise that influences message encoding and message interpretation. These cultural topoi consist of basic themes that can be broadly applied

in persuasive endeavors and used to support a variety of topics. Each topos is indicative of a particular cultural bias and exhibits a distinctive line of rationalization and logic. The associated assumptions and justifications of each topos reinforce a preferred pattern of social relationships.

These modes of understanding are born out of a core rhetorical vision of the way the world works and that vision involves adherence to particular epistemological, ontological, and moral mores (Leichty & Warner, 2001). Conforming to these patterns of social association facilitates a particular way of viewing the world and validates a corresponding kind of social relations (Leichty, 2003). A cultural orientation then dictates an individual's analysis of what is critical in a given situation and what can be disregarded. "It justifies and evaluates a concern, distributes responsibility and assigns blame, and thereby advocates a response" (Holloway, 2000, p.119). These configurations can be grouped into five basic voices differentiated according to their beliefs about nature, human nature, values, decision principles, activity principles, and justice principles. The five voices of cultural competition are fatalism, egalitarianism, hierarchy, autonomous individualism, and competitive individualism. Each cultural bias is an "internally consistent template that structures human relationships" (Leichty, 2003, p. 278). These classifications of voices have the potential to help practitioners because they give insight into how audiences may go about encoding and interpreting messages. The next section of this chapter discusses these cultural lenses in greater depth. It indicates how communication through these lenses may influence public opinion on affirmative action, and how this in turn has the power to shape public policy.

The Fatalist

Fatalists generally believe themselves to be subject to binding rules, and their sphere of autonomy is limited. Fatalists may have little say in how they spend their time, who they associate with, or where they live and work. Fatalists exist in a high group, low grid context. They are controlled by outside forces. However, they are excluded from the group that is responsible for making the decisions that regulate their daily lives (Thomson et al, 1990). Fatalist culture views both nature and the human condition as "capricious and unpredictable" (Leichty & Warner, 2001, p.65). People who subscribe to a fatalist perspective believe that personal effort to affect change can only lead to disappointment or disaster. This lifestyle understands fate as the deciding factor in every course of life. Thus, the only viable option for day-to-day survival is to

"roll with the punches" (Leichty & Warner, 2001, p.65). Social distrust is so overwhelmingly pervasive within the fatalist topos that those that subscribe to it are distrustful of any appeals for social cooperation because such appeals are seen merely as efforts to gain self-interested advantages under the guise of public benevolence. This culture sees barriers to individual and collective action everywhere (2001). Events beyond human control, natural disasters, disease, and death touch everyone's lives. Our hold over our physical environment is tenuous at best, as evidenced by floods, earthquakes, and acts of terrorism. Lack of control over nature's course or our personal safety will condition a degree of fatalism in all of us. The poor and destitute, in particular, survive under the auspices of a greater uncertainty than any other socio-economic group. They have access to fewer resources and a significantly higher incidence of illness and death. Such social and physical vulnerability breeds a fatalistic orientation. Relative to issues of race and equality, though fatalists may believe that race plays a role in opportunity, they believe that there is nothing that can be done to upset the imbalance of power.

The fatalist bias has been the most difficult to catalogue because, as a cultural orientation, it has been historically underreported. Recording thoughts or speaking out would be uncharacteristic of this bias. Ellis, for instance, asserts that slavery in the South was only possible because of a fatalist mentality (1993). This bias is characterized by apathy, indifference, and resignation to one's fate. "Fatalism is a learned response to a social environment in which there is only a tenuous connection between preferences and outcomes" (Ellis, 1993, p.135).

The Egalitarian

The egalitarian voice stimulates and encourages activists looking to overcome social inequality. Human nature is considered to be basically good but easily perverted by socially corrupt institutions that perpetuate inequity. Egalitarians want to achieve the highest standard of equality in order to mitigate the perversions of hierarchical social foundations (Leichty & Warner, 2001).

According to Thompson et al. (1990), strong group boundaries and few prescriptions generate egalitarian social relationships. Due to their low grid position, egalitarian groups lack internal role differentiation, and relationships between group members are undefined and ambiguous. Therefore, the welfare of the group is valued above the welfare of the individual, and an emphasis is placed upon cultivating group solidarity and reaching decisions by consensus.

However, because no individuals are established as authority figures with control over other group members, internal conflicts are challenging to resolve. The only way in which individuals can exercise power over one another is by claiming that their words or actions are in the best interest of the group, "hence the frequent resort to expulsion from the group in resolving intragroup differences" (Thompson et al, 1990, p. 6). These rather drastic measures, however, tend to suppress disagreements, thereby promoting the development of covert factions vying for control (Thompson et al, 1994).

As a group, this culture is mistrustful of the corruptions of power and division that result when members of society do not experience equality as a result. Egalitarians perceive obstacles to individual action yet hope that morally based collective action has the power to rise above them (Leichty, 2003). Not surprisingly, this group believes hierarchal oppression has erected barriers to equal opportunity and that affirmative action would be necessary in order to balance the scales and redress the consequences of the marketplace. This group is often accused of ignoring the "opportunity costs and trade-offs" that correspond to their proposals to mitigate social inequalities (Leichty & Warner, 2001, p.69).

The Hierarchist

In hierarchal culture, individuals' social environment is characterized by strong group boundaries and strict social rules. Within this social context, people are simultaneously subject to the control of other members as well as the restrictions of socially imposed roles. Unlike egalitarianism, which has few means short of expulsion from the group for controlling members, hierarchy has an arsenal of solutions to internal conflicts, including upgrading, lateral shifting, downgrading, re-segregating, and redefining. The generally unbalanced exercise of power is justified on the presumption that different roles for different people enable individuals to live together in harmony (Thompson, et al, 1990). Those that subscribe to the hierarchal paradigm believe that nature and human nature are in need of discipline and structure. These individuals often charge egalitarians with seeking to undercut authority and discipline within established social foundations. Hierarchists seek to promote order within their environment. Hierarchal disciples hold that human nature is bent and requires strict attention in order to be straightened through "carefully developed habits" (Leichty & Warner, 2001, p.65). In order to achieve the greatest good, they believe that society must be organized by an authoritative guiding hand. These individuals are most content when everyone "respects and obeys legitimately executed

authority" (Leichty & Warner, 2001, p.65). That authority is then responsible for making decisions and those within the chain of command are responsible for implementing those decisions. All human activity requires diligence and should be carefully planned. Hierarchists believe that knowledge and planning can strengthen resources to match human needs and simultaneously handle the threats that foster angst among egalitarians. They worry, however, that the degeneration of our social order will lead to "anarchy and chaos" (Leichty & Warner, 2001, p.65-66). Because they prefer a high group and high grid existence, Hierarchists value security, order, and authority. Hence, they will tend to discriminate against those who signify counter-hierarchical values, such as egalitarians. Egalitarians, in turn, will often condemn hierarchy for being brutal and capricious. Hierarchy is seen by egalitarians to favor the strong and powerful over the weak and is accused of using merciless and unjust methods on its adversaries. Because hierarchalists are unconcerned with issues of equality, they would not see the need for programs like affirmative action. According to Ellis (1993), America is notable for its hierarchal frailty. "Hierarchy finds support wherever social relations are highly stratified and the group has sanctions over the individual, whether this be in the army, the patriarchal family, the modern corporation, or on a large plantation" (1993, p.95).

The Competitive Individualist

Liberty, equality of opportunity, and personal achievement drive competitive individualists. They are bound by neither group incorporation nor prescribed social roles. In their environment, all restrictions are provisional and subject to negotiation. Though the competitive individualist is relatively free from outside control, the individualist's success is often measured by the size of the following the person can command (Thompson et al, 1990). Individuals that subscribe to this culture believe that humans are generally good but self-seeking. However if this disposition is tested by competition, then it will be efficiently and effectively channeled. Competitive individualists are also dedicated to the full realization of each person's limitless promise. Therefore they would contend that affirmative action is unnecessary because each person, regardless of race or circumstance, should be able to achieve as much as they are capable of. If they fall short, it is due to the fact that they could not compete within the marketplace as effectively as others and not as the result of a lack of opportunity.

Competitive individualist culture presumes that nature is abundant and hardy**;** therefore, individualists believe that full potential can only be achieved when individual freedom is

exploited to its fullest advantage. Value is placed on individual liberty, equality of process, and free competition within the marketplace. People are encouraged to increase both desires and means to the limits that their skills permit (Leichty & Warner, 2001). This topos privileges the concept of survival of the fittest and holds that people have the wherewithal to regulate themselves. Cooperation is best realized through "networks of voluntary relations" among individuals perceived to be of comparable abilities (Holloway, 2000, p.120). Competitive individualists complain that Egalitarians discourage the incentive to excel**.** They view egalitarians as losers whose actions are prompted by jealousy (Leichty & Warner, 2001).

Competitive Individualists, however, would instead argue that the personal success of members of society translates into societal success (Holloway, 2000). Conversely, this group is frequently criticized by egalitarians as being indifferent to the common good. Competitive individualists also believe that the market should always decide. All decisions that possibly can be should be removed from the group and bestowed upon "transacting individuals" (Leichty & Warner, 2001, p 67).

Competitive individualists often view hierarchy as capricious, but they chiefly attribute this to its foolishness. They attempt to demonstrate that the market is superior to authority. "The road to hell is paved with good intentions because hierarchalists think that they can predict and control things that they cannot" (Leichty & Warner, 2001, p.69). Life for this group is a contest in which justice requires that individual choices be rewarded and penalized according to their merit. Likewise, in group situations, individuals should receive compensation proportional to their input. Due to the emphasis placed on competition, it is important for people to work toward ends for which they have an aptitude because this group cultivates achievement motivation and the individual desire to be recognized for personal performance (Leichty & Warner, 2001).

The Autonomous Individualist

The autonomous individualist is a hermit. Those that subscribe to this topos endeavor to avoid "coercive relationships and entanglements, especially the coercive demands for the correct way of thinking by groups" (Leichty & Warner, 2001, p.66). This culture perceives nature to be benevolent and human nature in need of enlightenment. Autonomous individualists have a low group and low grid score. They believe that human relationships and groups should be structured such that they do not at any time hinder those that wish to withdraw from the relationship if that association becomes domineering. Therefore, these individuals escape social control by refusing

to control others and refusing to be controlled by others (Thompson et al, 1990). To the Autonomous individualist, it is vital that equality be maintained so that adherence to the norm of reciprocity is consistent. They believe that each individual should receive an equal benefit from group efforts and that each person should have a say in collective decisions (Leichty & Warner, 2001). The autonomous individualist separates him/herself from greater society in order to seek personal enlightenment and to commune with nature. Whether a monk, an artist, or writer, these individuals are dedicated to a simple life that involves minimalism and self-sufficiency (Holloway, 2000). Ellis (1993) uses Henry David Thoreau as a classic example of this political culture. For Thoreau, "capitalism is vile because its expansive materialism distracts from man's ability to attend to his inner, spiritual life" (p.141). For the autonomous individualist, isolation is a sanctuary from the evils of capitalism. The autonomous individualist resembles the competitive individualist in that his/her social experience is not controlled by either group restrictions or attributed status. Unlike the competitive individualist, however, the autonomous individualist renounces the spoils of the competitive system. Whereas the competitive individualist aims to make him/herself the center of a network, the autonomous individualist deliberately abandons relationships that involve power, domination, and manipulation. The autonomous individualist and the egalitarian have concurrent critical opinions concerning the division of labor and the competitive element that punctuate the competitive individualist lifestyle; however, the autonomous individualist differs fundamentally from the egalitarian in his/her preference for a solitary existence above social unity. (Ellis, 1993).

Cultural worldviews are not static, but they may be subject to change over time and circumstance. Individuals tend to hold a worldview only as long as it works to explain their social world and to direct action. They may realign themselves along cultural boundaries depending on an issue. For instance, someone might believe in the power of a free market on economic issues (competitive individualism) and adopt the position of a hierarchalist on social issues such as the abortion. Moreover, individuals ascribing to differing cultures may support the same policy, but for different reasons. For instance, egalitarians and hierarchalists may both support school uniforms initiatives. Egalitarians believe school uniforms promote equal treatment by eliminating outward expressions of wealth. Hierarchalists believe school uniforms create an outward symbol of group conformity to a system of rules created for the betterment of the group. The potential for individuals to hold "cross-cultural" positions and for those with

differing cultural beliefs to support the same policy opens the door for constituency building in social and political realms. Similar shifts have occurred throughout the history of affirmative action in the United States.

Cultural Topoi, Race, and American Political Discourse

"Equality has long been recognized as a core value of the American creed" (Ellis, 1993). However, in the context of political discourse, equality is a rather nebulous term. Historically, Americans have assigned two fundamentally different interpretations to equality. The competitive individualist understands equality in terms of process, where as the egalitarian understands equality in terms of outcomes. These two conceptions of equality have been at odds since the framing of the Constitution in 1776 (Ellis, 1993).

In an address to the joint session of Congress in July of 1861, President Lincoln said, the "leading object" of free government should be "to elevate the condition of men – to lift artificial weights from all shoulders… to afford all, an unfettered start, and a fair chance, in the race of life" (Ellis, 1993). Lincoln's statement is an enunciation of his belief in equality as a process. In this sense, the Republican understanding of equality was less about "sameness" and more about the opportunity to make one's mark (1993). Conversely, Jacksonians were concerned about the disparities of condition caused by the government that appeared to aid the rich in getting richer, and making the poor poorer.

This debate continued into the Gilded Age of the early twentieth century as well. At that time, Andrew Carnegie was a major supporter of equality of process. In his book, *Triumphant Democracy,* Carnegie noted that there was "not one shred of privilege to be met with anywhere in all the laws" (Ellis, 1993). The reasoning was that if we live under just and equal laws, then all avenues are open to all people. However, for Populists, equal process was meaningless without equal outcomes. In egalitarian fashion, they championed the position of the common people. "What is life and so-called liberty," stated the *Farmer's Alliance*, "if the means of subsistence are monopolized" (1993)?

In the 1800 and early 1900's American egalitarianism was marked by its hostility toward government as the root of inequality. The development of the New Left in the 1960's, however, challenged the old model of using government to repair social inequality because the New Left shared the Old Left's distrust of capitalism but also shared the Jacksonian suspicion of

bureaucracy as a source of inequality (Ellis, 1993). The new American egalitarian was hostile toward both competitive individualism and hierarchal authority.

According to Ellis (1993), in the past, most Americans understood discrimination to be a violation of equal process; however, after the 1960's a new egalitarian results-oriented meaning of discrimination was put forth in which practices that were not deemed unequal in process were deemed "discriminatory in effect" if they increased unequal results. It was at this time that President Lyndon B. Johnson, in a commencement address at Howard University, redefined equal opportunity. According to Johnson, legal freedom was insufficient to bridge the separations of races or repair the unequal conditions experienced by blacks. "It is not enough to open the gates of opportunity. All our citizens must have the ability to walk through those gates," he said (Zarefsky, 1980). For this purpose, traditional understandings and applications of equal opportunity were insufficient. Theoretically, providing equal opportunity to individuals in unequal circumstances would still produce inequalities in treatment. And, these inequalities could not be blamed on differences in individual ability (as the traditional view required) because, Johnson said, "ability is stretched or stunted by the family you live with, the neighborhood you live in, by the school you go to and the poverty or the richness of your surroundings" (Zarefsky, 1980). Consequently, discrimination could occur while treating people of different sexes and racial groups the same. It is this change in thinking, which began with Johnson's speech, that lead to a new understanding of equal opportunity and thus the acceptance of affirmative action as a means to remedy the situation. This change, however, made any alliance between egalitarians and individualists very difficult, as evidenced in the contemporary affirmative action debate.

The difference between equality of opportunity and equality of outcome was raised again in the University of Michigan cases. Cultural topoi provide an analytic lens through which to explore both the current case and to note its place in the historical debate on race in American. The following section details the method through which the analysis was performed.

Method

This rhetorical study will entail a close contextual analysis of stories from major news outlets covering the University of Michigan's Supreme Court case. Print media coverage was selected as a unit of analysis as opposed to court records due to the power the media has to frame issues, set the public agenda, and ultimately influence public opinion. While court records would

no doubt lend significant insight to this issue, this study is concerned with examining public perceptions of the affirmative action controversy promoted through media coverage (See Appendix C).

The U.S. Supreme Court handed down a final decision on the case on June 23, 2003. This study will examine news articles and opinion pieces from March 1, 2003, through July 31, 2003 to determine the different culturally based political positions represented within popular print media. These dates were selected because it is during this time frame that the bulk of the media coverage occurred. The Supreme Court agreed to hear the admission lawsuits in early December of 2002, but the first oral arguments were not heard before the court until April 1, 2003. Thus, the March through July time frame captures speculation and opinions prior to the first oral arguments in the case and reactions more than one month after a decision was handed down. Articles and opinion pieces were selected based upon a full text search for the terms "Affirmative Action" and "University of Michigan." Sources used include the following newspapers and newsmagazines: *The Washington Post, The Washington Times, The New York Times, The Wall Street Journal, The National Review, Newsweek, Time,* and *U.S. News and World Report* These sources were selected in an effort to represent a political spectrum of widely read U.S. media sources. Relevant articles and opinion piece in each of these publications were examined to determine the different culturally based political positions used within popular media to either justify or condemn affirmative action.

A rhetorical approach to media coverage of the Michigan case offers insight into the affirmative action issue in two ways. The first is to better understand different symbols, what they mean, and how individuals use them. The second is an explanatory function that serves to contribute to rhetorical theory by determining how some aspect of rhetoric operates (Foss, 1989). The focus of this particular rhetorical criticism is on the messages sent by a variety of different actors involved in the University of Michigan's Supreme Court Case on Affirmative Action and how these messages serve to create a reality for not only the audience but the rhetor as well. Thus, this research will analyze the justifications offered in support of and in opposition to affirmative action.

The stories pulled from the selected print media outlets were examined to determine how different cultural frames were used to explain such a highly contested social issue. This is important because studies on agenda setting theory and framing suggest that people's media

consumption habits affect how they think about controversial issues. By reading these positions, it is possible to discern the ideas and arguments that shape political action. Broadly applied, knowledge of how this process works is relevant to public relations, because if practitioners understand how different appeals resonate within the attitude and belief structures of individuals that subscribe to various political cultures, then it may be possible to respond to issues in ways that will reap the greatest public support. Therefore, in order to gain greater insight into these value and belief structures, Cultural Topoi were used as a lens through which to examine the responses of individuals reported in print media including political figures, Supreme Court Justices, those affiliated with the University of Michigan, the plaintiffs, and the press.

CHAPTER THREE - DESCRIPTION AND ANALYSIS

What follows is a description of the different types of justifications and stances that different individuals adopted with regard to the affirmative action debate. This section is divided into positions that supported and opposed affirmative action. After the description of each position is an analysis of how each set of justifications may be classified and interpreted according to cultural topoi.

Pro-Affirmative Action Frames

In the 1978 Bakke case, the dominant pro-affirmative action position was defined by Justices Thurgood Marshall, William J. Brennan, Harry A. Blackmun and Byron R. White. They justified affirmative action as a way to try to repay society's debt to African Americans (Lane, June 25, 2003). Justice Powell, however, for the first time put forth the idea that colleges should be allowed to consider race as a factor in admissions, with the goal of creating an ethnically diverse student body (Iannone, 2003). The 2003 Michigan Cases were marked by frames containing a range of cultural appeals and values.

The variety of positions as to why affirmative action is good for society were reiterated several times, in several different ways in multiple publications. Articles and opinion pieces articulated several justifications for upholding affirmative action, including: America still has a debt to pay to African-Americans for past discrimination; the rights of the group outweigh the rights of the individual; racism is still a problem in contemporary society; affirmative action counters legacy admissions and uneven distribution of wealth; existing "race-neutral" alternatives are unacceptable; diversity is part of an effective college education; diversity is needed to compete in the global marketplace; diversity is needed to cultivate leaders acceptable to the citizenry; diversity is needed in military leadership in order to maintain national security; affirmative action allows schools to train professionals that will serve minority communities; and without affirmative action, schools will re-segregate.

Historical Need Frames

One of the most commonly cited justifications in support of affirmative action within the articles analyzed was the notion that America had a debt to pay to black Americans for slavery, segregation, Jim Crowe, and the negative consequences currently played out in black communities as a result of a historical lack of opportunity. This faction of supporters believed

that the United States is not a colorblind society; therefore, we cannot have a colorblind admissions policy. Within the context of this particular justification for maintaining affirmative action, there were a variety of different positions

Continued Negative Consequences

America has a debt to pay; African-Americans are still suffering negative consequences

Glenn C. Loury, a professor of economics and director of the Institute on Race and Social Division at Boston University, was once an opponent of affirmative action. However, he was also the lead author in a brief submitted in support of the University of Michigan's policies. Professor Loury submitted an editorial to the *New York Times* in which he discussed why he changed his position in regard to affirmative action.

> Despite its superficial appeal, colorblindness is a false ideal. No understanding of the American social order that ignores racial categories is possible, because these social constructed categories are embedded in the consciousness of all of us. Because we use race to articulate our self-understandings, we must sometimes be mindful of race as we conduct our public affairs… If blacks and Hispanics are to achieve genuine equality in this society, they must be able to participate in these institutions (Loury, 2003).

Alvin Thornton, associate provost of Howard University and former chairman of the Prince George's County Board of Education, participated in a rally to support affirmative action. When asked by a reporter why he felt compelled to be there with the college-age students, he replied, "They understand the tenuousness of our nation's commitment to complete the civil and human rights revolution that is necessary to remove the vestiges of chattel slavery and generations of state-imposed Jim Crow segregation" ("Questions and answers," 2003).

Justice Ginsburg, in her dissent in the undergraduate admissions case, expressed a similar opinion and addressed the consequences of our history. Quoted in a *Washington Post* editorial, she wrote,

> We are not far distant from an overtly discriminatory past, and the effects of centuries of law-sanctioned inequality remain painfully evident in our communities and our schools. In the wake "of a system of racial caste only recently ended," large disparities endure. Unemployment, poverty and access to health care vary disproportionately by race. Neighborhood and schools remain

> racially divided. African American and Hispanic children are all too often educated in poverty-stricken and underperforming institutions (King, 2003).

One individual felt that the idea that we can switch to a colorblind system at this point in history was naïve because children in the United States do not have equal access to the best schools. “A teenager of any race who lives in an affluent suburb like Summit, N.J. – with great soccer fields, after-school SAT preparation courses, and neighbors who are corporate executives – doesn’t have the same barriers to success as a teenager living in Newark, where schools are overcrowded, gangs are a constant threat, and there is very little money for library books” (Ziebarth, 2003).

In a *New York Times* opinion piece it was noted that if there were uniform education spending at the Nation’s public schools, then affirmative action at the University level might no longer be necessary, but that is not yet the case.

> Some liberals say the gap can be closed only be equalizing the amount of money spent on educating whites and minorities. The school districts that many blacks and Hispanics attend spend $902 less per student on average than mostly white districts, according to a national study conducted last year by the Education Trust, a group focused on closing the achievement gap (Holmes & Winter, 2003).

Caleb Weiner, a first-year student at Michigan interviewed about his feelings regarding the case said that while he thinks diversity is a noble objective, he finds the argument “disingenuous” (Wilgoren, 2003). “Affirmative action is really about making up for past discrimination, he said, and a better way to do that would be to create equal educational opportunity for everyone starting from Day 1. It’s a way of addressing a symptom rather than the disease” (Wilgoren, 2003).

According to Colin Diver, president of Reed College in Portland, Ore., and former dean of the University of Pennsylvania Law School, “Diversity is a Johnny-come-lately afterthought… The strongest argument for affirmative action is social debt – evening the playing field” (Golden, 2003). One writer suggested that despite admissions officers demonstrations of a desire for black kids to be accepted, numbers are still expected to decline because African Americans have been placed in a position in which they face “less adequate elementary and secondary education in poor neighborhoods, relative economic and political powerlessness and, finally, the lasting psychic injuries of slavery and Jim Crow… Our children deserve a break

today because they have inherited through us the debilitations of white bigotry" (Raspberry, 2003b). He essentially labels the black community as a group of fatalists and suggests that this is a very difficult orientation to overcome.

In response to the widely published opinion that affirmative action causes minorities to become fatalists, to lack faith in their own abilities, one *New York Times* editor quoted scholar Stanley Fish: "the low self-esteem that comes from wondering if your success was based on merit is probably preferable to the low self-esteem that comes from never getting a chance to succeed in the first place (Keller, 2003).

Rights, Individuals, and Groups

The rights of the group outweigh the rights of the individual

Many felt that though affirmative action policies may disadvantage some, the need to account for past discrimination against African-Americans overrides the individual rights of a few. The idea behind this type of justification is that what brings positive ends for many is not wrong, even if some people may suffer in the process, because it accomplishes the greater good. A *Washington Post* writer and alumnus of both Hampton University (a historically black school) and the University of Michigan, quoted one of her Michigan graduate school classmates, Garth Kriewall, a self-described "white farm boy with manure on his shoes," as observing that "any system will be unfair to somebody" (Britt, 2003). Basically, this frame suggests that diversity initiatives may trample on the individual rights of a few, but this only occurs for the sake of diversity, which is for the greater good of the group. Contrary to some anti-affirmative action positions, to this way of thinking, the rights of the group supersede the rights of the individual.

> Critics often portray affirmative action as representing the snake of obsessive race-consciousness that sullied a previously colorblind Eden. But before the advent of affirmative action, universities were overwhelmingly white and the handful of minority students had to keep quiet and adapt to the majority culture. There was no real cultural encounter, only silent adjustment by the few minority students (Lemann, 2003).

A *New York Times* column noted, "A pragmatic public policy, it is easy to show that the benefits of affirmative action far outweigh its social or individual costs. It ensures the integration of our best universities and thereby promotes (if indirectly) a heterogeneous professional elite"

(Patterson, 2003). The same author goes on to dismiss the individual costs, which he claims are negligible.

> There are indeed costs at the individual level, borne by those whites who may not have gained places or jobs as a result of preferences for minorities. But nearly all research indicates that these costs are miniscule. Repeated surveys indicate that no more than 7 percent of Americans of European heritage claim to have been adversely affected by affirmative action programs, and it has been shown that affirmative action reduces the chances of whites getting into top colleges by only 1.5 percentage points (Patterson, 2003).

Contemporary Racism

Racism is still a problem in contemporary society

According to Paul Butler, a professor of law at George Washington University, "the problem is not race; it's white supremacy… When most white people evolve to the point where race does not matter to them, we can start talking about ending affirmative action (Milloy, 2003b).

Ginsburg did not limit her remarks to these disparities alone. She also focused on racial discrimination and bigotry evident in current times.

> Adult-African Americans and Hispanics generally earn less than whites with equivalent levels of education. Equally credentialed job applicants receive different receptions depending on their race. Irrational prejudice is still encountered in real estate markets and consumer transactions. Bias both conscious and unconscious, reflecting traditional and unexamined habits of thought, keeps up barriers that must come down if equal opportunity and nondiscrimination are ever genuinely to become this country's law and practice ("THE SUPREME COURT," 2003b).

In his commentary on Ginsburg's dissent, one writer observed that the fight against affirmative action is not a new thing. In January of 1865, the Union found itself confronted with millions of impoverished, uneducated, and formerly enslaved black people. In an attempt to redress their suffering, Union Gen. William T. Sherman issued Special Field Order No. 15. The order provided that land bought or confiscated by the Union in South Carolina and Georgia would be divided into 40-acre tracts and distributed, with title, to the head of each freed slave

family. “It was a taste of empowerment through affirmative action. But it didn’t last long” (King, 2003). In September of the same year, former plantation owners implored southern President Andrew Johnson to break faith with the freed slaves and remove them from the land. The land program ended abruptly and former slaves were dispossessed.

> Fear of African American advancement coming at the expense of better-off whites is a long-standing barrier to progress… It spurred opposition to school desegregation and the integration of colleges. It stood in the doorways of restrooms and restaurants. It prevented blacks from using “white only” water fountains, sleeping in “white only” hotels, buying homes in “white only” neighborhoods even getting buried in “white only” cemeteries. Fear of things going too far – of people of color being helped at white expense – is behind the fight against affirmative action too. It’s almost as old as America. Justice Ginsburg left out that part (King, 2003).

Lee Bollinger also noted that the “court knows what the nation knows” which is that, unfortunately, race is still an issue in America, and though, as a nation, we always want to treat everyone fairly and “equitably as individuals, college and university admissions offices cannot be barred from looking at race.” He quotes Justice Harry Blackmun who wrote of the 1978 Bakke case, “it would be impossible to arrange an affirmative-action program in a racially neutral way and to have it be successful… In order to get beyond racism, we must first take account of race. There is no other way (Bollinger, 2003).

In driving home his opinion that there are still problems of racism that affirmative action is needed to combat, one journalist made an interesting observation about the hiring practices of the Court itself:

> Hardly a member of the court would consider it irrelevant that an African American and two women now sit on a body that once routinely comprised nine white men. Nor would any of them be surprised if the present or a future president named a Hispanic or an Asian to the court. That is affirmative action. But the justices are also aware that most of their clerks are white. About a quarter have been women. When the issue was raised in 1998, Chief Justice William Rehnquist, it was noted, had hired 82 clerks during his tenure; 81 where white (Raspberry, 2003a).

One *Washington Post* writer, not optimistic about the time frame given for the improvement of future of race relations in America, found fault with the idea articulated by both Justice O'Connor and Justice Ginsburg that in 25 years affirmative action will no longer be necessary. Skeptical that this "rather modest" means of contending with racial injustice will no longer be necessary, he sarcastically writes that in 2028, "the last vestiges of nearly 400 years of slavery and apartheid in America have disappeared… Racism is dead. There are more black men in college than in prison… No child has been left behind" (Milloy, 2003b). "Lets be realistic," he asks. The writer cites a national Opinion Research Council poll taken in 2000, which found that half of whites in the United States believe that racial inequality is caused by a "lack of motivation and willpower on the part of blacks." "That just restates a centuries-old racial stereotype" he claims – "that blacks are lazy and not too bright. An additional 25 years won't make it go away either" (Milloy, 2003b).

Wealth and Privilege

Affirmative action counters legacies and uneven distribution of wealth

Some affirmative action proponents claim that affirmative action is not unfair because it merely balances out universities' practice of granting admission to white students with lower than average academic performance if their parents or families are rich, famous, alumni, large financial backers of the institution, or all of the above.

One editorial noted that Congress regularly passes laws that favor special interests and it cites veterans, millionaire ranchers, oil-well owners, holders of patents about to expire, people with home mortgages – "many with no economic justification, all costing billions of tax dollars." Why, then, the writer asks, the "obsession" with the colorblindness principle, "especially among right-wing activists who otherwise exhibit little enthusiasm for the equality principle enshrined in the Declaration of Independence" (Patterson, 2003). He claims that it is hard to resist the conclusion that "principles are invoked in public life to rationalize the control of the vulnerable. In relations among equals, meanwhile, pragmatism trumps virtue" (Patterson, 2003).

This was a common sentiment during an April 1, 2003, rally in Washington, D.C., in support of affirmative action. Many speakers and people in the crowed frequently referred to the family and alumni connections that helped President Bush gain admission to Yale University as an undergraduate and then Harvard Business School. One contingent from the United

Steelworkers of Indiana and Illinois held a banner that read, “Affirmative Action: hey, it got Bush into Yale” (Wilgoren & Fernandez, 2003).

Paul Spurgeon, a 20-year-old white sophomore at the University of Michigan, said, “I benefited from affirmative action. My grandfather went to UM, and I benefited from that. If you look at the television, and if you listen to students in my class, you don’t see them attacking me. They attack blackness and race” (Fears, 2003).

One *New York Times* editorial claimed that the affirmative action debate in 2003 was not so much of a “high-volume fistfight” as it was in the past. He claims that this is partly due to the fact that there is a growing realization that a majority of special admissions cases involve white students who are athletes or “V.I.P.’s.” Sometimes applicants are also the offspring of wealthy parents and they get into elite colleges because their families write big checks. “The growing realization that money and privilege play a role in the admissions process has transformed what began as a debate about race into a discussion about the meaning of academic merit and what constitutes fair access for the rich, white and famous” (Staples, 2003).

The same editorial also suggested that the viability of SAT scores, on which statistics suggest black students perform significantly lower than white and Asian students, has been rejected by everyone except the White House.

> The voices that argued most forcefully for Mr. Bush to attack affirmative action at Michigan did so partly because they believe that the university puts too little weight on SAT scores and too much weight on race. This fixation on the link between SAT scores and race is peculiar, given a White House with so many people who relied on privilege and connections as they rose to high office (Staples, 2003).

Elaine Jones, president of the NAACP Legal Defense and Educational Fund reiterated these sentiments.

> For 10 years now, the far right has been spending millions trying to limit the access of blacks and Latinos to higher education, but not saying a word about all the advantages whites get… The parental legacies, the financial contributions to the schools, all of that built-in head wind is fine as long as they make sure the few blacks and browns don’t get in (Milloy, 2003b).

Some took issue with the fact that affirmative action was being attacked as violating the mandates of the Constitution, yet legacy and V.I.P. preferences were not. According to one *Washington Post* editorial, "to suggest that only policies that benefit minorities violate the Constitution, while policies that benefit whites do not, is disingenuous and intellectually dishonest ("Selective support," 2003).

The historical need frame was one of the most popular espoused reasons for maintaining affirmative action in its then current capacity. The different justifications included the belief that America has an unfulfilled debt to African-Americans who are still suffering from the remaining vestiges of slavery, that the rights of the group outweigh the rights of the individual, that racism is still a problem in modern society, and that some system must be in place to balance legacy and V.I.P. admissions granted to primarily white students.

Unacceptable Alternatives Frame

Existing affirmative action alternatives are unacceptable

Several opinion pieces also addressed the viability of affirmative action alternatives such as the Texas plan endorsed by the Bush administration and a few other groups. Practiced in a similar fashion in both California and Florida, under this plan, the top 10% of students from all high schools in the state (irrespective of their SAT scores) are automatically admitted into the state supported school of their choice. This was said to be problematic because it lowers standards at some of the schools and "perversely" relies on the continued racial segregation at the grade school level to create diverse student bodies at the state's colleges and universities. Moreover, the program would produce far less racial diversity in states whose high schools are not as segregated as Texas, California, and Florida (Kahlenberg, 2003). Advocates claim that the plan provides historically disadvantaged groups (including low-income whites) with unprecedented access to elite universities and produces diversity. It is seen as an attractive compromise that "rewards" individuals who have excelled in their given circumstances (Forest, 2003).

But, this plan still admits less qualified applicants, which, detractors say, overrides the merit argument and simply "replaces race consciousness in admissions with race consciousness of segregation. The plan glosses over the fact that even within the same high schools, there are differences in average test scores and grades between white and minority students" (Forest, March 29, 2003). Furthermore, opponents of the program claim that the concept has "little

independent justification beyond its ability to serve as a proxy for race, which makes the scheme legally vulnerable" (Kahlenberg, 2003).

A *Washington Post* staff writer observed that attempting to achieve diversity through race-neutral approaches has proven more difficult for professional schools. "Part of the difficulty is that low-income whites and Asians, on average, score significantly better than middle- and upper-income blacks and Hispanics on standardized tests, making them more compelling candidates under most race-neutral admissions scenarios (Fletcher, 2003).

There is also the problem of reducing the standards at selective schools. According to Douglas Laylock, who reviewed the undergraduate admissions figures for the University of Texas, before the 10-percent plan, the University admitted 93 percent of all applicants in the top 10 percent of their high-school classes. Now the university must admit the remaining 7 percent of both white and black applicants that otherwise would not have made the cut under the original system (Rosen, 2003).

According to a brief filed with the Court by the Association of American Medical Colleges, "accounting for economic hardship will not level the admissions playing field for minority and non-minority medical school candidates." One article observed that since the University of California system eliminated its affirmative action program in 1996, the percentage of black and Latino students suffered a significant drop. In 2003 black and Latino students made up 16.5 percent of the first-year students at California's five state-run medical schools and 16.2 percent of the first-year students of its public law schools; whereas in the final years of legal affirmative action in California, blacks and Latinos "consistently accounted for more than 20 percent of enrollment" in those schools. And, the writer notes, these declines occurred despite the fact that the California system employs a variety of race-neutral strategies intended to increase minority enrollment (Fletcher, 2003).

Finally, plans like Texas' 10 percent program cannot apply to graduate schools and law schools, which do not admit their applicants from "largely segregated state high schools but from more integrated colleges across the state and the country" (Rosen, 2003).

Diversity Frame

Diversity Is an Important Goal And Part Of An Effective College Education

One *New York Times* editorial phrased this position rather succinctly when he wrote, "In our racially stratified society, diversity is a necessary part of an effective college education. To

attain such diversity, in turn, the explicit use of race in the admissions process is necessary" (Loury, 2003).

In a letter to the editor of the *Washington Post*, a Silver Spring, MD woman also asserted her belief that diversity is a benefit to students.

> The court's ruling affirmed the practical benefit to all students of a diverse student population. If a campus is significantly multicultural, the lessons in the classroom will be richer and will better prepare students for a global society and for professional advancement. College admissions officers have the right and the responsibility to ensure that students are ready for participation and leadership in a diverse nation and a diverse world that have complex problems ("Diversity and the High Court," 2003).

Lee C. Bollinger, former President of the University of Michigan and current President of Columbia University, submitted an editorial to the *Washington Post* in which he praised the Court's recognition of a policy that he believes greatly contributes to a well rounded university education.

> The court also explicitly endorsed the view that the government (here the public University of Michigan) does have a compelling interest in obtaining the educational benefits that derive from having a diverse law school student body. It recognized that those educational benefits are "substantial," "important and laudable." It stated that the university's law school admissions policy "promotes 'cross-racial understanding,' helps break down racial stereotypes, and enables students to better understand persons of different races.' "referring to friend-of-the-court briefs from major American businesses and "high-ranking retired officers and civilian leaders of the United States military," the court noted that the "benefits are not theoretical but real (Bollinger, 2003).

Even Justice O'Connor said, "Access to legal education (and thus the legal profession) must be inclusive of talented and qualified individuals of every race and ethnicity so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America" (Greenhouse, 2003b).

One man on staff at the *Washington Post* wrote an editorial explaining how affirmative action had actually benefited him as a reporter.

> As a white male, I am in the category that some critics of affirmative action describe as "victims of reverse discrimination." To the contrary, I can truthfully testify that I – and others like me – have been major beneficiaries of this policy… People who are of a different age, sex or race see things that you miss – and their insights and perspectives help sharpen your own understanding. On the campaign trail, covering Congress or working on issues such as education and health care, I cannot begin to count the number of times a reporter very unlike me in background has noticed something or made a comment that caused the light bulb to flash above my bald head (Broder, 2003).

A Secure Future Frames

Affirmative Action Is Necessary In Order To Secure The Future

Closely linked to the idea that diversity is an important part of a well-rounded education, is the idea that it is also important to competition in business and developing the nation's future leadership. The rationale is that if individuals of different racial backgrounds cannot get into our nation's elite colleges, then they will not be well represented in these two contexts. This position suggested that diversity is important at the collegiate level for its future benefits. These include creating the diverse business environment that is important for competing in an increasingly global marketplace, cultivating a set of leaders acceptable to the citizenry, maintaining national security, and training professionals to serve minority communities.

The Future Marketplace

Diversity is important for competing in an increasingly global marketplace

According to Susan Meisinger, president and chief executive of the Society for Human Resource Management, the companies that filed briefs in support of Michigan did so because they believe diversity is necessary in the work place because,

> It just adds a richness of opinion and insight into what may or may not work… Also, it's a reflection that most organizations have a customer base that is more diverse than it was 20 years ago. And the best way to serve that is to have employees who are in that potential customer base (Joyce, 2003).

An opinion piece by a government professor explained why these diversity supporters recommended replacing the moralistic "righting past wrongs" affirmative action programs with a "bottom-line future-oriented dollars and demographics rationale" (Lynch, 2003). The professor

alleged that this way of thinking was premised upon two widely circulated government reports. In 1987 the Hudson Institute's "Workforce 2000" study predicted that the United States would have a "majority minority" workforce, a prediction that was steadily reinforced by increasing numbers of Third World immigrants into the United States, rising numbers of foreign workers, and customers in global markets. Additionally, the Department of Labor's "Report on the Glass Ceiling" and a series of "glass ceiling audits" were introduced in 1991. Government contractors were notified that they must do more than hire females and minorities, these individuals would also need to be retained as employees and promoted. The Business-driven diversity justifications held that the new millennium workforce majority of women and people of color would no longer quietly assimilate to organizational cultures created by and for white men (Lynch, 2004).

> Savvy employers would compete successfully for minority and female talent by instituting "cultural audits" pinpointing corporate practices that prevented minorities and women from "being themselves." White male managers would be trained in more sensitively supervising people "who are not like them." They'd discover that "differences are assets" and that "equal treatment is not fair treatment" under "old boy" standards. Cultural and organizational change would facilitate productivity, creativity, and group interaction and permit a more proportional distribution of women and minorities throughout the ranks. Such changes also would reduce the risk of costly regulatory hassles and discrimination lawsuits (Lynch, 2004).

This demographic-driven diversity theory swiftly permeated all types of organizations including corporations, major foundations, government agencies, and educational institutions. Diversity training became routine and diversity management a standard subject covered in business textbooks. Institutions and corporations are rated on how diversity-friendly they are and corporate "Vice-President for Diversity" officers' bonuses are often linked to minority hiring and promotion records (Lynch, July 14, 2004). By the time the Michigan cases entered the picture, the "little social policy movement" had matured into a "mighty diversity machine respected and feared even in the Bush White House which advertises its Cabinet that "looks like America" (Lynch, 2004).

Justice O'Connor, swayed by the numerous amicus briefs filed by powerful American corporations, also wrote in the Court's opinion that, "Major American businesses have made

clear that the skills needed in today's increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas and viewpoints (Von Drehle, 2003).

Future Civic Leaders

Diversity is needed to cultivate a set of leaders acceptable to the citizenry

In the Court's opinion on the law school case, written by Justice O'Connor (who was undoubtedly swayed by the numerous amicus briefs filed by powerful American corporations) it states, "in order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity " (Lane, 2003).

Justice Stephen G. Breyer, in addressing Kirk Kolbo, counsel for the plaintiffs, said,

> … among other things that they tell us on the other side is that many people feel in the schools, the universities, that the way – the only way to break this cycle is to have a leadership that is diverse. And to have a leadership across the country that is diverse, you have to train a diverse student body for law, for the military, for business, for all the other positions in this country that will allow us to have a diverse leadership in a country that is diverse ("Excerpts from arguments, 2003).

James P. Hacket, chief executive officer of Steel case, an office furniture company that helped organize the series of friend-of-the-court briefs signed by 65 corporations, said, "For me that's the strong connection to business. It's something that business has been highly committed to for at least the last decade and has made tremendous strides in improving. The belief in diversity is not something that is argued anymore in business. It's a factor of being in business" (Greenhouse & Glater, 2003).

Future Military Leaders and National Security

Diversity is needed in our military leadership in order to maintain national security

After the White House filed a brief condemning Michigan's affirmative action program, senior officers still in uniform were unable to challenge the Commander and Chief directly. However, perhaps in their stead, an amicus brief was filed and signed by several decorated former officers. Retired officers that joined together to submit the brief included Gen. H. Norman Schwarzkopf, commander of Allied Forces during the Gulf War, Gen. John M. Shalikashvili, Gen. Hugh Shelton and Adm. William J. Crow, all former Chairmen of the Joint Chiefs of Staff; and Maj. Gen. Charles F. Bolden, the Marine Corps's first African American

astronaut and commander of two space shuttle missions (Milloy, 2003a). “The military” they wrote, “must be permitted to train and educate a diverse officer corps (Broder, 2003). The brief harkens back to the Vietnam War, when the military’s ability to defend the country was compromised because America entered the conflict with a nearly all-white officer corps but a racially diverse fighting force. Integrating the officer corps entailed somehow increasing the presence of minorities among the incoming classes at the nation’s military academies. One columnist wrote that this required an understanding that test scores are not “the final arbiters of ability” and concentrating on a broader range of factors, including race, in recruitment and admissions (Staples, 2003).

“Based on decades of experience,” the retired officers wrote, “a highly qualified, racially diverse officer corps educated and trained to command our nation’s racially diverse enlisted ranks is essential to the military’s ability to fulfill its principal mission to provide national security.” Just over 50 years after President Truman ended racial segregation in the American military, the officers noted, the military’s use of “limited race-conscious recruiting and admissions policies” is the only way to remedy past discrimination and ensure an operative fighting force. Their stance in the brief was unequivocal: “the rules should not be changed” (Milloy, 2003a).

One article pointed out that there were additional reasons as to why the retired officers felt it was vitally important that they take a stance in the controversy. “Unstated, but obvious [in the brief] was the broader context: the current battle for a Muslim country’s liberation being waged by multiethnic U.S. Army and marine platoons” (Lane, 2003).

Another editorial gave additional reasons as to why these retired military officers were so concerned about the outcome of the case.

> The (white) military officers who testified recently on what affirmative action has accomplished for the armed forces spoke directly to the appearance of fairness, openness and opportunity. How effective could the military be, they asked, if the rank and file were filled with men and women (disproportionately minority) who couldn’t find decent careers outside, while the officer ranks comprised, disproportionately, the sons and daughters of the educated well-off? It makes sense they said, to take special pains to create an officer corps that looks more like

> America – not by promoting the unqualified but by searching out and nurturing the qualified (Raspberry, 2003a).

The writer remarked that if these former officers were asking for something such as greater defense spending or more weapons, their assessment would be taken very seriously. The armed forces have struggled with integration for years, and currently, the military is far ahead of the rest of the nation in terms of diversity. "Few," he writes, "understand better than our military leaders what is at stake."

> As much weight should be given to their assertion that a racially integrated education system and a racially diverse officer corps are essential to national security. They spoke up because a system that serves the nation well is being challenged by a couple of white students who believe that a few blacks got a break at their expense (Milloy, 2003a).

As of 2003, despite improvement, there was a significant gap in the numbers of black people enlisted in the military and those who served as officers. At the time, nearly 9 percent of military officers were black, yet blacks make up 21 percent of the armed forces' enlisted personnel (Milloy, 2003a).

Retired Navy Admiral, Dennis C. Blair, who was commander in chief of the Pacific Force in 1999-2000 and Joe R. Reeder, a former undersecretary of the Army and a former officer in the 82nd Airborne Division penned an editorial that ran in the *Washington Post* explaining why the outcome of the Michigan cases were so important to them that they joined 27 other former top-ranking officers and civilian leaders of the Army, Navy, Air Force and Marine Corps in submitting an amicus brief in support of affirmative action.

"A cohesive officer corps is essential to the military's ability to protect national security. This is not an abstract academic goal, it is a combat imperative," they claimed (Blair & Reeder, 2003). They wrote that for the good of the nation, the policies established in the Bakke case must not be overturned. In the 1960's and '70's while integration had increased minority enlistment, the percentage of minority officers was "disturbingly" low and a perception of discrimination was standard.

> This contributed to low morale and heightened racial tension. The resulting danger is not theoretical, as the Vietnam era demonstrated… the armed forces suffered increased racial polarization, pervasive disciplinary problems and

> racially motivated incidents in Vietnam and other places around the world. By the early '70's, racial strife in the ranks was pervasive. The dearth of minority officers substantially exacerbated the problems (Blair & Reeder, 2003).

The military's affirmative action efforts, in accordance with the Bakke decision, have significantly increased the percentage of "qualified" minority officers. They further claim that more and more officer candidates are trained and educated in racially diverse colleges and universities, arming them the "irreplaceable educational benefits inherent in a mix that matches the nation's highly diverse enlisted ranks" (Blair & Reeder, March 22, 2003). "No workable alternative to limited, race-conscious programs currently exists that would increase the pool of high-quality minority officer candidates and ensure diverse educational training for officers" (Blair & Reeder, 2003).

Future Professionals

Schools must train professionals that will serve minority communities

Several medical schools filed amicus briefs on behalf of UM under the justification that minority doctors are more likely to work in areas with minority and indigent patients. One article interviewed Dr. Sylvia Shaw, chief of endocrinology at Ranch Los Amigos, a rehabilitation hospital in Los Angeles County that treats primarily minority and indigent patients. Shaw was admitted to UC Davis' medical program under a special-quota program. She still supports giving the disadvantaged a boost, "If you don't groom doctors of various ethnic communities, who's going to care for those communities" (Rosenberg, 2003)?

Medical school officials claimed that training black and Latino doctors was crucial for more than just diversity's sake. Like Dr. Shaw, they suggest that having these minorities in their medical schools helps to "ensure that there are medical professionals willing to practice in poor and minority communities, which are typically underserved by doctors (Fletcher, 2003). Several surveys of minority medical school graduates revealed that they are for more likely to practice in poor communities than other medical students (Fletcher, 2003).

Resegregation

Without affirmative action schools will re-segregate

Some supporters were adamant that affirmative action remain a legal policy, because they were concerned that if it were to be abolished, schools would re-segregate. "I don't want to go

back to where attending a black college would not be a choice," said Hampton University senior, Lisa Callender (Dvorak, 2003).

Several news articles quoted more than one individual comparing this to the civil rights movement. Luke Massie and Shanta Driver of the Coalition to Defend Affirmative Action and Integration and Fight for Equality by Any Means Necessary (which sponsored the April 1 rally) both called the rally the beginning of the "new civil rights movement" (Wilgoren & Fernandez, 2003 and Dvorak, 2003).

"Tomorrow's case can take us back to *Plessy v. Ferguson* [a century-old ruling that legally established racial segregation under the "separate-but-equal" doctrine]," said Donald Temple, a Washington lawyer and speaker at the April 1st rally (Dvorak, 2003). Temple was also loudly cheered when he told the crowd that the United States is a country unafraid of sending young African Americans to war in Iraq, but that hesitates to send those young men to college. Tina Osborne, a senior at Howard University said that the entire thing is "surreal" in its parallels with the 1960's – when integration was still new and the Vietnam War raged (Dvorak, 2003).

One journalist approached a few Michigan high school students in order to gain their perspective on the issue. "As a minority, it really concerns me," said Danyel Currie. The 17-year-old will be the first person in her family to graduate from high school. "I'll be one of the first people affected. It's important, because if affirmative action is struck down by the court, resegregation and inequality will be a fact of life" (Fears, 2003).

This idea was reinforced by the position and actions taken by the Bush administration with regard to the cases. The potential blow from the Bush White House made some affirmative action supporters fear for the future of diversity in higher education. One *Washington Post* writer remarked on how interesting it was that one particular group traveled to the steps of the Supreme Court in Washington D.C. to demonstrate. That group was a contingent of college students from Hampton University in Virginia. Why, she asked, would students from a "venerable black institution" journey 200 miles to support "a distant, 75 percent white university?" She then pointed out that these students were stunned when, on January 15, Martin Luther King Jr.'s birthday, in a brief to the court President Bush announced his support of the legal challenge to Michigan's admission policies. These students then learned that the president was planning a 5 percent increase in funding to historically black colleges. Hampton freshman Daarel Burnette

interpreted these actions as a very simple message, “It was Bush’s; ‘go back to Africa’ statement,” she said (Britt, 2003).

Analysis of Pro-Affirmative Action Frames

The Pro-Affirmative action positions described in the previous section included frames based upon historical need, unacceptable affirmative action alternatives, diversity’s perceived inherent value, and the future dangers of eliminating affirmative action. These frames drew most heavily on the tenets of egalitarianism. However, within the egalitarian position, advocates appealed to both competitive individualist principles and the structure and authority of hierarchy, providing some basis for support across the lines of political culture. An issue that is recognized as a threat to one’s established way of life and vision of the world will arouse an individual from any cultural political group. Egalitarians will be on the lookout for problems of inequality and the sacrosanct trade-offs, hierarchical advocates will search for problems of deviancy and disorder, autonomous culture advocates will see threats to independence, and competitive individualists will be wary of threats to liberty via interference from well-meaning “bleeding hearts” and regulating groups. Because fatalists expect calamity, they might be aware of problems that concern or provoke the other ways of life, but they will process this information passively and haphazardly.

Whether or not a situation is perceived as a threat, what type of threat it is and what it impact it might have are determined by the issue frame and the cultural bias underlying it. Three different cultural voices dominated media coverage of affirmative action preceding and subsequent to the Supreme Court’s decision in the University of Michigan cases. Major positions on the pro side of the issue evident in media discourse were supported on the basis of egalitarian, competitive individualist, and hierarchical values.

Egalitarian Justifications

On the pro-affirmative action side, the idea that these programs are a means of repaying America’s debt to African Americans who are still experiencing the negative consequences of slavery, segregation, and racial discrimination is a reflection of egalitarian values. Egalitarians seek equality for all. And, if they perceive that there is not an even playing field, they feel that as a society we should work collectively to make it so. In numerous articles, it was evident that many people felt that affirmative action is the tool to achieve these ends.

Egalitarian values were also evident in the Justices" opinions. Ginsburg's observation that, "we are not far distant from an overtly discriminatory past, and the effects of centuries of law-sanctioned inequality remain painfully evident in our communities and our schools," suggests that she recognizes that there is inequity that needs to be remedied (King 2003).

As the swing vote, O'Connor's diversity rationale on the compelling interest of racial considerations in college admissions was the object of extensive media attention. Several of her statements, such as, "effective participation by members of all racial and ethnic groups in the civil life of our nation is essential if the dream of one nation, indivisible, is to be realized" (Greenhouse, 2003b) speak to the notions of transcendent unity and solidarity that are valued in the egalitarian topos.

Yet another egalitarian justification for affirmative action was that though these policies might disadvantage a few people, largely, they bring about positive ends for many. Therefore, the policies are justified in the eyes of the egalitarian, because what brings about desirable results for the group is not wrong, even if some people may suffer in the process, because the welfare of the group supercedes the rights and welfare of the individual.

To egalitarians, institutionalized racism is the result of corrupt hierarchal structures and an uneven distribution of power and wealth. Therefore, many that subscribed to this viewpoint claimed that affirmative action was necessary in order to combat the problems caused by hierarchy.

For similar reasons there was concern that if affirmative action were abolished, then schools would re-segregate. Such an eventuality would be extremely threatening to egalitarians because it would revert society back to its state prior to the civil rights movement when there was an even greater gap in the quality of education and access to college and employment.

Egalitarians want to achieve the highest standard of equality in order to mitigate the perversions of hierarchical social foundations. Thus, the notion that affirmative action needs to be in place in order to counter legacy and V.I.P. admissions is, to the egalitarian mind set, yet another means to ensure equal access to education and mitigate the effects of an inequitable allocation of money and opportunity. As a group, this culture is mistrustful of the corruptions of power and division. Therefore, because the targeted minority groups disproportionately come from poorer neighborhoods and under-performing schools, some proponents claimed that race-conscious admissions policies are not wrong because they merely balance out universities'

practice of admitting students who come from wealthy or famous families and are predominantly white.

Several writers had problems with alternatives to affirmative action such as the program which was known as the "Texas plan" in which students in the top 10% irrespective of test scores and other factors were admitted to any state school of their choice. The justifications for keeping affirmative action in favor of plans such as these crossed cultural mores and relied on appeals to both egalitarian and competitive individualist values.

The egalitarian objection stemmed from the fact that this plan "perversely" relies on the existing racial segregation in K-12 schools in order to ensure diversity at the state's colleges and universities. This as viewed as wrong and unacceptable because it perpetuates continued inequity in the quality of education at the grade school level.

Furthermore, it was argued that this plan does not allow schools to examine the individual achievements of students across a variety of factors and relies solely on class rank. This is threatening to the competitive individualist because this type of policy overrides the merit line of reasoning by "replacing the race consciousness in admissions with race consciousness of segregation" (Forest, 2003).

The idea that diversity has inherent value and contributes to the college experience represents an egalitarian ideal. It suggests that diversity is good because it enriches everyone's education and promotes understanding among the different peoples that make up our society thereby contributing to the reduction of racial stereotyping and, hopefully, future discrimination. In an editorial by former Michigan President, Lee Bollinger, it was noted that the Court recognized that diversity "promotes 'cross-racial understanding,' helps break down racial stereotypes, and enables students to better understand persons of different races" (Bollinger, 2003).

Competitive Individualist Justifications

While some supporters argued that diversity justifies increased minority presence on campuses in order to benefit the majority, big businesses joined the diversity proponents not because of the principle of equality or the betterment of the group but because of the market value of a diverse workforce. This is an interesting crossover from the more popular competitive individualist position that privileges merit and individual rights. Because competitive individualists will be wary of threats to their liberty via interference from regulatory bodies the

prospect of the court deciding to strike down a policy that allows companies to be more competitive would be distressing and unacceptable. It is for this reason that a number of large corporations filed amicus briefs in support of the University of Michigan.

Hierarchal Justifications

An additional pro-affirmative action position relied on hierarchal appeals rather than egalitarian appeals. Hierarchalists seek to promote order within their environment. They view anything that may upset authority, structure, or discipline as a threat. Those that subscribe to this topos fear that the degeneration of our social order will lead to chaos. Generally, hierarchalists will tend to discriminate against those who signify counter-hierarchical values, such as Egalitarians. Egalitarians, in turn, will often condemn hierarchy for being brutal and capricious. However, in this case, the two cultures found agreement in support of affirmative action, but for different reasons. In an amicus brief filed by retired military leaders on behalf of the University of Michigan it was argued that affirmative action was necessary in order to secure a diverse officer corps in the United States armed forces. Without such policies, they claimed that the military would revert to a diverse fighting corps trained and led by predominantly white officers. They referred to the Vietnam War, when the military's ability to defend the country was compromised because America entered the conflict under exactly these circumstances. This eventually led to dissension among the ranks. The retired military officers contended that a diverse officer corps is essential to the military's ability to fulfill its principal mission to provide national security and that affirmative action is necessary in order to achieve this goal. This type of justification appeals to the hierarchal values of both order and security.

This same type of position was extended to include the idea that in order to develop a "set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity" (Lane, June 25, 2003). This type of justification suggests that if our diverse society does not see its diversity reflected in its leadership, then people will rebel and it will lead to anarchy.

[Should this be in the egalitarian justification section?]A major component of egalitarianism is to seek consensus. Both sides argued that their position had the support of the majority of Americans. Given that public agreement on this issue is virtually impossible to achieve the court opted to "straddle the fence." In the Court's opinion written by Justice O'Connor, she indicated that context matters when "reviewing race-based governmental action

under the Equal Protection Clause." Several writers speculated that the context she was referring to was not only the historical justifications for affirmative actions but the broader context with regard to majority public opinion. The unprecedented number of amicus briefs filed by advocacy groups, major corporations, retired military leaders, labor unions, and other universities no doubt influenced the courts eventual ruling. Journalists noted that it was no accident that the court "came down roughly in line with public opinion" (Von Drehle, June 24, 2003). In fact, in several articles, both sides declared a victory. Justice O'Connor even cited the positions of corporate, military and academic leaders in her decisive opinion. "Scores" of amicus briefs were filed in the two cases. While a variety of conservative groups argued for colorblind policies, the friends supporting affirmative action included some of the most powerful organizations of the American mainstream including big business, big labor, major colleges, and the military (Von Drehle, 2003).

Anti-Affirmative Action Frames

Unlike the pro-affirmative action justifications, the anti-affirmative action positions present in the analyzed media came across as more of an attack on the opposition. These justifications were often a systematic dissection of pro-affirmative action positions. Several different positions as to why affirmative action is wrong were present and appeals spoke to multiple cultural values. The different justifications for abolishing affirmative action included: affirmative action is discriminatory and undermines equality; discrimination is a disappearing problem and people should be judged on merit alone; affirmative action undermines America's founding principles; affirmative action only survived because it has never been put to a vote; diversity has not been proven to have any inherent value; the rights of the individual should supersede the rights of the group; true diversity should entail the inclusion of more than just targeted minorities; semantics are being used to disguise discrimination; minorities are being exploited for the benefit of non-minorities; affirmative action is divisive, destructive, and un-American; and bureaucracies should not legislate moral decency.

Historical Frame

There Are No Remaining Historical Justifications for Affirmative Action

In many cases, different justifications for eliminating affirmative action ultimately manifested as the result of a similar premise. Perhaps the most popular of all positions was the belief that there is no longer a historical justification for maintaining affirmative action policies. This idea held that equal opportunity does exist and that racial discrimination has vastly diminished relative to the time when affirmative action policies were first implemented.

Discrimination and Preference

Affirmative action is discriminatory and undermines equality

The standpoint that affirmative action is discriminatory and undermines equality was the basis of one of the major arguments made by the legal representation for petitioner Barbara Grutter. The court's opinion in this case, written by Justice O'Conner, was widely published. In it, O'Connor wrote of Grutter's allegations:

> Petitioner alleged that respondents discriminated against her on the basis of race in violation of the Fourteenth Amendment; Title VI of the Civil Rights Act of 1964… Petitioner further alleged that her application was rejected because the law school uses race as a "predominant" factor, giving applicants who belong to certain minority groups

> "a significantly greater chance of admission than students with similar credentials from disfavored racial groups." Petitioner also alleged that respondents "had no compelling interest to justify their use of race in the admissions process" (THE SUPREME COURT, 2003b).

One writer examined the difference between equality of opportunity and equality as a result. She wrote of President Lyndon Johnson's commencement speech to the 1965 graduating class at Howard University. In it, Johnson acknowledged that after centuries of oppression, blacks needed more than just freedom to "catch-up" with the rest of society. "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him 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" (Barber, 2003). But Johnson added that, "We seek not just equality as a right and theory, but equality as a fact and as a result." This writer claimed that Johnson unwittingly framed the underlying concept for racial quotas. "Sadly," she writes, "the struggle for equality of opportunity has become an expectation for equality as a result, an idea that still reverberates through the collective psyche of liberals who erroneously believe the two concepts are interchangeable (Barber, 2003).

One anti-affirmative action stance taken within the pages of the *National Review* was the idea that all individuals should be "treated equally without regard to race, color or national origin" (Wood, 2003b). Peter Wood, author of *Diversity: The Invention of a Concept* and professor of anthropology at Boston University wrote a commentary in which he cited equality for all Americans as the reason that racial preferences are bad. He even went so far as to use Martin Luther King Jr. to support his position. In doing so he suggests that all American's need be treated equally now because, he believes that bigotry is "an ever-decreasing feature" of American society and that racial discrimination was a problem of a different time and place. "… if you've had an doubts about who holds the moral upper hand in America's current debate about our government's use of race, we have an answer as crystal clear as the "Letter from a Birmingham Jail" was in another time and place" (Wood, 2003b).

Another article also invoked Martin Luther King Jr. Phil Kent, former CEO and president of the Southeastern Legal Foundation and author of "The Dark Side of Liberalism," said, "It [affirmative action] is unconstitutional. There should be a level playing field. As the great Dr. King said, judge on quality of character not color of skin." Kent also felt that it was wrong for

those who support race-neutral admissions standards to be labeled as “haters” and “bigots” (Carney, 2003).

A July 14th editorial took a similar stance, “The Fourteenth Amendment to the Constitution guarantees ‘equal protection of the laws’ to ‘all persons.’ It turns out that what that amendment really means is that state governments may discriminate on the basis of race, so long as they do not employ mathematical formulas in doing so.” The author later goes on to write, “Universities that practice racial discrimination must be subject to ‘strict scrutiny,’ but at the same time their judgment that discrimination is necessary deserves ‘deference’” (“RACIAL PREFERENCES,” 2005).

Ward Connerly a black man and advocate for the cessation of affirmative action, was the popular hero of the conservative position and was frequently quoted in many anti-affirmative action opinion pieces. As founder and chairman of the American Civil Rights Institute, Connerly came to Michigan three weeks after the Supreme Court’s decision in an attempt to “seize back” the initiative from a Court that made “racial preferences the law of the land” (Payne, July 10, 2003). In his speech he claimed, “To deny Jennifer Gratz and Barbara Grutter access to UM in the name of “diversity” is a distinction without difference in denying James Meredith access to “Ole Miss” because of his race. The presumed nobleness of the cause does not wash away the fact that discrimination has occurred and an injustice has been perpetrated… To the justices of the Court, I say, respectfully, that we will not wait 25 years for the principle of equal treatment to be restored (Connerly, 2003).

Achievement and Merit

> *Discrimination is a disappearing problem, individuals should be judged on personal achievement and merit alone*

In many cases, affirmative action was also rejected as a remedy for past discrimination because it was believed to be a dying issue. A variety of articles supported this position taken by the plaintiff. In fact, one *Washington Post* editorial entitled, “Crude remedy for a disappearing problem” concurred with the plaintiff that the problem of racial discrimination is no longer as serious as it once was and definitely not the crisis that some affirmative action supporters would claim (Will, 2003b). A different piece that also ran in the *Washington Post* sought the opinions of some University of Michigan Students. Some sided in favor of the plaintiffs, others with the

university. Ben Wagner, a 20-year-old white sophomore, had this to say, "I think the best people deserve to get the best. Racism isn't as rampant as it used to be" (Fears, 2003).

A different opinion piece cited an exchange between two black men, Justice Clarence Thomas and John Payton, a lawyer for the University of Michigan as evidence that we "cannot still be talking about an era when black people were second-class citizens." "The face-off between Thomas and Payton," he claimed, "represents the virtues and the limitations of what we call diversity. They are both black, both men and yet they differ on this most important of social and legal issues. This clash of ideas – irrespective of race – is the sort of diversity American universities ought to promote" (Cohen, 2003a). At first he suggests that the justifications for affirmative action were easy, the legacy of slavery and subsequent discrimination required that the government devise a way for African-Americans to catch up. "But," he declares, "the passage of time has weakened that argument, and so advocates of affirmative action have moved on to the supposed virtues of diversity… It's one thing to overcome segregation. It's something else to use the increasingly distant past to justify an ongoing injustice" (Cohen, 2003a).

In a widely published "withering" dissent to the Court's decision, Justice Thomas wrote that affirmative action is discriminatory, overlooks reward based on merit, and is only supported by America's elites because to end affirmative action in universities would subject legacy admissions to scrutiny as well. "The entire process is poisoned by numerous exceptions to merit… Were this court to have the courage to forbid the use of racial discrimination in admissions, legacy preferences… might quickly become less popular – a possibility not lost, I am certain, on the elites [supporting affirmative action]" (Golden & Freeman, 2003).

Political Ideals Frames

Affirmative Action Subverts American Ideals and Political Doctrine

All things considered, the decision in this case was a difficult one with even the Justices having vastly different opinions on what is and is not meant by our Constitution. This case had significant ramifications because it required an interpretation of laws that protect what American citizens have always considered the most fundamental of rights. The fear in this was that the Justices might "change" the Constitution. One writer for *U.S. News & World Report* accused that that is precisely what they did.

> … Chief Justice William Rhenquist said Ginsburg thinks we should deal with university violations 'not by requiring the universities to obey the Constitution,

> but by changing the Constitution so that it conforms to the conduct of the universities.' Fair comment. Changing the Constitution is exactly what the court did here (Leo, 2003).

Founding Principles

Affirmative action undermines this country's founding documents

Justice Thomas along with many others appealed to the United States Constitution as the definitive guide in reaching a decision equating affirmative action to reverse discrimination and is therefore illegal. He favorably cited Justice William O. Douglas's statement from his dissent in a separate case, "The equal protection clause commands the elimination of racial barriers, not their creation in order to satisfy our theory of how society ought to be organized" (Fish, 2003). The plaintiffs in this case, backed by the Center for Equal Opportunity, the Independent Women's Forum, and the American Civil Rights Institute used the same justification, insisting that the use of race in admissions is impermissible because of the Constitutional command of equality (Ponnuru, 2003). They argued that the Constitution is "colorblind" (Bass, 2003).

Kirk O. Kolbo, counsel for the plaintiffs, in excerpts from arguments before the Supreme Court, attempted to explain how he believed recruitment and retention programs and the reality of the University of Michigan's affirmative action policies differ:

> … The Constitution provides… individuals with the right of equal protection. And by discriminating on the basis of race at a point of competition, innocent individuals are being injured in their constitutional rights. That's the distinction between that and simply trying to cast a wider net, recruiting spending money on outreach efforts, a very principal line it seems to me can be drawn between those two things… Race itself should not be a factor among others in choosing students, because of the Constitution ("Excerpts from arguments," 2003).

Connerly, as a major figurehead of the anti-affirmative action movement, gave a speech to announce the start of a Michigan Civil Rights Initiative campaign supporting a ballot initiative to end affirmative action. The speech was published in a July 8, 2003 issue of the *National Review*. His discourse frequently evoked themes of equality, sameness, and patriotism. He began by focusing on shared American experiences of parades, barbeques, softball, and fireworks in celebrating Independence Day. Then he brought that celebration around to the ideals of freedom and liberty, the symbolism of the American Flag, the Declaration of Independence.

> Whatever our station in life – rich or poor, Democrat or Republican, conservative or liberal; whatever our sexual orientation, our ethnic background, our gender or our religion – the Forth of July has a very special meaning to all of us… We pledge our allegiance to the American flag and to the ideals represented by that flag – ideals like liberty and justice for all and the aspiration of becoming one nation, indivisible." … For most of us, the journey down the avenue of freedom and equality began on July 4, 1776 with that proclamation that "all men are created equal." It continued on July 9, 1868 when we enshrined as a constitutional principle the Equal Protection Clause of the Fourteenth Amendment: "…We established as law the 'civil right" of every person in this dear country of ours to be treated as an equal "without regard to race, color or national origin." Every government agency in every village and hamlet of America of America thereby acquired the duty and the obligation to make no distinction between its citizens on the basis of the color of their skin or the origin of their ancestors when those citizens interacted with their government… America has evolved a culture of equality established over 227 years ago and nurtured along through much pain, turbulence and, even death (Connerly, 2003b).

Connerly then moved on to explain exactly what he felt these ideals and symbols now meant in light of the Supreme Court's decision.

> On June 23rd of this year, the highest Court in the land, with a stroke of the pen, essentially said, there is nothing sacred about our Declaration of Independence. About the Fourteenth Amendment of the Constitution the Court declared: "the Equal Protection Clause does not prohibit the law school's narrowly tailored use of race in admissions decisions to further a compelling interest in obtaining the educational benefits that flow from a diverse student body." With that ruling, the Supreme Court confronts the American people with some rather basic questions: Is the principle of equality so devalued that we are willing to brush it away without a moment's hesitation and on the whim of five people? Do we not believe in the Equal Protection Clause of the 14th Amendment? Are we not obligated to comply with the Civil Rights Act of 1964 (Connerly, 2003b)

In his July 8th speech Connerly gave a variety of justifications as to why he believed that affirmative action and the Court's decision regarding the legality of these policies was wrong. Another was the fact that he, too, felt that affirmative action is, in fact, illegal. In a *Washington Times* opinion piece, he explains how it contradicts the Declaration of Independence and American tradition.

> The Declaration of Independence outlines a civic structure to guide and regulate the relationship between the people of America and their government as well as with each other. Throughout the centuries, the character and the ideals of the American people have been heavily influenced by the words in that document. Embedded within it is the essence of America's definition of itself: its commitment to freedom, its belief in a Creator, its proclamation of unalienable rights endowed by that Creator, its dedication to absolute "truths," and, significantly, its devotion to the creed of equality. More powerful than any law, executive order or court decision is the culture of equality fashioned by the words to be found in that Declaration. It is that culture of equality a belief that all Americans are not only equal in the eyes of God but equal in the eyes of the government that binds us and unites us as one people "indivisible" (Connerly, 2003a).

In another *Times* editorial, Connerly relied on a similar sentiment, but instead this time appealed to the Fourteenth Amendment and the Civil Rights Act of 1964.

> No matter how much we respect and rely on our universities of this nation to provide leadership, guidance, and to serve our communities, there is no compelling reason in the hearts and minds of most Americans that they should be above the law. To the contrary, they ought to be the moral conscience of this nation in the defense of our fundamental values of equal treatment, liberty and justice. We are not content to be governed by admissions officers instead of the Constitution (Connerly, 2003b).

One contributing writer to the *National Review* suggests that those wishing to bring an end to "institutionalized discrimination called "affirmative action" must demand that Congress "amend Title VI of the Civil Rights Act to prohibit racial and ethnic preferences" (Clegg, 2003). He contends that, "The wrong-headedness of this decision was decisively demonstrated a few

weeks ago, as Justice O'Connor – along with a number of her colleagues, both male and female – determined that the Constitution does not ban racial discrimination, even though it does, and does ban discrimination against homosexuals, even though it does not" (Clegg, 2003).

Another *National Review* article also mentions the Civil Rights act in the context of the dissenting opinion of Justice John Paul Stevens in the 1978 *Bakke* case. Stevens wrote that, at that time, the issue could be decided without reference to the Constitution because the Civil Rights Act of 1964 had already settled the matter. It declares that no person "shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." The author of this piece claims that, "Michigan's racial preferences – both its law-school and undergraduate preferences – are thus illegal. Most of the justices write as though the Civil Rights Act had never been passed; O'Connor dismisses it in two disingenuous lines" ("RACIAL PREFERENCES," 2005).

A *National Review* columnist also attempted to rally Republicans to turn the environment of the debate to rest solely within the confines of the Constitution.

> Republicans must begin by recognizing that judicial "activism" is a question of constitutional substance, not judicial style. A decision to force the judicial debate onto constitutional terrain – where the GOP has not trod in decades – will severely tax the party's political acumen and courage. Unfortunately for the GOP, it has no other choice (Greve,, 2003).

In an opinion piece appearing in the *Washington Post,* Peter Wood again denounced the diversity rationale. "The concept does not appear in any of our nation's founding documents" (Wood, 2003a). Instead, he writes, it was instigated by Justice Lewis Powell's "eccentric" opinion in the Bakke case in 1978 (2003a).

Majority Rule

Affirmative action has only survived because it has never been put to a vote

One position from the *National Review* claimed that affirmative action has only survived because people were never allowed to vote on whether or not they actually wanted such policies. "All the opponents of racial preferences have going for them is the public's naïve sense of justice. Preferences were never adopted democratically. In fairly worded polls and ballot

initiatives, they fail every time. The Court having failed to do its duty, it is up to the rest of us to take political action to abolish racial preferences" ("RACIAL PREFERENCES," 2005).

Connerly, having lead successful anti-affirmative action initiatives in both California and Washington state, attempted to push forward a similar proposal in Michigan. Several anti-affirmative action pieces championed his efforts.

Covering a July 8 news conference in which Connerly attempted to begin a grassroots campaign to start his preference-free revolution, one writer agreed that democracy has been dealt a blow and that voting is the best way to resolve the Michigan controversy. "Convinced that five judges have usurped the democratic process, he proposes to put racial preferences to a popular vote and let the people decide" (Payne, 2003).

Anti-diversity Frames

Perhaps one of the most popular viewpoints expressed in favor of abolishing affirmative action was a frame challenging racial and ethnic "diversity" (often offset by quotation marks), contrary to the court's ruling, is not a valuable benefit to the quality of higher education and that the rights of the group should not supercede the rights of the individual.

One writer explained how the diversity issue came about in the first place:

> The pedagogic justification of diversity based on race is, to say no more, murky. But the murkiness makes it immortal. Racial preferences as a remedy for past discrimination must eventually be considered things of the past. But the value of diversity can be invoked a century from now. Indeed, many people favor the "diversity" rationale for racial preferences precisely because it need never go out of style (Will, 3003c).

Justice Powell, in the 1978 *Bakke* decision, agreed that preferences might be acceptable as a temporary measure but noted that the problem was one of transition to a color-blind society. Opinion writer, George F. Will (2003c), noting this, quoted an article that ran in The Public Interest Quarterly by John D. Skrentny, a professor of sociology at the University of California:

> Powell chose to embrace the 'diversity' rationale for affirmative action precisely because it avoided the question of which groups had suffered sufficient discrimination to warrant preferential treatment – any underrepresented group could add to the diversity of a student body… Powell suggested that constitutional

> ‘diversity’ preferences might, in some circumstances, offer preference to Italian Americans (Will, 2003c).

In his *Bakke* decision, Powell wrote,

> There is no principled basis for deciding which groups would merit ‘heightened judicial solicitude’ and which would not. Courts would be asked to evaluate the extent of the prejudice and consequent harm suffered by various minority groups. Those whose societal injury is thought to exceed some arbitrary level of tolerability then would be entitled to preferential classifications at the expense of other groups (Will, 2003c).

This, Will claims is how “diversity” severed preferences from remediation and how Justice Powell helped affirmative action spread beyond the “narrow and temporary function” of recompense for past discrimination.

Inadequate Social Science

Diversity has not been proven to be inherently valuable

In one particular editorial, the writer calls the Justices’ decision based on this particular principle “outrageous” (Miller, 2003). He contends that failing to address whether or not diversity is in fact valuable, was a tactical error on the part of the Center for Individual Rights (CIR), the firm handling the case. Miller quotes Ward Connerly as agreeing that this was a mistake.

> It’s a blunder conservatives can no longer afford to make. For more than a decade, conservatives have waged a slow but successful legal offensive against preferences in contracting and voting; the Supreme Court’s acceptance of “diversity” as a rationale for state-sponsored racial discrimination puts these gains in jeopardy. The Left will now try to expand the “diversity” argument beyond the confines of higher education. Pretty soon, it will be offered as a rationale for set-aside contracts, racial gerrymandering, and the composition of magnet schools in K-12 systems. Can ‘diversity” for gays be far behind? Conservatives who thought they were on the verge of a game-winning touchdown with the Michigan cases now find that they’ve thrown an interception – and the other team is sprinting down the field (Miller, 2003).

Throughout the article, Miller further suggests that the research findings supporting the benefits of diversity are nonsense:

> The Hopewood case was won on pure law, with no mention of the social-science gobbledygook underpinning Michigan's key claim that diversity is essential to intellectual growth. But Michigan's innovation was a necessary one if racial preferences were to survive far into the 21st century: With bigotry an ever-decreasing feature of American life, the old justifications for preferences were losing their punch. They needed a new reason for being, and they got it from Patricia Gurin, a Michigan psychology professor who produced a flurry of research on the supposed benefits of diversity in Ann Arbor. (Miller, 2003).

A *National Review* article poses an anti-affirmative action stance similar to Miller's but attacking the idea that universities have a compelling interest in promoting diversity on their campuses:

> Thus, it will remain difficult to justify preferences in the two other areas in which they are frequently used, namely contracting and employment. The "diversity" rationale is not used to justify discrimination in contracting – no city argues that it has a compelling interest in potholes being filled from a "black perspective" – and the courts have declined to carve out a "diversity" exception to Title VII of the Civil Rights Act, which bans employment discrimination and explicitly refuses to recognize a "bona fide occupational qualification" for race (Clegg, 2003).

Several editorials also attacked O'Connor's logic, again disparaging the "compelling interest" justification.

> O'Connor says that state universities have a "compelling interest" in the educational benefits that supposedly come from racial diversity. It is this compelling interest that justifies racial discrimination that would otherwise be forbidden; and it is the granting of constitutional status to this interest that constitutes the most substantial legal development in O'Connor's decision ("RACIAL PREFERENCES," 2003).

The findings of Dr. Patricia Gurin, a Michigan psychology professor who researched the benefits of diversity in Ann Arbor, were used by the defense during the court proceedings. One researcher actually decided to counter her findings with his own study. In 1999 Stanley

Rothman, professor emeritus of government at Smith College and director of the Center for the Study of Social and Political Change, along with a couple of colleagues, surveyed a random sample of approximately 1,600 students, 2,400 faculty members, and administrators at 140 American colleges and universities. These individuals were asked to evaluate the quality of education at their schools, the academic preparation and work habits of the student body, the state of race relations on their campuses and their personal experiences with discrimination. The researchers then correlated their responses with the proportion of black students attending each institution, based on government statistics. After their research was concluded, Rothman shared his findings in an editorial that ran in *The New York Times*. In it he claims that "the results contradict almost every benefit claimed for campus diversity" (Rothman, 2003). Rothman alleges that a higher level of diversity was associated with somewhat less educational satisfaction and worse race relations among students. He also noted that Hispanic enrollment appeared to have little effect on any group's ratings of the educational or racial climate; however, he notes that as the proportion of Asian students increased, faculty members and administrators perceived an improvement in the academic quality of their students. Thus, he writes, "support for the diversity argument comes with respect to a minority often excluded from preferential programs" (Rothman, 2003).

Likewise, a review of Peter Wood's book, *Diversity: the Invention of a Concept*, further suggests that there was never any significant support for this reviled conception of diversity.

> Unheralded by "any great mind, any prestigious philosopher or social theorist, or any major book," it probably had its genesis in Justice Lewis Powell's idiosyncratic opinion in the 1978 *Bakke* case – in which he alone, of the Court's majority, stipulated that colleges could consider race as a factor in admissions, with a view toward creating an ethnically diverse student body. The ideology thereafter germinated in the academy and at length began to burgeon in the early 1990's. Before long, it had invaded "one area of American life after another… altering the root cultural assumptions on which American society is based" (Iannone, 2003).

Rights, Individuals, and Groups

Diversity initiatives are discriminatory because they place the rights of the group above the rights of the individual

In statements before the Court, Kirk O. Kolbo, one of the lawyers representing the plaintiffs in the Michigan cases described his clients as the victims of discrimination, "The Constitution protects the rights of individuals, not racial groups" (Greenhouse, 2003a).

A June 23, 2003 *Newsweek* article entitled *Race-norming in Michigan* mirrored these ideals. It began with the opening statement, "At issue is the radical goal of overthrowing a core principle of our open society – that rights inhere in individuals, not groups" (Will).

This position was reiterated by many organizations that opposed affirmative action including the counsel for the plaintiffs, the Center for Individual Rights. These individuals also argued that they were not specifically opposed to unity and diversity until they perceived that it infringed upon their individual rights. When asked by Justice Stephen Breyer is there not "an extraordinary need to have diversity" in the selective institutions that train the leaders of America?, Mr. Kolbo, the counsel for the plaintiffs, responded saying, "'a mere social benefit' wasn't enough reason to deny equal protection to students because of their race" (Kronholz, 2003).

A book review in the *National Review* of Peter Wood's book, *Diversity: the Invention of a Concept* brought up the issue of balancing the interests of the group against the interests of the individual.

> But even apart from the deficiencies of these particular programs in terms of actually achieving "diversity," a much larger question remains: What does mandating group representation mean for a country built on individual rights? The most amazing feature of the rapid ascendancy of this concept of "diversity" is how little thought is being given to that question, even as the idea is transforming our country before our very eyes (Iannone, 2003).

The same review goes on to support Woods condemnation of the diversity ideal.

> … *Diversity*, gives us some insight into the way this poisonous weed took such deep root in our society. Wood, an anthropologist by training, makes a crucial distinction between two definitions of diversity. Diversity as fact is descriptive of America's ethnic and racial mix. Diversity as ideology aims, in effect, at a

> complete restructuring of society, mandating proportional outcomes for each group in every area of the culture. The generally accepted idea of diversity in the first sense is used to push the noxious ideology of diversity in the second sense (Iannone, 2003).

Achievement and Merit

Individuals should only be judged according to merit

In a letter to the editor of the *National Review* Stephen J. Tonsor, professor emeritus of History at the University of Michigan wrote, "I believe in advancement according to merit, in color-blind justice, in the indissoluble link between rights and their corresponding duties. If this creed has been disrupted by a culture intoxicated by political correctness, affirmative action, and kindred evils, that says more about the betrayal of liberalism than about its inherent character (O'Sullivan, 2005).

One letter to the editor of the Washington Post stated, "I am annoyed by those who claim that diversity made this country great. What really made this country great are a commitment to excellence and the recognition of merit. The pursuit of so-called diversity does nothing to further America's greatness. Those who have merit don't need affirmative action, and those who need affirmative action are probably of questionable merit" ("Diversity and the High Court," 2003).

Inclusiveness and Fairness

If diversity is a priority, it should require the inclusion of more than just targeted minorities

Some detractors noted other drawbacks to the diversity rationale, "Critics ask, for instance, how racial diversity enriches classroom discussion in such fields as physics, tax law, and ancient Greek. And if a diverse student body contributes to a 'robust exchange of ideas,' as Justice Powell argued, how do universities give preferences only to blacks, Hispanics, and Native Americans" (Golden, 2003)?

Samuel Issacharoff, a Columbia University law professor who represented the University of Texas Law School in the 1996 Hopewood case, claimed that "the commitment to diversity is not real… None of these universities has an affirmative-action program for Christian fundamentalists, Muslims, orthodox Jews, or any other group that has a distinct viewpoint. How many schools reach out for new-Nazis" (Golden, 2003)?

Semantic Game

Diversity goals are the result of semantics being used to disguise discrimination

A *National Review* editorial suggested that the decision articulated by Justice Sandra Day O'Connor is a semantics game and the author took it upon himself to point out the "real" meaning behind the language used in the Justices decision:

> It is "permissible" for state universities to set "goals" for the racial composition of their student bodies, but "quotas" are impermissible. It is okay to seek a "critical mass" of minority students, so long as the students are not admitted on a "separate admissions track." Race can be a "plus factor," but there must also be an "individualized, holistic review of each applicant's file, giving serious consideration to all the ways an applicant might contribute to a diverse educational environment ("RACIAL PREFERENCES," 2005).

One *U.S. News and World Report* article entitled, "The Supreme's Sophistry" charged that the Court was encouraging

> In striking down preferences in the University of Michigan's undergraduate admission program (where the thumb on the scale was obvious) but upholding a very similar admission scheme at the university's law school (where the skullduggery was slightly veiled), the court delivered a clear message: Keep finagling, but make sure to fudge things a bit (Leo, 2003).

An opinion piece that ran in the *Wall Street Journal* shared the view that the application of the diversity rationale is deceit. "The race-based "diversity" rational is even more disturbing for what it shows us about the modern university. In light of its educational mission, a university has a particular obligation to logical argumentation, and a duty to reject subterfuge" (McGinnis & Schwartz, 2003).

Another editorial alleged that the decision was wrong because it failed to "articulate clear legal principles" and is "self-parodic" ("RACIAL PREFERENCES," July 14, 2005). Due to this, the author writes, the decision will require further litigation in order to clarify its meaning. He suggests that O'Connor's decision is not logical and some future court will be left to explain precisely when a review is "holistic enough" and when a goal becomes a quota ("RACIAL PREFERENCES," 2005). This author questions the "supposed" benefits of racial diversity as well. He goes on to discuss a point made by Justice Ruth Bader Ginsburg who asked why, if the

diversity interest is compelling, the state university is forced to pursue racial balance without using mathematical formulas. “Why use ‘camouflage’ instead of ‘candor’?” According to the author, according to the modern history of racial preferences, “the answer appears to be that the preference regime requires deception, and self-deception, to survive. Too much candor about its operations would be fatal” (“RACIAL PREFERENCES,” 2003).

This article further denounced affirmative action claiming that it was unfair citing Justice Clarence Thomas who “acidly” noted that the court showed little concern for university’s autonomy, which is “supposedly” protected by the First Amendment, when in 1996 it ruled against the Virginia Military Institute. “There, equal protection was held to require the admission of women. VMI’s judgment that it would have to sacrifice elements of its character received no ‘deference’ then.” Thomas concluded: “Apparently where the status quo being defended is that of the elite establishment – here the Law School – rather than a less fashionable Southern military institution, the Court will defer without serious inquiry and without regard to the applicable legal standard” (“RACIAL PREFERENCES,” 2005).

A *National Review* writer took an agnostic stance toward the effectiveness of affirmative action programs because, in his view, they are dishonest:

> … If Congress wants to let universities continue to use racial preferences, it can change the law. In my view, it should do so. That’s not because racial preferences in college admissions are a good idea. They’re not. They introduce a note of dishonesty, they’re a thumb on the scale of a competition. They foster a race consciousness that is unhealthy for a campus or a nation. They are a diversion from the task of reforming K-12 education so that black and Hispanic students can compete on their merits (Ponnuru, 2003).

Justice Ginsburg’s dissent in the law school case implies similar ideals. She does not deny the harm that past discrimination has wrought on certain members of the American citizenry and acknowledges the need to increase minority representation in certain areas of our society; however, she contends that it should be achieved in a more honest fashion:

The stain of generations of racial oppression is still visible in our society, and the determination to hasten its removal remains vital. One can reasonably anticipate, therefore, that colleges and universities will seek to maintain their minority enrollment – and the networks and opportunities thereby opened to minority graduates – whether or not they can do so in full candor through

adoption of affirmative action plans of the kind here at issue. Without recourse to such plans, institutions of higher education may resort to camouflage. For example, schools may encourage applicants to write of their cultural traditions in the essays they submit, or to indicate whether English is their second language… If honesty is the best policy, surely Michigan's accurately described, fully disclosed college affirmative action program is preferable to achieving similar numbers through winks, nods and disguises ("THE SUPREME COURT," 2003b).

Minority Exploitation

Diversity initiatives exploit minorities for the benefit of non-minorities

Another *Newsweek* article claimed that affirmative action infringed upon the rights of African-Americans specifically by using them as a means to flavor the ambience of elite campuses closed with this thought:

> The University of Michigan and likeminded institutions claim a virtually unrestricted right to act on their judgments about how to design a student body with what they consider the optimal racial and ethnic mix. If the Supreme Court finds this constitutionally permissible, the doctrine of group rights will be ratified. Its adherents will become increasingly aggressive in pursuit of their radical goal; the overthrow of a core principle of our open society – the principle that rights inhere in individuals (Will, 2003a).

Also in his July 8, 2003 speech, Connerly discussed the detrimental effects that he believes affirmative action has on racial minorities as well:

> Do we have so little confidence in the American spirit and in yet unborn Americans of African and Mexican descent that we consign them to another generation of presumed inadequacy? Is it fair to say to a black parent: your child to be born eight years from now will still need a preference when he or she applies to college in the year 2028. I cannot describe to you the anger and humiliation that fills me as a "black" man to be viewed with such misplaced pity and misguided patronization (Connerly, 2003b).

Connerly reiterated these sentiments in an interview for *U.S. News and World Report* as well. When asked, "Why are you so opposed to affirmative action?" he replied:

> My uncle never got beyond a third-grade education, but there was never a day in his life that he didn't work and respect himself as a man. He told me no one can

> give you anything. You have to earn it yourself. There were students at the University of Michigan [during his July 8 press conference] holding signs saying our society is racist, and you have to almost cry because they have so little confidence in themselves that their whole future is contingent upon what people give them (Shea, 2003).

Justice Thomas' dissent against the majority opinion in the Grutter case against the UM law school also received significant press. He was also opposed to affirmative action because of the negative consequences he believed such policies created for minorities. In his dissent, he also wrote, "I believe blacks can achieve in every avenue of American life without the meddling of university administrators" ("Upholding racism," 2003). Justice Thomas thought that admissions preferences for minorities would extend racial disparities in education and economic achievement rather than eliminate them. "Those overmatched students take the bait, only to find that they cannot succeed in the cauldron of competition." Beyond this hardship, he alleged that affirmative action programs also "stamp minorities with a badge of inferiority and may cause them to develop dependencies" (Krueger, 2003). He even quoted Frederick Douglass on the Negro,

> The American people have always been anxious to know what they shall do with us… Do nothing with us! Your doing with us has already played the mischief with us… All I ask is, give him a chance to stand on his own legs! Let him alone!… Your interference is doing him positive injury'" (Dowd, 2003 and Will, 2003b).

Evidently, these opinions were shaped by his personal experiences. In an interview, Justice Thomas once revealed that as a black student at Yale, every time he walked into a classroom he "felt as if a monkey had jumped onto his back from the Gothic arches" (Keller, 2003).

A *Washington Times* contributor made similar claims. "As a black person," she wrote, "I am embarrassed by the decision. My heart cries out to students who will one day disentangle themselves from the liberal lie that they are inherently inferior to others and require lower standards, just as I did. I escaped the Democrats' plantation and never looked back" (Barber, 2003).

One writer held up Jayson Blair, a young black news reporter fired from the *New York Times* for writing fake stories as an example of how affirmative action can actually hurt minorities.

> If the perpetrator is Stephen Glass, the white fabulist fired five years ago from the *New Republic* magazines, he is just another ethically challenged youngster who made some very bad decisions… But if the perpetrator is Jayson Blair, the black fabulist who resigned two weeks ago from the *New York Times*, he is an example of affirmative action run amok. Somewhere in between the passage of the 1964 Civil Rights Act and the 1978 Supreme Court Bakke decision… blacks forfeited the right to be judged by society as individuals. The most unfortunate consequence of racial preferences is not that they… however well-intentioned, strip blacks of their individuality, their pride, their humanity. Race-based policies make black achievement a white allowance and black failure a group stigma… Liberals want blacks on elite college campuses for the same reason they want them on elite newspaper staffs. Their presence makes these institutions 'look like America.' How it makes those blacks look is at best a secondary concern… The indignity of walking around a campus (or workplace) susceptible to the charge that you're only there because the standards were lowered just doesn't interest very many on the left… Unlike 'legacy' preferences for children of alumni, affirmative action in practice is tinged with ugly inferences of genetically predisposed black inferiority. A decision to end these policies will put the educational spotlight back on grades K-12, where it belongs. But an important byproduct would be to ease the dehumanizing stigma that…forces black professionals to wince at the publicized shortcomings of a colleague who happens to be black (Riley, 2003).

Several columnists, including La Shawn Barber, a writer for the RightReport.com in a *Washington Times* op-ed piece agreed with Thomas' assessment. "Race preferences are damaging and demoralizing," she wrote. "Under such policies, blacks are treated not as responsible moral agents with accountability, but as objects of pity, shame and failure, incapable of human excellence. The Civil Rights dream turns into fools gold" (Barber, 2003). Another letter to the *Times* suggested that the most "bothersome" aspect of the court's ruling is that

affirmative-action programs stigmatize minorities, regardless of whether or not affirmative action was behind their advancement. “Will a black woman’s abilities be questioned when a potential employer finds out she went to the University of Michigan? Will a successful black man be seen as a hard worker or just a benefactor of institutionalized diversity?”

A *Newsweek* opinion piece by George F. Will shares similar objections to affirmative action policies but takes a slightly different spin in his protestations. He writes:

> Nationwide, 45 percent of African-American young people have their life chances irrevocably blighted by never receiving high-school diplomas. In 2000 only 2 percent of Michigan’s African-American eighth graders registered as “proficient” on the National Assessment of Educational Progress math test. Five percent is the national average for African-American eighth graders. For whites, the average is 34 percent proficient. Yet what are the nation’s educational and opinion-forming elites obsessing about? The defense of Michigan’s racial preferences….What makes the huge investment of ingenuity and resources in the defense of Michigan’s racial preferences disgusting is that the investment is grotesquely disproportionate to any good it will do the African-American community. But by the logic of the diversity rationale for preferences, doing good for African-Americans is an afterthought. The real purpose of socially engineered diversity is to somehow – there is scant evidence as to just how this supposedly works – improve the educational experience for all students attending elite institutions. Which means diversity preferences are intended primarily for the benefit of nonminorities… those institutions are violating the cardinal principle that people should be treated as ends in themselves, not as means to others’ ends… they are not even conscious that they are using minorities as mere means for flavoring the ambiences for their campuses (2003a).

Some minority students, though supportive of affirmative action, also find similar faults with the diversity justification. Erika Dowdell, a black student and affirmative action activist who graduated from Michigan in 2002, was quoted in a *Wall Street Journal* article saying that the diversity rationale “is not a good move for students of color… The term ‘diversity’ gets tossed around so much that it’s offensive to students of color. It sounds as if we’re just in college to enrich the education of white students” (Golden, 2003).

One *New York Times* columnist quoted court-watcher Dahlia Lithwick, writing in *Slate*, who ridiculed the proposal that campuses should be designed so that white students can be enriched by a "rainbow" environment: "Schools are not petting zoos – we don't fill them with lots of varied and interesting creatures merely as an end in itself" (Keller, 2003). These, he notes, are not right wing misgivings.

The same column observed that Justice Thomas would concur with these sentiments. In the embittered footnotes of his dissent he clarified why he denigrates racial diversity as an "aesthetic" concept. To his way of thinking, Michigan's idea of diversity reduced black students to a component of the university's décor. The law school, he wrote, "wants to have a certain appearance, from the shape of the desks and tables in its classrooms to the color of the students sitting in them" (Keller, 2003).

Similarly, an op-ed piece in the *Washington Post* ridiculed Sandra Day O'Connor as being confused, illogical, and unclear claimed that having too few minorities in American colleges and universities to educate whites about blacks and Hispanics is "total nonsense." The writer made an interesting analogy claiming working toward a critical mass of minorities is "insulting to blacks and Hispanics, who are not mere condiments recruited to add spice to an otherwise bland law school class" (Cohen, 2003b).

> Likewise, a commentary by law professor, James Blumstein observed:
>
> Michigan's legal position does not turn on the status of the minorities who receive admissions preferences. It rests on the benefits to non-minority students who receive a better education because there are more minority students in the milieu… Describing the objective of diversity in racial terms commodifies students who receive racial preferences. It justifies their preferred status not on the basis of remedying a racial wrong to that student as a victim but on the basis of the educational benefit to other – white – students. Under the university's theory, the education of black and Hispanic students is not an end in itself but instrumental to enhance educational experiences for white students. This instrumental rationale for racial preferences undermines media arguments that focus on the 'justice' of racial preferences for minority students, whose interests are in fact legally beside the point under Michigan's theory. In essence, the university excludes entirely some white students on racial grounds in order to

> provide other (matriculated) white students with the incrementally better education that derives from sitting in class with more black and Hispanic students (Blumstein, 2003).

In a slightly different vein, a *New York Times* editorial by Harvard sociologist, Orlando Patterson, commented that though he feels affirmative action is a positive policy, he was opposed to the diversity rational as a reason to support it. He instead supported the idea that the purpose or goal of affirmative action should have remained within its original scope, which was to redress the negative consequences of slavery, segregation and Jim Crowe:

> … While diversity is a goal that deserves to be pursued in its own right, it was a major strategic error for African-American leaders to have advocated it as the main justification for affirmative action. In doing so, they greatly expanded the number of groups entitled to preferences – including millions of immigrants whose claims on the nation pale in comparison to those who have been historically discriminated against… Using diversity as a rationale… also distorts the aims of affirmative action. The original, morally incontestable goal of the policy was the integration of African-Americans in all important areas of the public and private sectors from which they had been historically excluded (Patterson, 2003).

However, Patterson claimed, if diversity is the goal, then the purpose of affirmative action changes from "improving the condition of blacks to transforming America into a multicultural society. Thus the pursuit of inclusion is replaced by the celebration of separate identities… In a more profound sense, the diversity rationale undermines a hopeful view of America (Patterson, June 22, 2003). If the purpose of affirmative action is to compensate for past wrongs, then it requires both the "minority and the majority" to do the "cultural work" needed to realize what Martin Luther King Jr. called the "beloved community" of an integrated nation. "Instead, many of its supporters see affirmative action as an entitlement, requiring little or no effort on the part of minorities" (Patterson, 2003).

A slightly different position suggested that affirmative action harmed minorities because it steals motivation. A *Newsweek* article on the case included commentary from students in the incoming class at UC Davis medical school in 1978, the class made famous by the *Bakke* decision. Robert Miller, a white student who had trouble getting into med school was admitted

just two weeks before classes started after a minority students upset about Bakke dropped out. Now an eye surgeon in Davis, Miller supports diversity in medicine, however, he does not believe that race should be the deciding factor. “It offends me. It’s giving somebody credit for something they had no part in doing for themselves,” he said. Miller claimed that affirmative action “steals motivation from people.” He instead believes that it would be “more equitable to reward applicants who’ve overcome adversity, putting economic diversity ahead of race” (Rosenberg, 2003).

In the same *Newsweek* article, Bill Downey, of the same 1978 class, stated that if applicants are unqualified, “you’re just setting them up for failure” (Rosenberg, 2003). He also favors reframing affirmative action around economic status. “You have to give people a chance but you have to do it in a reasonable way,” he said (Rosenberg, 2003).

A *New York Times* columnist suggested that all pro-affirmative action arguments be separated from diversity, not only because such a position is contrary to the original aims of the legislation, but also because, like Miller, he feels that it stifles motivation and people come to view it as an entitlement.

> If the purpose of affirmative action is to redress past wrongs, then it requires both the minority and the majority to do the cultural work necessary to create what martin Luther King Jr. called the “beloved community” of an integrated nation. Instead, many of its supporters see affirmative action as an entitlement, requiring little or no effort on the part of minorities (Patterson, 2003).

Promoting Division

Diversity initiatives are divisive, destructive, and un-American

The Center for Equal Opportunity and the American Civil Rights Institute, the two anti-affirmative action groups backing the case against the University of Michigan’s admissions policies, claim that the racial exclusivity of affirmative action programs creates “ill feelings, racial polarization and a general fraying of the fabric that holds our multicultural society together” (Winter, 2003).

Peter Wood also wrote an opinion piece that appeared in the *Washington Post*. Again, he disputed the fact that diversity is valuable. “Diversity” has never before been officially recognized as a compelling government interest, and making it into one will make America

significantly less true to its deepest principles and stir profound resentment, animosity and conflict for years to come" (Wood, 2003a).

Yet another anti-diversity opinion expressed was the idea that life is a competition among the oppressed in which different groups are vying to prove who has been most disadvantaged by discrimination. "'Diversity' as an ideology and legalistic doctrine is a toy for leftist elites, not an enunciation of the rights of ordinary people… Diversity is a recipe for remaking American society in an unending competition of victim groups for even bigger shares of the spoils" (Wood, 2003b).

Bill Downey, a black member of the 1978 UC Davis medical school class, stated in a *Newsweek* article that he worried that affirmative action "pits people against each other." A *National Review* article takes a similar view mirroring Wood's sentiments by suggesting that racial preferences are in fact dividing the nation. Again, invoking Martin Luther King Jr., one writer asserts that we should seek equality without regard to race, and to do otherwise is un-American. He also appeals to the sanctity of the law, citing the Civil Rights Act as evidence.

> When Ward Connerly announced that he would invite Michigan voters to renounce racial preferences, Lieberman [Joe, CT senator] said, "this is a divisive and destructive act, and people of all political persuasions should condemn it as such." This, of course, stands truth on its head: It's the racial discrimination – "reverse" or not – that is dividing and destroying. What Connerly stands for is the good old liberalism, whereby you judge people by the content of their character, not by the color of their skin, and you uphold equality of opportunity and equality under the law – the Civil Rights Act and all that square stuff. Haven't we learned, at this point, that judging and hiring and admitting and promoting on the basis of skin color is, in fact, divisive and destructive? (Nordinger, 2003).

The same *National Review* article critiquing Peter Wood's book, *Diversity: The Invention of a Concept,* also cited the author as also claiming that affirmative action policies seeking to increase diversity are divisive. "…the diversity movement has 'already… achieved a substantial record of increased social discord and cultural decline.'" In his book, Wood devotes several chapters to describing how diversity has "infested" different areas of American life including business, education, and the arts, "everywhere lowering standards and fomenting group

grievances." The review closes with this charge, "The rise of diversity is not an expansion of the promise of America, but the gradual death of what America uniquely is." (Iannone, 2003).

Published court records revealed that Solicitor General Theodore Olson also attacked affirmative action during the oral arguments of the case. "The only thing that was required was to be a member of the preferred race," Mr. Olson said of minorities at Michigan. "It might just as well be an admission ticket. It's stigmatizing. It's divisive. It's dangerous to the fabric of society" (Murray, 2003).

One *Washington Post* journalist took the time to speak to some students from Michigan's campus, and evidently, the court case has heightened racial tensions at the school. Several incidents that occurred during the course of the trial are evidence of the problem. "The white-run independent student newspaper poked fun at minority student organizations by using expletives to lampoon their names" (Fears, 2003). As more and more national attention focused on the court cases, someone scrawled a racial epithet across a campus sidewalk, and a white student organization held a bake sale offering discounted sweets for black and Latino students (Fears, April 1, 2003). One black student said that she felt that the campus is very divided. "One of the reasons I chose to come to UM is their boastful reputation on diversity. But I have to make a choice between socializing with black people or socializing with white people, because this campus is extremely segregated (Fears, 2003).

Bureaucratic Control Frame

Bureaucracies Should Not Legislate Moral Decency

An opinion piece from the *Wall Street Journal* suggested that it is not the government's place to regulate personal morality and that society should be free to seek diversity on its own. "… the transformation that Dr. King sought was above all moral, not legal" (Henninger, 2003). The author further asserts that the "spiritual transformation" that King sought has been accomplished and for the Court to attempt to tamper with the "original" meaning of the Civil Rights Act is a mistake.

> What is at the heart of this matter is some notion of goodness. The great and now-rare achievement of the 1964 act was that Congress codified a social consensus in plain terms and then left it to the rest of us to measure up to its clear goal. There was nothing complex about the Civil Rights Act of 1964. It outlawed discrimination and segregation. Whatever resistance endured, no one in America

could say they were confused about what was expected of them (Henninger, 2003).

Furthermore, he writes, such mistrust of society and subsequent interference with individual moral commitments could later prove detrimental.

> Great nations, however, have become less than great by convincing themselves that their uprightness is best kept in bureaucracies. Morally bureaucratized France and Germany come to mind… But how did it come to pass that the achievement of better race relations in America would turn not on individual moral commitments but instead on data?... Stare at the language and you don't quite know what you're supposed to do. Look at the Rev. King's language on the Mall and you know exactly what you're supposed to do. The resort to bureaucratic means to achieve moral ends reveals, most of all, social mistrust. Here, the Civil Rights Act isn't an extraordinary spiritual watershed for a nation's people; it is mainly a forcing instrument to use on others whom you don't trust to ever do the right thing… This is a dark vision from which no exit is allowed for the untrustworthy majority. If, like this Supreme Court, you can look back across 40 years of effort in America toward racial progress and conclude that preference will be needed for another 25 years, then your opinion of this country is bleak indeed. But bureaucratic goodness can carry a price, too: After three generations, affirmative action may look like the middle-class version of welfare dependency (Henninger, 2003).

This journalist also felt that individuals should be free to seek out the benefits of interactions with people of other cultures on their own - "outside on the street, in our cities, in travel here and in other lands, in the consumption of global commerce and entertainment, in the reality of daily life in America." People, he believes, can seek diversity without the slick maneuvering of universities and corporations. The idea that people cannot or will not do this for themselves, he says, is also "at bottom an expression of profound mistrust" (Hennigner, 2003).

> No the experience of "others" may only be learned where diversity is well thought out, such as Ithaca, New York… The time consumed arguing over the "shape" of the student body at such aeries as the University of Michigan Law School means little energy or interest is left for the embarrassing, intractable source of this

> problem – the nations ill urban public schools, which this very month are shoveling out "graduates" by the thousands. But if the admissions bureaucracies at Michigan… and the rest, armed now with *Grutter v. Bollinger*, can hit their minority recruitment "goal," then they have done their small part to fulfill Dr. King's dream. And a small part it truly is (Hennigner, 2003).

The same piece by Nordinger mentioned above went on to discuss a *New York Times* article that examined the probability that Norway will mandate quotas for women on corporate boards. One of the quoted officials mentioned in the article was Norway's Minister of Children and Family Affairs. His concern is this, "A country that has a ministry of children and family affairs is one which freedom must be in at least a speck of trouble, wouldn't you say?" He goes on to write, "It's a shame that that term "women's rights' has to be used – when it comes to such things as quotas on corporate boards, instead of, say, voting. For that matter, it's a shame that "civil rights' has to mean legislation that has noting whatever to do with real civil rights" (Nordinger, 2005).

A *Washington Times* commentary entitled, "Farewell to rights," expressed concern about the future rights of "whites" in America.

> Diversity is a way of having quotas without the Supreme Court's sanctioning the death of the equal protection clause. Whites would be denied equal protection in practice with regard to university admission, but they would still have equal protection in theory. This would provide whites some protection from becoming full-fledged second-class citizens in law. If whites lose equal protection, they will be subject to new classes of laws, such as "hate crimes," that would apply only to the behavior of whites… You have to wonder how far along this road we are when Business Week magazine publishes an article that says white Americans have less constitutional protection than "preferred minorities" (Roberts, 2003).

Analysis of Anti-Affirmative Action Frames

The pro-affirmative action camp seemed to feel that they had the moral high ground and most articles reflected an enunciation of justifications for keeping affirmative action intact. Anti-affirmative action positions, however, amounted to more of an attack on the positions of the opposing side.

Again, the same three cultural frames dominated the media discourse surrounding anti-affirmative action positions, however, these cultural values were used in vastly different appeals. Each was generally used to break down the pro sides' justifications for affirmative action. Competitive individualism was the most dominant frame used in explanations of why affirmative action had to go. Different writers clearly emphasized individual rights, merit, competition, and a distaste for big government. Though individualist frames were most common, a variety of appeals were used, most likely in an attempt to reach those that subscribe to a different cultural worldview. The most interesting of these was a reverse egalitarian appeal.

Reverse Egalitarian and Competitive Individualist Justifications

The most common standpoint on the anti-affirmative action side of the issue was that race conscious policies are discriminatory and undermine equality. This was one of the major arguments made by the legal representation for petitioner Barbara Grutter. Interestingly, the conservative camp, not known for championing the liberal version of equality, frequently adopted a reversed egalitarian rationale in denouncing affirmative action in order to support what was referred to as equality for all, but was in fact, equality of opportunity. Though equality was frequently cited as a justification for this position, it was not so much a reflection of egalitarian principles but instead evidence of a competitive individualist outlook. Opponents of affirmative action suggested that those supporting these policies were not seeking equality of opportunity but equality as a result and were therefore failing to uphold the widely held American ideal of treating all people the same. This position advocated that literally all people should be treated equally without regard to race, color, national origin, and by consequence, circumstance as well. This position rejected the egalitarian notion that there are still historical justifications for maintaining affirmative action policies and held that discrimination is a disappearing problem in American society.

In a similar vein, another competitive individualist justification for the discontinuation of affirmative action was focused on individualism. Many writers maintained that though affirmative action may have been needed in the past, today people should be judged on merit and individual achievement alone because racism is not as rampant as it used to be. The contemporary application of affirmative action, they said, trampled on the individual rights of non-targeted minorities. There was a strong emphasis on the fact that affirmative action policies treat people differently based on the single criteria of race. This was most often evidenced by the

frequent use of the term “racial preferences” in the media rather than terms like “diversity initiatives” or “affirmative action.” This group also rejected the idea that the welfare of the group is foremost and instead claimed that rights adhere first in individuals.

The opinion of Supreme Court Justice, Clarence Thomas, the first African-American to be granted a seat on the United States’ highest judiciary authority, was frequently cited in nearly every publication reviewed in this study. His opinion is based upon competitive individualist values of personal achievement and merit. Justice Thomas said, “In the absence of racial discrimination in admissions there would be a true meritocracy” (Fish, 2003). He also argued counter to egalitarian preferences that a majority opinion is not a constitutional argument, but one that is too much a reflection of only society’s current position and is “conceptually incoherent even on its own terms” (Fish, 2003).

Several columnists and contributors suggested that Thomas’ opinion was based primarily upon “introspection” and “selective anecdotes” rather than objective scrutiny of the facts (Krueger, 2003). “It is the angry exclamation of a black man who feels personally patronized and demeaned by what he sees as racial gerrymandering” (Keller, 2003). His 31-page dissent was what several columnists referred to as a “personal expression of anger at having been the beneficiary of a policy that retroactively casts a shadow over his achievements” (Fish, 2003). Thomas’ opinions, like all cultural biases, are based upon his individual experiences and understanding of the world. Writers speculated that because he must believe that his position in life was attained due to merit, Clarence Thomas had adopted a competitive individualist outlook in respect to his own achievements and wishes that “underrepresented” minorities would be considered only on the basis of their personal abilities to avoid being labeled less qualified and incompetent.

As a presumed beneficiary of affirmative action, Thomas was frequently vilified in the press. One columnist speculated that Thomas switched from being a Democrat to a conservative as young man because he knew this would make him a hot commodity in politics. Thomas also likely knew that this would generate scorn of blacks who viewed him as a “pawn of the white establishment” (Dowd, 2003). Even Justice Thurgood Marshall ridiculed Thomas and others as “goddamn black sellouts” for reaping the rewards of affirmative action then disparaging it (Dowd, 2003).

Hierarchal and Competitive Individualist Justifications

One of the major arguments the plaintiffs made was that, "the Constitution protects the rights of individuals, not racial groups" (Greenhouse, 2003a). This justification appeals to the values of two different topoi. It appeals to the values of hierarchy because it suggests that the authority on whether or not affirmative action is wrong is the Constitution. Similar rationalizations also invoked specifically the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, the Declaration of Independence, and even the Creator. However, this stance also appeals to the competitive individualist because it privileges the rights of the individual above the rights of the group. Both topoi would view the possibility of the Justices might "changing" the Constitution as a threat.

Perhaps one of the most popular viewpoints expressed in favor of abolishing affirmative action was a frame challenging that racial and ethnic "diversity," contrary to the court's ruling, is not a benefit to the quality of higher education. In fact, the word "diversity," in several columns was sarcastically offset by quotation marks suggesting that diversity as a goal is a sham. Ms. Mahoney, a counsel for the defense, summed up the major question the Court faced in her response to attacks on Michigan's "compelling interest" by Justice Scalia. "Your Honor, the question isn't whether it's important to override the prohibition on discrimination. It's whether this is discrimination…" ("Excerpts from arguments," 2003). This camp claims that diversity initiatives definitely promote racial discrimination, again reflecting the competitive individualist principle of equality of opportunity to compete rather than manufactured equality as a result.

Claiming social science as an authority, some made a hierarchy based rationalization in which they contend that social science has not sufficiently proven diversity to be a benefit. This position also denounced the findings of Dr. Patricia Gurin, which suggested that there are benefits to diversity in higher education, as immaterial.

Egalitarian Justifications

An additional rationale for why affirmative action is wrong was that it exploits minorities for the benefit of non-minorities. This position claimed that under the guise of diversity, people of underrepresented racial groups were being used to increase the ambiance of universities and enrich the education of non-minorities. It also suggested that affirmative action proponents must assume that black people in particular are "inherently inferior." Some writers claimed that preferences are both damaging and demoralizing. This outlook used egalitarian principles of

equality and justice to counter the egalitarian position in favor of affirmative action. If any group is being used to further the position of another, then everyone is not equal.

This reversal on egalitarianism is furthered in the contention that affirmative action causes discord within society by creating resentment, animosity, and racial polarization. This position also claimed that affirmative action pits people against one another. This is a threat to egalitarian principles because they prefer to seek group solidarity and consensus. Anything that is divisive is viewed as a danger.

Race vs. Class as an Alternative Frame

The most compelling discussions of affirmative action are those that pull from more than one cultural bias, that seek to find a common ground by using multiple appeals. Ultimately, it is unlikely that these two very fundamental understandings of the historical context can be bridged. However, both sides can agree that education is vitally important for success, both can agree that there is a problem with unequal funding at the K-12 level and both can agree that a lot of barriers are economically based. That leaves the difficulty of gaining agreement on the means of achieving these goals.

Therefore, in order to gain the consensus of people on either side of the divide, it is necessary to remove the controversy from the context of affirmative action in college admissions. Several writers attempted to do this by suggesting that the focus move away from trying to treat the symptoms to focus on the actual cause. Instead of arguing about affirmative action at the university level, these individuals suggested channeling these energies to remedy the inadequate K-12 public education system in poorer communities. This would necessitate a shift from a focus on race, to a focus on class as well.

Amy Ziebarth, executive director of New Jersy Seeds, an organization that aids disadvantaged students, submitted an editorial in the *New York Times* suggesting an alternative to the types of affirmative action programs that were targeted in the Michigan cases.

> It would be naïve to think that children in the United States have equal access to the best schools… What we need is a new method to promote diversity, one that focuses on class rather than race. Class-based methods use financial and geographic indicators rather than skin color to determine whether a student will have something unique to bring to the table. Universities like Michigan use race-based diversity programs to ensure a multicultural student body… The shift could

> end the liberal-conservative logjam over social reform. For too long Americans have been bitterly divided over the legitimacy of affirmative action. It's time to work together and focus our efforts on making our society more meritocratic. The only way to do that is to give special recognition to the talent and hard work of students from poorer families (Ziebarth, 2003).

Once columnist put forth a similar suggestion. Karin Chenoweth (2003) considers affirmative action the ineffective solution to the failure of society to provide a quality education to all children across races and economic brackets. Affirmative action is turned to as a remedy, she states, because universities have "failed miserably" at turning out properly prepared teachers. This unpreparedness is what she blames on the mass exodus of new teachers from the classroom within the first three years. She also states that it is the failure of our society to provide a quality education to all children, particularly poor children and children of color. All children receive schooling, but some is far superior to others. Minorities and children from poor families are more likely to attend schools where the roof leaks and the libraries are bare. In addition, Latino, black, and poor children are systematically assigned the least experienced and least knowledgeable teachers.

In her column, Chenoweth (2003) cited a study by Richard Ingersoll at the University of Georgia. In 2000 Ingersoll documented that over 4 million secondary students nationwide were taught their core academic courses by teachers that do not have a major or minor in that field of study. He found that students in schools with high-minority populations, over 75 percent, are 1.4 times as likely as students in schools with low minority populations to have a teacher who has not majored in the subject. The important thing Chenowith took from this research is that the nation is on a trend toward re-segregation, this is the reason that the Texas 10 percent plan presumably works but fails to fix the real problem. Chenowith also quotes Kati Hayock, director of Education Trust, "Affirmative action is needed not so much to remedy the effects of past discrimination as to remedy present discrimination" (Chenowith, 2003).

Chenowith (2003) argued that we want diverse colleges and universities and should want diverse elementary and secondary schools for the same reason – "because we somehow have to figure out how to make work a nation that does not share a common ethnicity or religion, and we're going to need all of us to figure that out if our democracy is to thrive." For this reason, she suggests that the diversity focus needs to move back about 12 years. This egalitarian appeal is

particularly compelling because it advocates diversity and equality of education for everyone, not just those interested in attending elite institutions. This remedy is likely the best way to resolve the affirmative action debate because it seeks to achieve most of the goals of affirmative action without the need for instituting disputed racial preferences and, in theory, should allow an equal admissions process to work as originally intended. This solution takes the very different individualist and egalitarian conceptions of equality back to the most fundamental level of their value structures in order to find agreement. As two low grid cultures, competitive individualists and egalitarians will both oppose external regulations. Therefore, by re-focusing attention on the K-12 system, the opportunity to achieve is presumably equalized and, consequently, admission to elite schools is open to everyone. This equality of education and access fulfills egalitarian aims, but refocusing also hinges upon competition of personal ability which fulfills the aims of the competitive individualist.

CHAPTER FOUR - CONCLUSIONS

Peter Schuck, a law professor at Yale University, said the Court's approach articulated the public's dilemma. "There is a deep yearning in the public and especially among the elites that this issue sort of go away, so we don't have to face the terrible trade-offs between the desire for proportional representation in our elite institutions on the one hand and the vastly unequal levels of preparation and credentialing among different racial groups" (Liptak, 2003). Polls have demonstrated that Americans are largely opposed to giving minorities job, promotion, or university-admissions preferences, but they are also overwhelmingly in favor of diversity (Kronholz, June et. al, 2003). Naturally, people are confused.

Fundamental disagreements in the affirmative action debate stemmed from different cultural ideas about whether or not there is a historical justification for the continued use of race conscious admissions, whether or not we should seek equality of opportunity or equality as a result, whether or not rights inhere in individuals or in groups, and whether or not the rules governing modern society should be based on our historical foundation or our future.

Naturally, clearly articulated frames were present most often in opinion pieces. And anti-affirmative action opinion articles were most frequently found in more conservative media outlets such as the *National Review* and *Washington Times*; whereas editorials in both the *New York Times* and *Washington Post* were much more often in favor of affirmative action. Collectively, the articles within the *Wall Street Journal* leaned more to the side opposed to affirmative action; however, the tone of the articles was a bit less passionate and more detached. Articles that appeared in the *Wall Street Journal* in favor of affirmative action, generally approached the diversity angle from a business perspective. And, overall, the news magazines had balanced coverage that was generally more fact based. Those who pay attention to what is published in the media could be swayed by these opinions depending on which publications they attend to.

At issue in these cases was a question of how America's universities can possibly embrace two fundamentally opposed governing principles, equality and meritocracy. At affirmative action's inception, it was much easier for everyone to agree and to recognize that there was a need to remedy past discrimination. More lately, however, a major point of divergence surrounding this controversy involves different people's perceptions of the current

social fabric of American society and the pervasiveness of racial discrimination against minorities. There is no longer a consensus on the historical justifications for affirmative action. Supporters of affirmative action policies assert that discrimination and racism are still common problems while those on the other side of the debate vehemently reject the historical justification.

Furthermore, both groups disagree on the concept of equality. According to Ellis (1993) equality is one of the "vaguest" words in political discourse. Egalitarians and competitive individualists disagree on whether true equality is evident in process or results. Individualists will contend that placing equal results over equal process, as affirmative action does, will lead the country toward socialism. In the sense of equality of process all individuals, regardless of circumstance, should be judged on the same criteria, and that race should never be a factor. However, this stance presumes that everyone comes to the starting line of the race unfettered and equally prepared. Conversely, egalitarians contend that if we are to have truly equal opportunity, then circumstance absolutely matters when that circumstance is arguably the result of a damaging sequence of events that began nearly 400 years ago with slavery in America. They aim instead for equality of outcomes. Many egalitarians would hold that the only way for true equal opportunity to exist is if "one cannot predict an individual's future income, occupation, or status on the basis of that individual's race, sex, religion, ethnicity, or family background (Ellis, 1993).

Another major point of contention was whether or not the rights of the individual are foremost or whether preference should be given to the welfare of the group. The diversity rationale is a strongly group-based egalitarian position. It claims that diversity initiatives will increase cross-cultural understanding and group solidarity (meaning American solidarity). The individualists, however, have a problem with this rationale because it fails to account for the individual's right to have a fair and "equal" opportunity to compete. Interestingly, rather than promoting government intervention to compensate for historic wrongs, the shift to diversity initiated by Powell in the Bakke case leaves the pro-affirmative action position open to accusations of pandering. The media's use of phrases like, "institutionalized diversity" indicates that some people may believe a shift has occurred in which affirmative action, though once needed to compensate for racial discrimination, is now being used to discriminate against individuals in the other direction.

Finally, there was debate over whether or not the rules governing modern society should be based on our founding documents or projections about what is necessary to secure our future.

In many cases, individualists used hierarchal appeals to the Constitution and other founding documents to support their contention that affirmative action is wrong. They felt that it was important to conserve the sanctity of the Constitution and the Fourteenth Amendment. They viewed the possibility of the Court "rewriting" the Constitution as a huge threat. Likewise, the egalitarian side supporting diversity employed hierarchal values to support its position, but, unlike the individualist's framing, used a forward thinking appeal. The justification that affirmative action was needed in order to diversify the military's officer corps and thereby ensure future national security played on hierarchal culture's fear of chaos and anarchy. This type of appeal was very timely and likely much more powerful given the current context of the war in Iraq.

This type of study is valuable because given the nature of the court's decisions and society's positive progress in terms of race relations, this debate will undoubtedly be played out again in the near future when the viability of affirmative action is revisited. The issue is further complicated because of how very close the decisions were. As the composition of the court evolves, as old Justices retire and new Justices are appointed, the Court's opinion on the constitutionality of affirmative action programs will change as well. A new group of Justices could usher in a unique interpretive dominance that may initiate a completely different dialogue about race, preferences, and privilege. Furthermore, in this instance, both sides claimed a margin of victory, but next time this issue is addressed in the legal arena of the Supreme Court, it is likely that only one camp will triumph.

This research may be enhanced in a variety of ways. The inclusion of perspectives present in minority publications, particularly Black press could add a whole new dimension to the analysis. A richer view may also be achieved by including broadcast transcripts in the study. An examination of how different colleges and universities have re-shaped their programs in light of the Court's decisions would also offer a greater understanding of the impact of the decisions.

Political tensions in the United States have been permeated by fundamentally opposed visions of "the good life." Underlying the dispute over different policies is a discord between adversary political cultures.

> At stake in most policy disputes is not merely the best means to an agreed upon end but competing conceptions of the ends worth pursuing… These cultural differences may be obscured by appeals to shared words, or by attempts to

> sidestep disagreement on ends by seeking agreement on means. That all sides appeal to terms such as equality or democracy or liberty should not conceal from us the fundamentally different meanings these terms have in different political cultures (Ellis, 1993, p.151).

In the United States we are committed to two core values, individual liberty and equality; however, there is a profound contradiction between these two doctrines. The problem is that these are the two most prevalent appeals when discussing matters of affirmative action. Both were pervasive in this study of the UM case. These political biases are diametrically opposed because they create a conflict that leads members who subscribe to each in different directions. Debates on policy issues in the United States will often emerge as one value competing against the other, as was the case in this controversy.

By reading these positions, it is possible to discern the ideas and appeals that shape political action. Broadly applied, knowledge of how this process works is relevant to public relations because if practitioners understand how different appeals resonate within the attitude and belief structures of individuals that subscribe to various political cultures, then it may be possible to respond to issues in ways that will reap the greatest public support. This can be achieved by discovering a common ground that people of disparate groups can agree upon, by focusing on the issues in the middle of social tensions rather than those on the fringes. The most effective political discourse will persuade the most people by crossing the perceived boundaries of our competing political cultures to emphasize areas of commonality rather than areas of discord.

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APPENDIX A

High Grid

Fatalists	Hierarchalists
Competitive Individualists Autonomous Individualists	Egalitarians

Low Group **High Group**

Low Grid

Figure A-1 Grid-Group Typologies

APPENDIX B

Publication content of rhetorical analysis

PUBLICATION	NEWS ARTICLES	OPINION PIECES	TOTAL
Newsweek	4	2	**6**
Time	4	0	**4**
US News & World Report	4	0	**4**
National Review	0	14	**14**
Washington Times	22	22	**44**
Washington Post	48	34	**82**
New York Times	47	30	**77**
The Wall Street Journal	20	8	**28**
TOTAL			**259**