

SECTION II:

**Engaging Students and the Community  
through Study Abroad, Service-Learning,  
and Civic Engagement**

CHAPTER 9

## Contested Moral Ideals and Affirmative Action:

### THE IMPORTANCE OF PUBLIC DELIBERATION

Michele S. Moses

**Abstract:** This paper concerns an issue that often remains implicit within the public debate over affirmative action and related race-conscious education policies: What role do contested moral ideals play in the disagreement over affirmative action? I outline what a moral disagreement is and then examine the roots of the disagreement over affirmative action. Using philosophical inquiry, I make a case for the importance of illuminating and understanding the moral disagreement over affirmative action in order to inform the public deliberation over race-conscious education policies, especially given that affirmative action and related policies continue to be challenged in the public political arena. I hope to help raise awareness about how differing political commitments drive important policy decisions and serve either to constrain or expand educational opportunity as a result. When meaningful higher education opportunities are expanded, universities achieve a crucial part of their missions by serving not only individual students, but also the public good.

For proponents of the importance of diversity in fostering a rich and meaningful educational experience, the United States Supreme Court's decisions in the University of Michigan cases, *Grutter v. Bollinger* (2003) and *Gratz v. Bollinger* (2003),

came as a relief. Finally the Court ruled on the question of whether colleges and universities could legally consider race and ethnicity in their admissions processes.

Any relief, however, was short-lived. Consider the following political developments affecting race-conscious education policies that have occurred in the time since the Supreme Court decisions.

- ✦ Just one month after the Supreme Court rulings were announced, Ward Connerly, Chair of the American Civil Rights Coalition, announced that he would propose an amendment to Michigan's state constitution that would eliminate affirmative action in state universities and government. The proposed amendment was passed by voters in November 2006. The amendment, known as the Michigan Civil Rights Initiative, prohibits the state's universities and all other state entities from "discriminating or granting preferential treatment based on race, sex, color, ethnicity, or national origin" (Michigan Civil Rights Initiative, 2004).
- ✦ The Center for Individual Rights, the group that sponsored the plaintiffs in *Hopwood* (1996), *Gratz*, and *Grutter*, has pledged to monitor how U.S. institutions of higher education respond to the decisions in the University of Michigan cases. They have promised to bring legal action against any campuses whose affirmative action policies do not follow the rulings to the letter (Schemo, 2003).
- ✦ Under pressure from the Center for Equal Opportunity, an advocacy organization that supported the plaintiffs against the University of Michigan, Yale University has disbanded a number of programs aimed at minority students, including a 34-year-old orientation program for students of color. The Cultural Connections program allowed approximately 125 incoming first-year undergraduate students annually to visit the campus and begin acclimating before classes start in the fall.
- ✦ Indeed, the Center for Equal Opportunity sent letters to some 100 institutions of higher education warning them that the race-sensitive programs they have in place may be suspect in light of *Gratz* and *Grutter*. In addition to Yale, Harvard University, the Massachusetts Institute of Technology, Princeton University, and the University of Virginia have all discontinued some programs aimed at students of color (Schmidt, 2004b).

Since the Supreme Court rulings, opponents of race-conscious education policies seem to feel a renewed urgency to prohibit the consideration of race and

ethnicity in higher education admissions and related programs. The debates over race-conscious education policy have moved from the Supreme Court to the court of public opinion. Education theorists concerned with diversity and equality of educational opportunity are now thrust into the role of messengers of public information. Education policy research centered on race-conscious policies is needed not only to increase understanding and inform policy making, but also to contribute thoughtfully to the public debate and deliberation about the connections between race and education.

Given the recent political developments surrounding race-conscious education policies, I argue that if there is to be a future for race-conscious policy at all, education policy researchers and theorists need to focus on examining and illuminating the roots of the moral and political disagreement over such policies. Such examinations contribute to deeper understandings about, and better-informed public deliberation over, contested race-conscious policies. The central aim of this paper is to take some first steps toward that type of contribution.

In what follows, I first describe what makes a particular disagreement a moral one. This discussion provides the context necessary to understand the most prominent moral and political ideals at issue in the debate over affirmative action. Differing political theories of justice, such as liberal egalitarian theory and libertarian theory (to be explained in detail later), each seem to agree on the importance of the moral ideal of basic equality, and yet vehemently disagree about whether affirmative action is a defensible policy to help bring about basic equality. The final section centers on the importance of education research on race-conscious policies that informs public deliberation.

## DEFINING MORAL DISAGREEMENT

What is moral disagreement? How is it important for examining affirmative action policy?

Fittingly for a discussion on disagreement itself, there is no easy agreement among theorists as to what exactly constitutes a *moral* disagreement. There is even little agreement on what such disagreements ought to be called; the terms “radical moral disagreement,” “partial moral disagreement,” “moral conflict,” “intractable controversy,” “internal moral disagreement,” “irreconcilable moral disagreement,” “reasonable disagreement,” and so on are all present within the scholarly literature.

So, what makes a particular disagreement a moral one? Moral disagreements concern enduring, contested public issues involving values, relationships, and ideals, as opposed to individual, personal disputes (Gutmann & Thompson, 1996). There can certainly be personal disputes embedded in larger moral disagreements, but disagreements become moral ones when they center on public issues with

broad social consequences. The affirmative action debate is an example of a moral disagreement, one that arouses profound conflict over fundamental moral ideals such as equality and liberty. Moral disagreements are qualitatively different from disagreements based on factual issues or differences of opinion, taste, or style. Two people may disagree over whose car reached the stop sign first after a fender-bender, or they may disagree about whether to root for the Mets or the Yankees. These are not moral disagreements. But if two people disagree or two political perspectives conflict about the state's role in providing public aid for people living in poverty, this is likely a *moral* disagreement. For at root, this is a disagreement over what priority should be given to the fundamental moral ideals of equality and liberty in a democratic society such as that of the United States. Moral disagreements are based largely on the conceptual schemes and theories of justice that underlie peoples' views.

Moral disagreements endure despite significant agreement about factual and even moral considerations. Disputants may agree about factual claims and (some) moral values, but disagree in their moral evaluations, i.e., about what to *do* about the disagreement. So, in the case of race-conscious education policies like affirmative action, there exists a persistent moral disagreement despite ostensible *agreement* about the importance of basic moral ideals such as freedom and equality. Of course, the opposing sides do not agree on all moral ideals. Agreement about moral basics does not mean that there will be the same moral beliefs about certain kinds of cases. For example, those who hold libertarian political theory to be tenable can value equality, but believe that affirmative action is not the means to that end, whereas those with a liberal egalitarian perspective may believe that affirmative action serves to foster equality. But is there an irreconcilable disagreement (i.e., a moral deadlock)? There is a difference of moral opinion to be sure, and different moral priorities. Moral deadlock, Ronald Milo (1986) allowed, can be the end result of this type of moral disagreement. It can stem from bad reasoning or conflicting interpretations of shared moral ideals. For instance, both liberal egalitarian and libertarian theories of justice, which underlie the main opposing positions in the public moral disagreement over affirmative action, may claim to value the basic moral ideals of liberty and equality. But how each ideal is interpreted and prioritized within these theories of justice differs substantially. In addition, the motives behind the claims can be questioned. Thus there is born a persistent moral disagreement despite seemingly shared central moral and political ideals.

Accordingly, Amy Gutmann and Dennis Thompson (1996) called moral disagreement the most formidable challenge to democracy today; they lamented that we have no adequate way to cope with fundamental value conflicts. Their answer was to conceive of a democracy that has a central place for moral discussion in political and public life—what they and others call deliberative democracy. Part

of good deliberation is gaining a more nuanced understanding of the nature of the disagreement, the moral ideals involved, and the political commitments invoked.

Serious debate occurs over policy, but generally scant attention is paid to the moral principles and political commitments that underlie it. Too often this results in an unreflective acceptance of ideas and policies that claim to uphold such principles as if they are uncontroversial. In American society, it is difficult to argue against broad and often vague concepts such as justice, equality of opportunity, liberty, etc. Milo (1986) maintained that productive moral disagreement is only possible if there is substantial agreement between opposing sides on what the relevant issues and principles are within the debate. Otherwise there is absolutely no basis for even a conversation, much less any resolution. From what I have discussed so far, the debate over affirmative action policy constitutes a moral disagreement, one in which there is agreement by both sides about the relevance of the moral and political ideals of equality and liberty. There is, at the very least, basis for a conversation, one that may lead to better understanding.

### **THE ROOTS OF THE DISAGREEMENT OVER AFFIRMATIVE ACTION**

I argue that illuminating the moral and political roots of the disagreement over affirmative action is important for gaining a more profound understanding of how to best inform public discussion of such race-conscious policies. That said, the long-standing disagreement over affirmative action has its roots in other factors as well, not the least of which is racism (Feagin, 2002). While those social roots have received attention in the scholarly literature (e.g., Feagin, 2002; Feinberg, 1998; West, 1993; Williams, 1991), the political theories of justice that underlie the disagreement have not. These roots concern the moral ideals of equality and liberty, which often have been viewed as fundamentally in opposition to each other.

Specific conceptions and political uses of the moral ideals of equality and liberty characterize the political commitments central to libertarian and liberal egalitarian theories of justice. With the firm acknowledgement that there is substantial complexity and overlap within and among prominent theories of justice along the political spectrum, I have purposefully chosen to focus this examination on the opposing commitments of liberal egalitarian political theory and libertarian political theory. Either explicitly or implicitly, these two theories underlie much practical policy debate in the United States.<sup>1</sup> Whereas liberal egalitarian political theory tends to underlie many “liberal”—as popularly understood—policy positions, libertarian political theory underlies a good portion (though certainly not all) of “conservative”—again, as popularly understood—policy positions. In this section, I endeavor to clarify what the prominent ideals mean within libertarian

and liberal egalitarian theory and how those meanings inform policy views. How are important ideals like equality and liberty defined and interpreted?

### Equality and Liberal Egalitarian Theory

A discussion of equality at a high level of abstraction may be unproblematic regardless of one's underlying theory of justice. All persons are purportedly equal under the law. It is at a more practical level that differences arise more readily, especially in interpretation (Rosenfeld, 1991). Two prominent strands of liberal egalitarian theory emphasize different ideas central to the concept of equality. One emphasizes equality itself, while the other emphasizes equality of opportunity. However, the two strands of liberal egalitarianism are each characterized by a concern for *social* justice, as compared with the libertarian concern for individual justice. Whereas social justice is inextricably bound up with equality, individual justice is intertwined with personal autonomy and liberty.

The first strand of liberal egalitarian theory has held that equality is *the* fundamental moral ideal (Dworkin, 2000; Kymlicka, 1992). Ronald Dworkin (2000) articulates this perspective well: "Equal concern," he wrote, "is the sovereign virtue of political community—without it government is only tyranny—and when a nation's wealth is very unequally distributed, as the wealth of even very prosperous nations now is, then its equal concern is suspect" (p. 1). In order for people to be treated with equal concern, they need to have equality of resources. By resources, Dworkin means something akin to opportunities and possibilities for flourishing. For a theory of justice to be taken seriously, Dworkin concluded, each person has to matter equally, to be treated as equal. Of significant note here is that *treatment as equals* does not necessarily imply getting the *same* treatment. For example, the Supreme Court's ruling in *Lau v. Nichols* (1974), held that for limited English proficient students to be treated as equals within the public education system, they needed to be treated differently from students whose primary language is English; that is, they needed to receive instruction in their native languages. In this case, receiving the same treatment resulted in vast inequality of educational opportunity for limited English proficient students.

The second strand of liberal egalitarianism follows more closely the work of Rawls (1971, 1993, 2001) by emphasizing equality of opportunity and "justice as fairness." Consequently, treatment as equals requires equality of opportunity. As such, each person has a right to equal basic liberties; positions and offices are open to all under the principle of fair equality of opportunity; and inequality is permissible so long as any inequalities result in maximizing the position of the worst off, that is, those with the fewest primary goods. For Rawls (1971), persons' talents, abilities, and initial life circumstances are morally arbitrary and, as such,

are an unfair basis from which to delineate their life chances. From this perspective, affirmative action policies are permissible in order to ensure that students of color are granted equal basic liberties and fair equality of opportunity.

The concepts of equality and equality of opportunity can be interpreted to mean a variety of quite different and often conflicting things. Consider the following examples of two policy organizations that both champion the ideal of equality (in fact, their names explicitly invoke the ideal); the first is concerned with Dworkin's ideal of treating people as equals and Rawls's idea of justice as fairness, and the second is not. The "Center for Equality," which is concerned with conducting research that fosters economic equality (i.e., the redistribution of wealth and resources) operates from within a liberal egalitarian political perspective. By contrast, libertarian (rather than liberal egalitarian) political theory underlies the views of the aforementioned "Center for Equal Opportunity," led by Reagan-era appointee Linda Chavez, which opposes bilingual education and affirmative action policies intended to remedy educational inequalities. Even though there appears to be a consensus about the importance of equality as a fundamental value, the consensus can be misleading. Indeed, concepts may be used for political reasons, with little to no regard for their more complex meanings or what they require of social policy.

Nevertheless, there is often agreement between political theories about the principle of basic equality—that persons should be treated as equals and that the state ought to treat persons with equal concern and respect (Dworkin, 1977). This nominal agreement is positive, yet a conflict still occurs in defining what *treatment as equals* means. For libertarians, treatment as equals means that we respect a person's property ownership—her or his self as well as her or his material goods. The fact that such a primary principle may result in vast socioeconomic inequality is unproblematic within libertarian political theory, so long as property rights and procedures for the acquisition and transfer of property are fair.

## Liberty and Libertarian Theory

Libertarians characterize the moral and political ideal of liberty as "requiring that each person should have the greatest amount of liberty commensurate with the same liberty for all" (Sterba, 1992, p. 5). The role of the state is to protect human rights that are centered on liberty. John Hospers (1974) names three human rights as central to a libertarian theory of justice: the right to life (to protect people from force and coercion, unjust killing), the right to liberty (to protect freedom of speech, press, assembly, ideas), and the right to property (to protect material and intellectual property from theft, fraud, slander, etc.). This understanding of liberty excludes certain rights from the right to life category, such as the right to receive

public aid. Similarly, the right to property is considered a right to acquire goods and resources by fair means, rather than a right to receive goods from others who are better off in order to promote one's own welfare.<sup>2</sup>

Often cited as a source for libertarian political theory, Friedrich von Hayek (1960) argued that the libertarian ideal of liberty is characterized by two primary tenets:

1. "equality before the law" as "the only kind of equality conducive to liberty and the only equality which we can secure without destroying liberty" rather than "substantial equality" and
2. "reward according to perceived value" rather than "reward according to merit" (p. 85).

As a result, inequalities caused by birth circumstances and talent are perceived as just. Justice is seen as an individual principle that ought to take place between individual persons, rather than a social one.

Nozick (1974), long held as the representative of libertarian political philosophy,<sup>3</sup> put forward a libertarian theory of "justice as entitlement." This view is characterized by respect for rights of ownership of self and property, which allows persons the freedom to choose how they want to live their lives without the intrusion of the state. Why should any goods acquired within the free market be redistributed when one's talents, abilities, work ethic, and possessions are one's own? Libertarianism holds that vast structural inequalities could be just, that is, could come about in a just manner. There might be bad luck involved in people's starting places in life—even unfairness—but not injustice. If people's property rights are respected and the state fosters liberty and is not coercive, then the distribution of goods that results can be considered just. As a result, a formalist notion of opportunity that calls for equal access (i.e., no official barriers) to education is considered just (Howe, 1997).

The libertarian interpretation of liberty does not mean that libertarians do not care whether less advantaged people have their basic needs met; instead, it means that libertarians believe that the state has no duty to provide for those needs. Social welfare is therefore the requirement of charity, not of justice. One contemporary example of this idea in practice was the Bush Administration's call for faith-based charities and organizations to lead in the provision of social services for needy people. This call is justified through the belief that under a free market system and a minimal state, the least advantaged will have access to adequate opportunities and resources to make sure that their basic needs are met.

## Are the Conflicting Emphases on Equality and Liberty Irreconcilable?

Given the long-standing theoretical dispute over which of these two ideals ought to take priority in a democratic society, is the conflict impossible to resolve in the case of the moral disagreement over affirmative action?

This is a very sobering question, especially because there seem to be myriad examples of impossible moral conflicts. Consider the debates on abortion and euthanasia, the conflict between creationism and evolution, competing claims about the state's responsibility to poor people or undocumented workers; the list could go on. So, what good does it do to try to understand the basic moral ideals at issues in the affirmative action debate if there is no hope for resolution on the horizon? Should we, then, make no final judgments? Where would that take us?

There are two related possible conclusions: moral relativism and irreconcilable worldviews. A moral relativism argument goes like this: When faced with a moral disagreement that seems irreconcilable, theoretical and practical considerations will lead to moral relativism. That is, if disputing parties cannot reach a mutually acceptable resolution, then they must accept (without judgment) that one particular answer may be correct for one side, whereas a different answer may be correct for the other side.

Believing it to be an inevitable response to a society rife with difficult moral disagreements, David Wong (1991) characterized relativism as a "common response to the deepest conflict we face in our ethical lives" (p. 442). The opposing sides in such conflicts each may be right, or perhaps their views are not as inconsistent as first they appeared. On the other side, Nicholas Sturgeon (1994) argued that although moral relativism is a possible response to moral disagreement, it does not make sense. According to the antirealist position, opposing views can be understandable and even right about subsidiary points, but both cannot be morally *right* on the whole.

I do not aim to solve the issue of objective versus subjective truth herein. Nevertheless, the discussion about relativism is instructive. Does the existence of difficult—even intractable—moral disagreement necessarily point us toward relativism? I am swayed by the antirealist position here. Robert George (1999) made a cogent point: "To say that a moral question is difficult...is in no way to suggest that it admits of no right answer" (p. 186). An illuminating example in support of this conclusion is the U.S. Supreme Court's separate but equal doctrine that held that racial segregation in the U.S. was legally permissible. The moral disagreement surrounding the issue of legal racial segregation adjudicated in *Brown v. Board of Education* (1954) seemed irreconcilable, with each side certain of the moral rectitude of its position. In hindsight, I believe there was *one*

morally correct answer: Racial segregation because one race is deemed inferior to another is morally wrong, regardless of whether or not the separate facilities are equal. This is not to say that widespread social agreement about the moral wrongness of racial segregation in theory has resulted in integrated schools and communities in practice. Indeed, there remain those who champion racial segregation. But that view holds significantly less weight in the 21st century, and American society is working to catch up to the ideal of integration highlighted in *Brown* and the ideal of diversity put forward in *Grutter*. As George (1999) went on to say: “Even reasonable disagreement does not indicate an absence of objective truth” (p. 186).

The argument for the impossibility of resolving serious moral disagreements based on irreconcilable worldviews is put forth by George Lakoff (2002), who suggested that impossible conflicts underscore that the major political division within everyday political discourse in the U.S. is at bottom a moral one, based on core personal and family values. He posited that the main ideals are strictness (on the Right) and nurturance (on the Left), that these values are fundamentally opposed, and that all social and political debates reflect that one major, deep difference. An important consequence is that many moral differences between the two groups may be irreconcilable.

Lakoff (2002) (dis)missed the basic commonalities between, and values shared by, those on the Left and those on the Right. Through discourse analysis, he highlighted the similarity of the metaphors used for moral issues, but he did not consider that those similar metaphors might have their roots in certain shared moral ideals. As such, Lakoff is too quick to point out only the moral differences that lead to divergent worldviews and irresolvable policy disputes.

Moral disagreements may get reconciled in different ways:

1. moral argumentation (deliberative argument and discussion akin to Gutmann and Thompson’s ideas),
2. empirical discoveries (e.g., scientific discoveries about fetuses or second language acquisition); and
3. educational, cultural, and/or experiential influences (e.g., when a student leaves home believing that affirmative action is wrong, but then in college is exposed to diversity, etc., and changes her view) (Silver, 1994).

The existence of difficult, intractable moral disagreements need not imply that disputants have divergent worldviews that *cannot* be overcome.

## Basic Equality as a Shared Ideal

Even though a liberal egalitarian theory of justice considers equality of income or resources to be a prerequisite for treating people as equals and a libertarian theory of justice deems the right to one's own work, effort, and property as a requirement for treating people as equals, both theories invoke the ideal of basic equality. Competing political theories may not agree on how to define and interpret concepts like equality, yet they are still invoking the concept positively (e.g., Linda Chavez's Center for Equal Opportunity); at the very least, such a positive reliance on the concept holds promise for finding some basic agreement from which to move forward in better understanding each others' positions. Will Kymlicka (1992) pointed out that, traditionally, theorists have believed that there is a continuum of political theories of justice from the left to the right, and that each of these appeals to a different ultimate foundational value. The theories, therefore, have been seen as incompatible, their differences as incapable of resolution. However, he followed Dworkin in saying that a regard for *basic equality* (characterized not by an equal distribution of income and wealth, but by the more abstract idea of treating people as equals) is what should be viewed as the *ultimate* foundational value held by political theories from the left to the right. Kymlicka's (1992) point is this: "A theory is egalitarian in this sense if it accepts that the interests of each member of the community matter, and matter equally....This more basic notion of equality is found in Nozick's libertarianism as much as Marx's communism" (p. 4).

This is a key point. The ideal of basic equality holds an important place in both liberal egalitarian and libertarian political theory. Some citizens, educators, researchers, and other policy actors may feel clear about how they interpret and prioritize the moral and political ideals that guide their policy positions. Nevertheless, the ideals and their place in the conceptual schemes that drive positions are often implicit, which makes it difficult to make informed choices about policy prescriptions. In order to make the most knowledgeable, coherent, and consistent choices, citizens and policy actors need to be clear about their moral ideals and the moral ideals within opposing views. There is, of course, no guarantee that a more profound understanding of one's own views as well as the views of one's opponents will lead one to change her or his positions on policy issues. Many factors other than rational deliberation and argument make up conceptual schemes and influence policy views. What is important to take away from the preceding discussion is that, regardless of the motivations, there is at least some agreement over basic ideals. The moral disagreements over policy stem from a combination of contrasting prioritization, interpretation, and application of the salient principles. Within libertarianism, basic equality is perceived as necessary for enhancing liberty. As a result of the different ideas of what liberty and equality involve, justice for

libertarians may require laws and policies that conflict with what justice requires for liberal egalitarians. But there is hope to be found. Because there are important similarities in basic moral ideals, deeper understanding of the ideals and how they affect policy controversies may serve to enhance the public's ability to deliberate about the complex moral disagreement over affirmative action.

## INFORMING PUBLIC DELIBERATION

The most recent political test faced by affirmative action policy in the form of the Michigan Civil Rights Initiative has lent a sense of immediacy to new scholarship concerning race-conscious policies. Connerly's American Civil Rights Coalition has announced campaigns for similar ballot initiatives in several more states for the election of 2008. Education research on race-conscious policy will need to emphasize providing information and rationales that are most likely to inform public deliberation and understanding.

### Lessons from Gratz and Grutter

In these cases, the Supreme Court upheld Justice Powell's opinion in *Bakke* (1978) that student diversity is a compelling state interest. Therefore, admissions policies that satisfy the strict scrutiny standard can be considered constitutional. That is, they do not necessarily violate the 14th Amendment's Equal Protection clause, so long as they serve a compelling interest either to remedy past discrimination or foster racial and ethnic diversity among the student body, and are narrowly tailored to further the compelling interest. By upholding the University of Michigan Law School admissions policy, the Court endorsed policies that follow its guidelines in letter and spirit. In the majority opinion of *Grutter*, Justice O'Connor (2003) wrote, "The hallmark of that policy is its focus on academic ability coupled with a flexible assessment of applicants' talents, experiences, and potential 'to contribute to the learning of those around them.' The policy requires admissions officials to evaluate each applicant based on all the information available in the file" (*Grutter* Opinion, section IA). In order to comply with the high court's rulings, colleges and universities need to do the following:

1. seriously (though not necessarily exhaustively) consider race-neutral alternatives before settling on race-conscious admissions policies;
2. consider race and ethnicity as one qualification among many—a plus-factor, not a deciding factor;
3. develop an admissions plan that is narrowly tailored to further the compelling governmental interests of remedying the present effects

- of past discrimination or adding to the racial and ethnic diversity of the student body without unreasonably constraining the rights of non-minority applicants;
4. review student applications individually (i.e., holistically) taking into account quantitative as well as qualitative measures of student academic, social, and personal merit; and
  5. set up a process to periodically review the policy or a sunset provision for the policy.

Opponents of race-conscious policies will remain on the lookout for any missteps by institutions of higher education when crafting and justifying their admissions policies. In fact, in his dissent in *Grutter*, Justice Scalia (2003) went so far as to outline the next steps in the legal battle against affirmative action. He cautioned that future lawsuits would likely center on whether institutions are indeed conducting sufficiently individualistic reviews of applicants or on whether any educational benefits can be shown to flow from student diversity on campus.

As Justice Scalia's dissent itself shows, the high court's rulings did not put an end to the moral disagreement over affirmative action. As a result, prominent opponents of affirmative action and the diversity rationale will take the issue to the ballot, first in Michigan, and later in other states that allow public referenda. Such ballot initiatives create intense political campaigns, with each opposing side struggling to get their core message to the voting public. Educational researchers have a valuable opportunity to bring their scholarship to bear on the public political debate over affirmative action and related race-conscious education policies.

### A Promising Rationale for Race-Conscious Education Policy

There are several important lines of research that can inform the larger conversation about race and education policy (e.g., Chang, 1999, 2001; Gurin, 1999; Gurin et al., 2002; Hurtado, 2001; Marin, 2000; Moses, 2001, 2002; Yun & Moreno, 2006). Here I want to consider an additional line of inquiry into how educational research and theory on race-conscious education policy might serve to influence the public moral and political debates over affirmative action. With the legal battle won for now, the next battle concerns public (mis)information and (mis)understanding.

There is a need for cogent information that can be used to educate the general public about what *Gratz* and *Grutter*, affirmative action-related ballot initiatives, and the diversity rationale mean for the relationship between race and education in the U.S. Consider that both the University of Michigan and Ohio State University received substantially fewer applications from black students in the wake of the

Supreme Court rulings (Schmidt, 2004a). It would be helpful for applicants and their families to understand how the rulings are affecting college admissions processes, as well as how race is considered and diversity is valued on campus. The University of Michigan's National Forum on Higher Education for the Public Good has begun substantive efforts at informing the public discussion about these important issues through its Access to Democracy project (<http://www.thenationalforum.org>). The key is to provide outreach and information that is well grounded in theory and research from the humanities and the social sciences.

Providing credible information that helps advance public deliberation and debate over controversial issues is the responsibility of academic theorists and researchers. When it comes to the issues discussed herein, involving race-consciousness and education policy, well-informed public deliberation is all the more important. As Glenn Loury (1999) has pointed out, we live in a "divided society" (p. 1). Public deliberation over critical issues can function to clarify contested values, increase public understanding, foster people's willingness to reconsider their own views, and increase communication between opposing sides on a given issue (National Issues Forums Institute, 2001). For example, scholars can help members of the public question unexamined assumptions and structures that serve to exacerbate inequalities (e.g., the reliance on quantifiable measures of merit in admissions processes).

Gutmann and Thompson (1996) have developed a conception of democracy that emphasizes public deliberation. Regarding education policy disputes, "deliberative democracy can contribute, for example, in clarifying and, perhaps, reconciling conflicting research findings or conflicting values" (Moses & Gair, 2004). Because they believe moral disagreement to be a significant challenge to democracy, Gutmann and Thompson envision a democratic society that emphasizes moral discussion in political life in an effort to cope with fundamental values conflicts. They identify three conditions that structure the deliberative *process* of politics:

1. reciprocity, by which reason-giving and justification for mutually-binding policies are seen as a mutual endeavor;
2. publicity, which stipulates that policy makers, researchers, officials, and members of the public in general should have to justify their decisions and actions in public; and
3. accountability, which requires those who make policy decisions to answer to those who are bound by those policies.

Along with these three conditions, Gutmann and Thompson describe three principles that govern the *content* of deliberations:

1. basic liberty, which controls what government and society can demand of people and what people can demand of one another;
2. basic opportunity, which involves the distribution of goods necessary for pursuing a good life (e.g., basic income); and
3. fair opportunity, which has to do with the distribution of goods to people based on their qualifications.

Public discussions of race-conscious education policies in general, and the political challenges to affirmative action in higher education admissions in particular, can serve to clarify and demystify the rationales both for and against such policies. Such discussions occur through various media including print newsletters, newspapers, and journals; electronic sources; televised debates and events; workshops; public lectures; and community meetings. Education policy scholars would be able to contribute in meaningful ways to public information and deliberation over controversial policies. For example, the preceding analysis of the affirmative action debate, which framed this issue as a moral disagreement founded on contested moral ideals from libertarian and liberal egalitarian political theory, can add a missing dimension to the overall conversation about the nature of the dispute between affirmative action supporters and their opponents.

One substantive criticism against the significance of public deliberation is the idea that policy processes are much more political than rational (Stone, 2002). The policy making process can be understood as a political spectacle that is less about democracy and moral ideals and more about gaining political advantage and power (Edelman, 1988; Smith et al., 2003). The general idea here is that moral disagreements over education policy and the concepts and ideals involved can never be taken at face value, especially when race and class are at issue. Powerful forces strategically invoke certain moral ideals in order to further their political agendas, with little regard for issues of justice or for the least advantaged persons. For example, the Michigan Civil Rights Initiative (MCRI) used the language of civil rights in its ballot language. However, the ballot initiative's sponsoring group argues against race-conscious education policies, the very policies developed during the Civil Rights Movement to further civil rights, diversity, and equality. It invokes the concept of "discrimination" using a simplistic perspective that ignores the idea that equal treatment does not necessarily entail identical treatment. In doing so, MCRI's backers are following the successful strategy of other, similar ballot initiatives, including California's Proposition 209 that eliminated affirmative action in college admissions and hiring practices in state colleges, universities, and government positions.

Issues of power certainly lurk beneath the surface of moral-political debates, and it is fascinating to examine how power and politics affect the language and concepts used by policy actors. Nonetheless, it would be unproductive to respond by merely “throwing up one’s hands” and saying that the ideal of equality is sometimes invoked for purely strategic political purposes rather than for any real concern for equality. It would be far more constructive to try to understand how each side conceptualizes the ideal of basic equality and capitalize on what common ground there is. People may support whatever moral ideals they believe will keep them in power or give them political advantage, but the fact remains that once a moral ideal like equality is used, careful analysis may illuminate the political theories underlying political positions as well as help uncover deeper reasons for its use within particular political theories of justice. Consider that the Bush Administration’s *Amicus Curiae* brief to the Supreme Court in *Grutter* cited diversity as a desirable characteristic of a strong democratic state, yet urged the Court to strike down affirmative action in higher education admissions. We could attribute this support of diversity to disingenuous use of the concept of diversity in order to seem sympathetic to voters of color, which is certainly one viable interpretation. However, I argue that it is important to go further to endeavor to understand the seeming agreement between the Right and the Left about diversity in this case, in order to make sense of the subsequent disagreement over affirmative action policy. At the very least, clarity of meaning and interpretation can serve to highlight the importance of moral ideals like equality and diversity, and delineate what they require of public policy. When communities actually engage in deliberative democratic processes, the results are promising. Studies of public deliberation in communities in Oregon, Colorado, and California have shown that deliberative dialogues can foster greater understanding of contested issues and willingness to break moral and political deadlocks (Weeks, 2000).

It is often difficult to ascertain what morality and justice require in persistent political controversies. This is especially true about controversial issues of education policy having to do with race and ethnicity. How do we make sense of competing views on policy issues that carry vast significance for students? Is it possible that the conflicting sides can each be right? What does that mean for education policy decisions? Typically, there will be some fallout for making morally controversial decisions. Regardless of this, moral disagreement can serve to move people—and society—forward. One need only think of the Supreme Court decision in *Brown* to understand how moral disagreements can serve as catalysts for positive social change. This is exciting. Moral disagreement can be positive, so long as we are willing to work to understand reasonable opposing views with mutual respect.

Justice O’Connor (2003) pointed out that the Supreme Court has “repeatedly acknowledged the overriding importance of preparing students for work and

citizenship, describing education as pivotal to ‘sustaining our political and cultural heritage’ (*Plyler v. Doe*, 1982) with a fundamental role in maintaining the fabric of society” (Grutter Opinion, Section III A). This underscores the role of higher education in informing public deliberation over contested issues and fostering equality of educational opportunity in order to cultivate the public good. Michael Eric Dyson (2004) puts it well: “knowledge must be turned to social benefit if we are to justify the faith placed in us” (p. B12). In the arena of race-conscious education policy, education theorists and policy researchers have a significant responsibility to contribute theoretical and empirical grounding for the information that the public receives as they attempt to understand and negotiate their way through some of the most contentious moral disagreements faced by society.

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### Endnotes

1. In addition to affirmative action, another salient current example is the debate over social welfare reform. The arguments for social welfare programs and public aid for the needy have a marked egalitarian cast (see Holyfield, 2002). By contrast, the arguments against social welfare programs have a significant libertarian flavor (see Murray, 1984).
2. These are circumscribed by Nozick’s (1974) three principles guiding initial acquisition, voluntary transfer, and rectification.
3. Nozick is widely cited as such, despite the complexity of his ideas to be found in *Philosophical Explanations* (1976), for example.

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