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**AFFIRMATIVE ACTION:**  
A SOLUTION FOR FRANCE TO FIGHT DISCRIMINATION AND  
ENCOURAGE INTEGRATION?



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## ABSTRACT

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A Solution for France to Fight Discrimination  
and Encourage Integration?

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As the population of France becomes more diverse, it has become more difficult to integrate its minorities. Such events as the 2005 riots exemplify the frustration, discrimination and social exclusion that some French citizens experience. It is of utmost importance that France finds a solution to this dilemma in order to avoid further tensions within its society. In order to combat the discrimination and encourage integration, I propose implementing an affirmative action policy as is understood in the United States. First, I research the origins of affirmative action in the United States and its effectiveness thus far. Then, I present the arguments for and against the policy from American and French perspectives. A problem arises when considering France's Republican principles that some feel would be violated by implementing affirmative action. However, based on my analysis, I believe that because affirmative action is a wide ranging policy that can vary from recruiting minorities to a more stricter variation of goals and timetables, it is possible to implement an affirmative action policy in France without discarding France's Republican principles. In fact, there are already existing policies and programs in France that are geared towards recruiting minorities.

## DEDICATION

I would like to dedicate this thesis to my family for always being there during my graduate study. I thank them for their support in all my endeavors. Their love and encouragement have enriched my life to a magnitude I am incapable of describing. For that, I am eternally grateful.

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Distribution of Managers by Race/Ethnicity and Sex

## LIST OF ABBREVIATIONS

CEP	<i>Conventions d'Education Prioritaire</i> Conventions of Priority Education
CODAC	<i>Commission Départementale d'Accès à la Citoyenneté</i> Departmental Commission on Access to Citizenship
FEPC	Fair Employment Practices Committee
GED	<i>Observatoire du Groupe d'Etudes des Discrimination</i> Committee for the Study of Discrimination
HALDE	<i>Haute Autorité de Lutte contre les Discriminations et pour l'Egalité</i> High Authority for the Struggle against Discrimination and for Equality
INED	<i>Institut national d'études démographiques</i> National Institute of Demographic Studies
INSEE	<i>Institut National de la Statistique et des Études Économiques</i> National Institute of Statistics and Economic Studies
MRAP	<i>Mouvement contre le racisme et pour l'amitié entre les peuples</i> Movement Against Racism and for Friendship between Peoples
NAACP	National Association for the Advancement of Colored People
OFCCP	Office of Federal Contract Compliance Programs
SCLC	Southern Christian Leadership Conference
ZEP	<i>Zones d'éducation prioritaires</i> Priority education areas

“True peace is not merely the absence of tension, it  
is the presence of justice.”<sup>1</sup>

- Dr. Martin Luther King, Jr.

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<sup>1</sup> “Washington, D.C. Martin Luther King, Jr. National Memorial.” Build the Dream.org. National Memorial Project Foundation, 2006.  
28 May 2008 <<http://www.mlkmemorial.org/>>



## 1. INTRODUCTION

### 1.1. Minorities Come to the Fore

It was in the wake of the riots that predominantly took place in the suburbs of Paris that Nicolas Sarkozy, the Interior Minister at the time, described them as *racailles* or roughly translated by the English speaking media as scum<sup>2</sup>, hoodlums<sup>3</sup>, or thugs<sup>4</sup>. He was referring to the youth minorities, who were mostly the children of immigrants of Maghrebi or African descent, and participated in the riots, torched over 10,000 vehicles, and attacked hundreds of schools and public buildings in a wave of violence that shook France to its core<sup>5</sup>. France and the international community suddenly became aware of a problem that had long been brewing in French society. It became clear that France would need to confront its difficulty integrating its minorities. For the benefit of the country's social fabric, France must find an effective policy to fight discrimination and encourage integration if future unrest is to be prevented.

It is difficult to determine the exact number of minorities in French society because there exists no official data regarding ethnicity or race. However, according to a 2004 study by Michèle Tribalat, a researcher at the National Institute of Demographic Studies (INED – *Institut national d'études démographiques*), there are approximately 14 million Frenchmen of foreign ancestry, namely having either a parent or grandparent from a foreign country<sup>6</sup>. That makes up nearly one quarter of

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<sup>2</sup> Sage, Adam. "Sarkozy gets tough with suburban hooligans." Times Online. 1 November 2005. 28 May 2008 <<http://www.timesonline.co.uk/tol/news/world/europe/article585028.ece>>

<sup>3</sup> "Riots erupt in more Paris suburbs." BBC News. 2 November 2005. 28 May 2008 <<http://news.bbc.co.uk/2/hi/europe/4395294.stm>>

<sup>4</sup> "French riots spread beyond Paris." BBC News. 4 November 2005. 28 May 2008 <<http://news.bbc.co.uk/2/hi/europe/4405620.stm>>

<sup>5</sup> "French riots rage despite warning." BBC News. 6 November 2005. 28 May 2008 <<http://news.bbc.co.uk/2/hi/europe/4411192.stm>>

<sup>6</sup> Charles, Gilbert and Bisma Lahouri. "Les vrais chiffres." L'Express. 2 December 2003. 28 May 2008 <[http://www.lexpress.fr/actualite/societe/religion/les-vrais-chiffres\\_494290.html](http://www.lexpress.fr/actualite/societe/religion/les-vrais-chiffres_494290.html)>

the total 61 million people living in metropolitan France<sup>7, 8</sup>. Having the largest immigration population in Europe, it is necessary for France to implement an effective integration policy that focuses on anti-discrimination measures in order to ensure the prosperity of all Frenchmen. The recent outbursts among minorities in France showcase the struggle to integrate them effectively into French society.

There are several factors that have contributed to the race riots. It is primarily the consequence of social and economic alienation of different ethno-cultural groups. Isolated outside French cities, minority populations live in poor housing developments with inefficient schools, inadequate transportation systems, social exclusion, and mass unemployment. In 2000, according to the independent think-tank Institut Montaigne, the unemployment rate in France was slightly past the 9% mark. Among minorities, the rate of unemployment was 2 to 3 times greater, especially among Algerians and Moroccans, which suffered an astonishingly high 30.8% and 35.8% rate of unemployment respectively<sup>9</sup>. Also, a test conducted by the International Bureau of Work revealed that four out of five employers practice discrimination when hiring employees<sup>10</sup>. The riots were not only the result of unsuccessful integration policies, but also the result of discrimination. The riots exposed the existence of and need to combat discrimination towards minorities in French society.

It is clear that France's current model of integration has many deficiencies that are impeding minorities from prospering in French society. In order to find a

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<sup>7</sup> Metropolitan France consists of French territory on the European continent and does not include France's overseas territories, departments, or collectivities, which total an additional 3 million people.

<sup>8</sup> Central Intelligence Agency. "France" The World Factbook. 15 May 2008. 28 May 2008 < <https://www.cia.gov/library/publications/the-world-factbook/print/fr.html>>

<sup>9</sup> Sabeg, Yazid and Laurence Méhaignerie. "Les oubliés de l'égalité des chances." Institut Montaigne. January 2004: 84. 28 May 2008 < [http://www.institutmontaigne.org/medias/im\\_rapport\\_oublies-de-legalite-des-chances.pdf](http://www.institutmontaigne.org/medias/im_rapport_oublies-de-legalite-des-chances.pdf)>

<sup>10</sup> "Discrimination en France." UNSA. 27 May 2008. 28 May 2008 < <http://www.unsa.org/?Discrimination-en-France.html>>

remedy, the deficiencies in the current model must be recognized, and changes must be implemented lest the lack of integration and discrimination are to continue. One of the most controversial ideas is *positive discrimination*, or as it is called in the United States, affirmative action. Implementing affirmative action *à l’Amerique* has generated a wave of debate. Perhaps France needs to consider a similar policy in order to integrate its minorities and combat discrimination.

## **1.2. The Purpose and Methodology**

The integration of and discrimination towards French citizens of immigrant background is of grave concern and in need of immediate attention. During a period of civil unrest in the United States, affirmative action was established in order to relieve the tension. France found itself in a comparatively similar state during the 2005 riots. It was a blatant signal to all that the current integration model is not doing enough to integrate its minority groups and to reduce discrimination. The purpose of this thesis is to analyze a possible implementation of affirmative action in France in response to its societal problems.

The following methodology will be used in order to analyze affirmative action and its relation to France. First, in order to consider the American approach of affirmative action in France, one must consider the appropriateness of a policy from one country being applicable in another country. There must be certain similar cultural, societal, and economical criteria within each state to facilitate the comparison. These similarities between the United States and France will be explained. Once the relevance of comparing the two states is clear, the origins of the policy in the United States will be detailed. Because affirmative action has evolved over many decades and continues to evolve, it is important to know the historical setting in which affirmative action developed. To then know if it has proven to be an effective policy, the results of affirmative action in American society will be analyzed by reviewing studies on affirmative action. We will then take a look at the programs and policies in France. Not only is the effectiveness of affirmative action a factor in deciding whether to implement affirmative action, but also the French state’s view on

equality plays a significant role. The French state will be taken into account along with the already existing programs that it has initiated that have operated within the framework of the French Republican ideals. Further analysis will be given to the obstacles facing the implementation of affirmative action in France and to the arguments in support of and against practicing affirmative action in France. Based on the analysis and results, affirmative action can be interpreted as a positive or negative policy to adopt in French society.

### **1.3. Societal Similarities between the United States and France**

Affirmative action is synonymous with an American approach to combat discrimination. However, it is not just a policy implemented by the United States, but also in many other countries such as Brazil, India, South Africa, and Malaysia<sup>11</sup>, each with its own varying degree of peculiarity and success. The United States affirmative action model is often times the most appropriately comparable model to being implemented in France since both countries have more in common than simply the need to fight discrimination.

The United States and France perceive themselves as strong, just democracies with a strong foundation in equality. The Constitution of the United States (1788) laid the groundwork for American equality and the natural rights of all man. Similarly, the Declaration of the Rights of Man and of the Citizen was adopted in 1789 and provided the framework for equality in France. Both documents have garnered worldwide aspiration for adopting similar documents elsewhere.

Both countries have historically been ruled by White men and have mistreated segments of their populations. In the United States, it was the employment of slavery in the 18<sup>th</sup> and 19<sup>th</sup> centuries and, after its abolition in 1865, the continuing mistreatment of African-Americans well into the 20<sup>th</sup> century. According to the Tuskegee Institute records, between 1880 and 1951, there were 4,730 lynchings. Three quarters of the lynchings were committed against blacks while the other quarter

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<sup>11</sup> Vongs, Pueng. "Affirmative Action in Other Countries." Pacific News Service. 11 July 2003. 28 May 2008 <<http://www.alternet.org/story/16391/>>

were against Republican whites, likely viewed as favoring racial equality. After the abolition of slavery, African-Americans were given second-class citizenship. They were often segregated from the White population prohibiting African-Americans from having the same access to the facilities the Whites had. It was not until in the Civil Rights Movement in the 1950's and 1960's and the passage of the Civil Rights Act of 1964<sup>12</sup> that African-Americans made real strides in equality. In France, it is the complex relationship with Algeria which was an integral part of France dating back to 1848 until the aftermath of the French-Algerian War resulted in the independence of Algeria in 1962. During French colonial rule, the Muslim population was not granted French citizen. In May 1945, leading up to the war for independence, French soldiers killed thousands of Algerians in the town of Setif after celebrations for the defeat of the Nazis became a pro-independence protest. French historians tally the murder count to around 15,000 to 20,000 while the official Algerian version approximates 45,000 killed.<sup>13</sup> It was also during and after the French-Algerian War (1954-1962) in which the Maghrebis, specifically Algerian, community in France were ill-treated. In 1961, police officers attacked a peaceful demonstration of around 30,000 Algerians against a curfew that was widely regarded as racist. Although official figures attribute only three deaths to the event, there are other estimates of up to 200 killings. The victims were beaten to death, shot, and/or drowned in the center of Paris.<sup>14</sup> After having lost the war, the government actively sought to prevent Harkis, indigenous Algerians who supported the French army, from seeking refuge<sup>15</sup> in France. For those who were able to enter French territory, their right to stay on French soil was not recognized until years later. They were put in

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<sup>12</sup> The Civil Rights Act of 1964 ended segregation and made it illegal to discriminate based on race, color, religion, sex, or national origin.

<sup>13</sup> "Colonial abuses haunt France." *BBC News*. 16 May 2005.

28 May 2008 <<http://news.bbc.co.uk/2/hi/europe/4552473.stm>>

<sup>14</sup> "Paris marks Algerian protest 'massacre'." *BBC News*. 17 October 2001.

28 May 2008 <[http://news.bbc.co.uk/2/hi/world/monitoring/media\\_reports/1604970.stm](http://news.bbc.co.uk/2/hi/world/monitoring/media_reports/1604970.stm)>

<sup>15</sup> Because the Harkis had supported the French army, they often became targets of lynching, and some were even killed by the National Liberation Front, the army that fought against the French for Algerian independence. Therefore, after the war, many sought refuge in France.

isolation, placed in fenced-off internment camps,<sup>16</sup> disenfranchised and marginalized from the rest of society.<sup>17</sup>

Nowadays, both countries are wealthy, economically developed, countries with a strong democratic tradition and large minority population many of whom are of North African descent. France has a large minority population especially coming from North Africa. The French government, however, does not keep statistical data regarding minorities, which makes it, in turn, more difficult to state the exact number of French minorities. The United States' population consists of around 20% being of African, Asian, or Native descent. The large Hispanic minority population is not included in the official census since Hispanic refers to people of Latin American descent, which could include any race or ethnicity (African, Asian, etc.).<sup>18</sup> In any case, the Hispanic population makes up approximately 12.6% of the United States population, and by 2050, it is predicted that the white, non-Hispanic population will no longer be the majority.<sup>19</sup>

The similarities shared between the United States and France discard many factors that would otherwise need to be considered had affirmative action as it is done in South Africa been proposed. For example, proposing American-style affirmative action is not confronted with the issue of a country's relative economic wealth since both the United States and France are among the economically richest countries. Such an issue would perhaps need to be tackled if South African affirmative action was suggested instead. In any case, there still does lie differences between the United

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<sup>16</sup> "France faces 'war crimes' case." BBC News. 30 August 2001.  
28 May 2008 <<http://news.bbc.co.uk/2/hi/europe/1515202.stm>>

<sup>17</sup> Johnson, Yvonne. "Manes sheds light on racial tension in France." Communique. February 2006  
28 May 2008 <<http://www.wcsu.ctstateu.edu/ia/archives/comm-feb2006.pdf>>

<sup>18</sup> Central Intelligence Agency. "United States" The World Factbook. 15 May 2008.  
28 May 2008 <<https://www.cia.gov/library/publications/the-world-factbook/print/us.html>>

<sup>19</sup> U.S. Census Bureau, 2004. "U.S. Interim Projections by Age, Sex, Race, and Hispanic Origin." 18 March 2004  
28 May 2008 <<http://www.census.gov/ipc/www/usinterimproj>>

States and France that could hamper a possible establishment of affirmative action in France.

Even in the name itself, France refers to affirmative action as *positive discrimination*. The names illustrate a fundamentally different point of view from the two different countries towards affirmative action policies. Whereas the United States views affirmative action as a policy of actively seeking qualified minorities to employ or select to attend higher educational institutions, France views such policies as simply reversing discrimination against the majority white population. Such contradicting views reveal the complexity of the issue and the different interpretations from each country. The reasons for this divergence will become clear in the coming chapters.

It must also be clarified as to what the term, minorities, is meant to describe. The term, minorities, is referring to those who are considered “different” in society. France refuses to sign any treaties recognizing minorities since it does not identify differences among French citizens.<sup>20</sup> In France, analysts may use the term, *visible minority*, to refer to those who are “visibly different” in French society, namely those of African and/or Maghrebi origin, which make up the bulk of France’s immigrant population. Minority will refer to the visible minorities, but who are also French citizens since a distinction can legally be made between non-French citizens and French citizens. Discrimination will therefore focus on French citizens treating other French citizens differently based upon his or her race, ethnicity, or sex. It will refer to the *visible minorities* in France and will primarily focus on the African-American minority in the United States.

## 2. AFFIRMATIVE ACTION IN THE UNITED STATES

It is imperative to know how affirmative action in the United States was launched. It was not started as a simple policy that stayed static over the decades, but

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<sup>20</sup> Body-Gendrot, Sophie. “L’universalisme français à l’épreuve des discriminations”. *Hommes et Migration* N° 1245 Sept-Oct 2003: 20.

rather evolved as the American population and societal interactions evolved. In discussing the progression of the policy, the successes and drawbacks along with the advantages and disadvantages will come to the fore. Likewise, France's own mechanisms for fighting discrimination will be analyzed. Is France perhaps unknowingly heading towards affirmative action? Or will its historical roots in a Republican society hinder it from implementing affirmative action and result in the creation of a new course of action? Will the new course of action be effective?

## **2.1. The History of Affirmative Action**

The goals of affirmative action are to fight discrimination and to give equal opportunity to minorities. Affirmative action is designed to give an equal opportunity to those minorities that have been historically discriminated against, and therefore, do not have the same opportunities as their white counterparts due to the years of unjust discrimination. Mr. J. Edward Kellough describes the policy as being “intended to redistribute opportunity from those who have been historically advantaged (e.g., primarily white men) to those who have suffered disadvantages because of race, ethnicity, sex, or other traits or circumstances”.<sup>21</sup> In addition, the policy was used to integrate the minority population, in particular African-Americans, into the job market and provide educational opportunities so that minorities are more proportionally represented. The means in which to implement the policy, however, have evolved greatly since its onset in the 1940's.

### *2.1.1. Government's Progress in Fighting Discrimination (1945-1960)*

Towards the end of the Depression and the beginning of World War II, jobs were booming, particularly in the fields of military contracts and national defense. Discrimination practices excluded minorities from having the opportunity to take advantage of the job boom. Annoyed with continuing employment discrimination, civil rights leaders mobilized organizations and societies throughout the country and

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<sup>21</sup> Kellough, J. Edward. Understanding Affirmative Action. Washington D.C.: Georgetown University Press, 2006: 12.



threatened to march on the National Mall in Washington, D.C. The leaders projected that over 100,000 protesters would attend. President Franklin Roosevelt feared that such a march would expose racism in the United States and would divide the population during a time of war. In order to avoid a potential upheaval, President Roosevelt launched the Fair Employment Practices Committee (FEPC) by issuing Executive Order 8802 which would receive and investigate complaints of discrimination in employment by defense contractors and federal departments and agencies. As a result, President Roosevelt succeeded in persuading against the march and also established one of the first federal agencies dedicated to minority problems. Issuing an Executive Order would set precedence for future presidents to act independently of Congress with regards to other civil rights programs. The establishment of a federal agency would encourage civil rights leaders for further progress. Also, the agency would be able to document discrimination in the workforce.<sup>22</sup>

While the FEPC was a step in the fight against discrimination, it became clear that it was not sufficient. By only receiving and investigating complaints of discrimination, fighting discrimination relied completely on the person who was discriminated against, the victim. Such a policy relied on his or her willingness to come forward and issue a complaint. Often times, those being discriminated against in a hostile work environment do not feel comfortable lodging a complaint against his or her employer. Furthermore, proving discriminatory practices was often difficult due to the “often subtle and elusive nature” of discrimination. David H. Rosenbloom reaffirms the sentiment by saying that “a complaint-oriented system was inherently of limited utility because there was ‘no doubt that many’ complaints were ‘withheld because of reluctance’ on the part of complainants ‘to become identified as trouble makers or risk reprisal,’ and because ‘even the complaints at hand discrimination is often elusive and difficult to pin down’<sup>23</sup>.”<sup>24</sup>

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<sup>22</sup> Kellough: 22-25.

<sup>23</sup> Kellough: 30.

<sup>24</sup> Kellough: 29-30.

As a result of this setback, President Kennedy shifted the approach of earlier programs, which focused on what employers should not do, to what employers should do to promote greater equality of opportunity. The policy meant that the federal government and private businesses with government contracts would play a more active role and take greater initiative in fighting against discrimination. They were to recruit minority high school and college graduates for employment and make it possible for minority applicants to qualify for entry-level and high positions by providing skills development programs. Employers were to reassess job qualifications to guarantee that they are work related and are not synthetically blocking minority applicants who may not have had equal educational opportunities. Building on previous administration policies regarding discrimination, Kennedy's policy under these efforts became the starting point of the program known as affirmative action.<sup>25</sup>

### *2.1.2. The Civil Rights Movement Through the 1960's*

The evolution of fighting discrimination is not solely attributed to the efforts of the federal government, but also to the efforts of the minority population itself. Racial protests date back to the slave era, and although job discrimination was rampant in the early 1900's, protesters were not able to make an impact to due the small size of their protests and the limited scope of their demands.<sup>(15)</sup> Protesters were, therefore, not able to make discrimination a high priority of the federal government and instead settled on minor victories. The two organizations that encompassed civil rights activism were the National Association for the Advancement of Colored People (NAACP) and the National Urban League founded in 1909 and 1911 respectively. Both organizations focused on fighting job discrimination through a variety of means such as meeting with businessmen or holding demonstrations.<sup>26</sup> During the 1950's and 1960's, the limited progress made

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<sup>25</sup> Kellough: 30-31.

<sup>26</sup> Weiss, Robert J. "We Want Jobs". New York • London: Garland Publishing, Inc., 1997: 15.

in achieving equal opportunity by African-American workers and civil rights activists resulted in a growing militancy among the African-American population. Because the civil rights groups were unable to create a widespread grassroots movement, their efforts were hampered. It was not until Rosa Parks was arrested for refusing to give up her seat in the “white” section of a bus that the city’s African-American population mobilized and boycotted the transportation system. The protests were not only against the discrimination suffered by Rosa Parks, but also for the hiring of more African-American bus drivers. The success of the mass protest ushered in the creation of the Southern Christian Leadership Conference (SCLC). The SCLC was led by a charismatic leader named Martin Luther King, Jr. who was able to mobilize blacks of all classes. The traditional strategies, such as boycotts and legal action, remained, but the greater mobilization of the black population produced a greater effectiveness. This improved form of activism of the 1960’s “shattered American complacency and pressured the political system to address – belatedly – its massive racial problems.”<sup>27</sup>

The evolution of and the progress made by the civil rights movement along with the pressure it applied to the federal government and the federal government’s willingness to confront the issues of race led to the establishment of an affirmative action program in the federal government. In fact, during the late 1960’s and into the 1970’s under the Johnson and Nixon administrations, the Office of Federal Contract Compliance Programs (OFCCP) was established as an enforcement agency within the Department of Labor during the Johnson administration. The OFCCP “put into place a system of ‘pre-awards’ reviews of equal employment opportunity compliance pledged by organizations bidding for federal construction contracts”.<sup>28</sup> In 1967, a contractor benefited from this program by providing a list detailing the number of minority workers that would be hired if the contractor received the government contract. Due to the discrimination patterns of unions, the OFCCP started to require a list specifying the number of minority workers the contractor pledged to hire. The

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<sup>27</sup> Weiss: 20-21.

<sup>28</sup> Kellough: 38.

contractor's responsibility was limited based on the number of qualified minority workers. Under the Nixon administration, the OFCCP set goals for minority representation based on the estimated number of minority workers in the labor market. The desired number of minority workers was included in the invitations for bids on federal contracts.<sup>29</sup>

The civil unrest during the late 1960's led to the belief that there needed to be more results in showing the equality of opportunity. Creating goals and timetables were methods of achieving the equality of opportunity that the government was seeking. The data was used to take corrective action if it showed an under-representation of qualified minority workers. However, this led to greater controversy seeing as how giving preferences to qualified minority workers may be viewed as going beyond the principle of nondiscrimination. Minority outreach programs are favorable, but any form of preferences for minorities assures greater controversy.<sup>30</sup> Preferential treatment may be necessary in advancing a society past discrimination and may result in a generation of strong opposition trying to resist such change.

In the 1990's, there were several initiatives on the state level to prohibit the use of preferences in state employment, contracting, or higher education. Only two states, California and Washington, succeeded in passing legislation that prohibited the use of preferences based on race, ethnicity or gender. As a response to the rising opposition towards affirmative action, many organizations embraced the establishment of diversity programs. Diversity programs were seemingly less controversial and focused on inclusion and "the need to recognize the value of all individuals". Diversity programs were also to bolster the idea that "differences should be valued, and that organizations should be managed in a way that allows people from all backgrounds to succeed."<sup>31</sup> They granted a wider range of differences "in terms of any mixture of attributes that distinguish people, including

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<sup>29</sup> Kellough: 39-41.

<sup>30</sup> Kellough: 52.

<sup>31</sup> Kellough: 68.

such characteristics as age, education, background, or personality.” Over 85% of federal agencies and sub-agencies claimed to have diversity programs in 1999.<sup>32</sup> Without the existence of goals and preferential policies, affirmative action would be similar to the affirmative action program of the early 1960’s based on outreach and recruitment of minorities. Hiring minorities would be in the control of employers, free to appeal to qualified minority workers, but not permitted to hire based on race or sex. Currently, businesses and education institutions outside California and Washington are permitted, but not required to implement preferential treatment.

## **2.2. The Legality of Affirmative Action Challenged**

There have been numerous cases brought to the courts regarding affirmative action. Title VII of the Civil Rights Act of 1964 permits the government and private organizations to differentiate individuals based on his or her race and sex in order to establish affirmative action programs. However, the sections 703 and 717 of Title VII in the Civil Rights Act of 1964<sup>33</sup> and the Constitution, specifically the Fourteenth Amendment’s equal protection clause, guarantee the equality of all individuals irregardless of race, color, sex, religion, or national origin.<sup>34</sup> Thus, it is a difficult balancing act between allowing affirmative action programs and guaranteeing nondiscrimination. Often times, the arguments above are cited in favor of both sides, the plaintiff and the defendant, of the suit. Affirmative action has been challenged many times from the beginning of its implementation in both the employment and educational fields. It is difficult to find a definitive consistency regarding all decisions. It frequently depends on whether the complaint is against the federal or state government, an educational institution, or a private business. In addition, the rationale for implementing an affirmative action differs from one to another and thus, because the rationality for the existence of an affirmative action program is a key factor in deciding its legality, it often affects the decisions of the courts.

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<sup>32</sup> Kellough: 68-69.

<sup>33</sup> Kellough: 95.

<sup>34</sup> Jones, Elaine R. “Race and the Supreme Court’s 1994-1995 Term.” Curry: 150.

One of the most well-known affirmative action cases was between the University of California and an applicant to the university named Alan Bakke. In the 1978 court case titled *Regents of the University of California v. Bakke*, an affirmative action program at the medical school of the university reserved sixteen out of one hundred seats in each entering class for minority applicants. As a result, Alan Bakke, a White male, was denied admission despite having higher qualifications than some African-American applicants who were accepted. The Supreme Court ruled against the University of California and in favor of Bakke. The court justified its decision by stating that an institution cannot reserve seats solely based on race. Justice Jesse Powell held the deciding vote among the nine judges. He stated that although creating student body diversity by considering race is acceptable, additional factors must play a role. Admission cannot be solely based on race, and therefore, because all the seats were only available based on race and not open to all applicants, the program was ruled impermissible. The ruling made it clear that affirmative action programs cannot be based just on race, but that race can be one of many contributing factors that play a role in admissions.

In a similar challenge to a university affirmative action program, the Supreme Court used Justice Powell's remarks as precedence to come to a decision in the case *Grutter v. Bollinger* in which Barbara Grutter sued the University of Michigan School of Law claiming that she was not accepted due to the affirmative action program in place. However, the university was able to show the many factors that contributed to admission such as reviewing the undergraduate grade point average, the Law School Admission Test score, letters of recommendation, a personal statement, and an essay describing how the applicant would contribute to diversity.<sup>35</sup> There were no quotas or fixed numbers as had been the case in the affirmative action program at the University of California. In addition, diversity was not placed within the confines of race or ethnicity. The essay gave the applicant the opportunity to exemplify his or her contribution to diversity through other means transcending race and ethnicity. The Supreme Court, therefore, concluded that the consideration of

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<sup>35</sup> Kellough: 119-121.

diversity in the affirmative action program was of substantial importance and provided benefits to the entire student body such as “the promotion of interracial understanding, the erosion of racial stereotypes, and the development of students better prepared to enter a diverse society.”<sup>36</sup> It also concluded that by not creating fixed numbers or quotas, all the positions were open to all applicants. The race conscious admissions did not disproportionately harm non-minority applicants. Unlike the program at the University of California, the Supreme Court ruled in favor of the program at the University of Michigan.

The two case examples show the complexity in ruling some affirmative action programs legitimate while others illegal. The rulings illustrate that an affirmative action program can consider race, but not establish quotas based on race. The programs must not harm non-minority applicants by excluding them from competing for admission seats. Considering race ought to have an overarching symbolic goal such as creating a more diverse student body for the benefit of all. It would otherwise be illegal to conduct an affirmative action program in contradiction to these principles.

### **2.3. The Effectiveness of Affirmative Action**

The most important aspect of affirmative action is to know whether it actually works, whether it is an effective policy in achieving its goals to integrate the minority populations and combat against discrimination. The effectiveness of affirmative action is difficult to prove since many other factors may contribute to the integration of and discrimination towards minorities. In addition, because it is such a controversial issue, it is important that statistical information be accurate in its relation to and conclusion towards affirmative action. Statistical information that gives affirmative action a negative appearance would greatly influence the presence of the policy. It must be certain that changes in integration and discrimination be related to affirmative action and not the outcome of other events.

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<sup>36</sup> Kellough: 121.

### *2.3.1. The Effectiveness in Employment*

Several studies found positive results from implementing a goal oriented affirmative action policy in the 1970's in which companies succeeded in substantially increasing the company's minority workforce. This was specifically the case according to one study that found federal agencies that readily implemented goals and timetables enjoyed a larger share of minority workers. The agencies that did not establish affirmative action goals suffered a poorer record. In addition, the findings of another study suggest that a company favoring affirmative action is more likely to employ a black man into a management position. The same study found that firms with a large minority workforce receive additional applications from these groups. In effect, affirmative action seems to initiate the possible employment of more minorities. The study proposes, "this underscored the importance of informal channels of communication operating through an existing workforce regarding the availability of job opportunities and the attractiveness of particular firms as employers."<sup>37</sup> A study by Harry Holzer and David Neumark also reinforce the positive effects of affirmative action. By studying the businesses using affirmative action policies, they conclude that non-minority workers tend to have more qualifications than minority workers, but these qualifications pertain solely to those that are easily distinguishable, such as a higher education level or other qualifications that can be viewed on a resume. These companies are more likely to have several mechanisms for evaluating the qualifications of a potential employee, which in turn may render him or her an asset that would have otherwise not been uncovered. The asset may make up for a lack in other qualifications, such as a lower education level. Holzer and Neumark come to the conclusion that "affirmative action does increase employment, enrollments [in higher education], and contracting for minorities and women in the ways we might expect."<sup>38</sup>

There has been progress made in managerial positions between 1980 and 1990. Minorities and women have made large strides in increasing the percentage of

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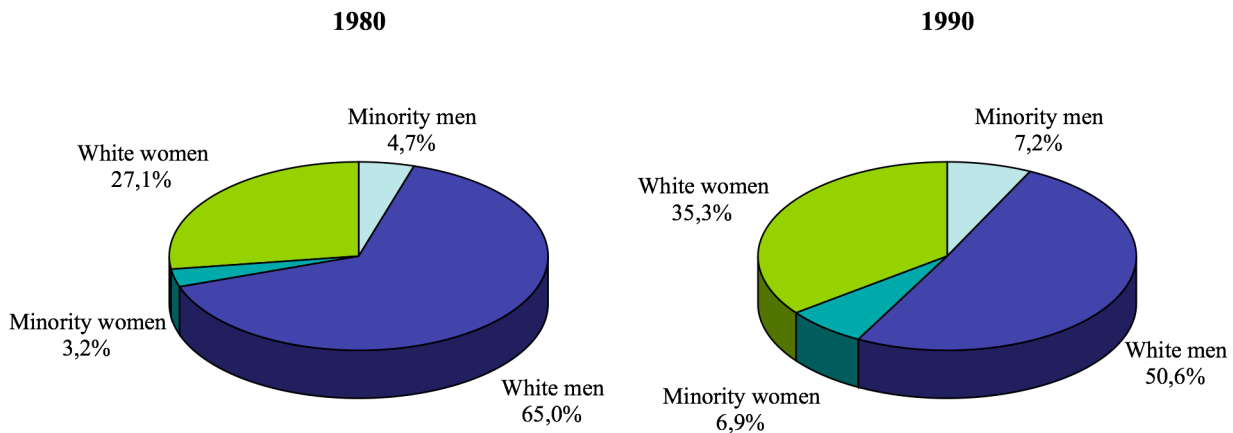
<sup>37</sup> Kellough: 134.

<sup>38</sup> Kellough: 138.



those holding these positions. As Figure 1 shows, both minority men and women significantly gained manager positions. The percentage of minority women in manager positions more than doubled from 3.2% to 6.9% while the percentage of minority men increased from 4.7% to 7.2%. The percentage of white women in manager positions also increased from 27.1% to 35.3%. The figures exemplify the progress of minorities and women in securing lucrative positions.<sup>39</sup>

Figure 1  
**Distribution of Managers by Race/Ethnicity and Sex**



**Source:** Institute for Women’s Policy Research, calculations based on the U.S. Bureau of the Census, Census of the Population, 1980, 1990.<sup>40</sup>

<sup>39</sup> Hartmann, Heidi. “Who Has Benefited?” Curry, George E., ed. The Affirmative Action Debate. Massachusetts: Addison-Wesley Publishing Company, Inc., 1996: 78-79.

<sup>40</sup> Hartmann, Heidi. “Who Has Benefited?” Curry, George E., ed. The Affirmative Action Debate. Massachusetts: Addison-Wesley Publishing Company, Inc., 1996: 79.

Although the workforce may be more diverse, other problems may arise. For example, a study in 1992 suggests that “a firm implementing affirmative action will experience less elastic demand for inputs and higher output costs than a firm not so constrained.”<sup>41</sup> As a result, it is argued that an affirmative action policy results in higher costs for the firm. Also, a study from 1976 suggested that affirmative action may lower incentives for minority workers to achieve higher qualifications while raising the incentive for their white counterpart to seek such qualifications perhaps in order to offset any perceived notion of disadvantage or to ensure success in a more competitive environment. The result may be an exacerbation of the original problem.<sup>42</sup>

The goals of affirmative action, to establish equal opportunity by fighting discrimination and integrating minorities, appear to have succeeded to some extent in American society. The problems that affirmative action is intended to resolve, nonetheless, remain an element in American society. Although affirmative action has aided the process toward greater equal opportunity, there continues to be discrimination and examples of minority non-representation in American society. This, in turn, justifies the need to carry on with affirmative action. Unemployment among African-Americans is about twice as high as that of whites. Detailed in a report from the Glass Ceiling Commission, only 0.6% of the senior management positions are held by African-Americans in the nation’s largest companies. White men make up 43% of the workforce, but hold 95% of the senior management positions. Such a statistic is evidence for the need to continue affirmative action. In addition, the federal government received in 1994 approximately 90,000 complaints of employment discrimination based on race, ethnicity, or gender. Less than 3% of those complaints involved reverse discrimination.<sup>43</sup>

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<sup>41</sup> Kellough: 134.

<sup>42</sup> Kellough: 133.

<sup>43</sup> Clinton, Bill. “Mend It, Don’t End It.” Curry, George E., ed. The Affirmative Action Debate. Massachusetts: Addison-Wesley Publishing Company, Inc., 1996: 266-268.

### 2.3.2. *The Effectiveness in Education*

In the school systems, affirmative action has illustrated some signs of success. The percentage of black college students between the ages 18 and 24 has increased since the mid-1950's. From only 4.9% in 1955, the percentage has steadily climbed from 7.8% in 1970 to 9.1% in 1980 and reaching 11.3% in 1990. While the overall percentage of black college attendees has increased, the proportion of high school blacks has not increased. In 1977, the proportion of black and white high school graduates attending college was nearly equal. Since 1977, however, the proportion of black high school graduates attending college has dropped compared to the proportion of white high school graduates going to college.<sup>44</sup> The latter statistic may have more to do with an increase in black high graduates that could therefore lower the proportion of black high school graduates attending college while still increasing the numbers of blacks going to college. Another study conducted in 1997 noted that fewer than 1% of the 10,000 lawyers in the state of New Jersey were non-white. By 1990, the number of non-white lawyers had increased to 2,000. Among the 2,000 non-white lawyers now practicing law, 40% of them, or around 800, had come through the affirmative action program at Rutgers University.<sup>45</sup>

A study by William G. Bowen and Derek Bok took into account the experiences of thousands of black students over a 20-year period at some of the nation's most selective colleges and universities. Although black students are admitted with having lower grades on average and graduate at a lower rate than their white counterparts, of those black students who do graduate, they seek advanced degrees at the same rate as white graduates. In regards to seeking degrees in law, business, and medicine, they are slightly more likely than their white counterparts to seek advanced degrees in these fields of study. Bowen and Bok believe that without affirmative action programs, minority applicants would have suffered tremendously while the advantage gained from white applicants would have been very minimal.

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<sup>44</sup> Eisaguirre, Lynne. Affirmative Action. California • Colorado • Oxford: ABC-CLIO, Inc., 1999: 93.

<sup>45</sup> Eisaguirre: 106.

Furthermore, both black and white students recounted social interactions with students of different races being a positive experience that helped them interact with people of different races after graduation.<sup>46</sup> Bok summarizes the study as follows:

*“If you ask what bothers the public about these admission policies, it is probably the sense that there is some unfairness here. I have two responses. One is that there is a tendency to equate fairness with high school grades and scores that is not well-founded in terms of admissions practices. Second, fairness is something that really has to be defined in terms of what the institution is legitimately trying to accomplish. In the case of universities and colleges, race turns out to be very relevant because we are interested in what students can teach one another and race is a part of that in an increasingly diverse society. Well-prepared minorities have a special leadership role because there have been so few in the past. So what is fair involves the question of the purpose of a university. And, ultimately, that question is not soluble with data.”<sup>47</sup>*

The Bok and Bowen study is one of the few studies that have been taken over a long period of time to show the development of affirmative action programs and their long-term results. Studies are at times misleading due to people who want to present the information in his or her favor as can be the case with politicians and special group interests to name a few. Many of the failures in society are inappropriately attributed to an ineffective affirmative action policy. For example, some use the level of poverty in a minority community as a measure of the effectiveness of affirmative action. However, fighting discrimination and fighting poverty are separate goals. Affirmative action is intended to give greater opportunities and thereby potentially lift someone out of poverty, but he or she must

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<sup>46</sup> Bronner, Ethan. “Study of Affirmative Action at Top Schools Cites Far-Reaching Benefits.” The New York Times. 9 September 1998: 1 – 3.

28 May 2008 <<http://query.nytimes.com/gst/fullpage.html?res=9D07EFD6133EF93AA3575AC0A96E958260>>

<sup>47</sup> Bronner: 3.

still work hard to be qualified. It demonstrates that if you work hard, you can succeed and also serves as a role model for others. Affirmative action was never intended to replace social welfare programs. Its main focus is on fighting discrimination and encouraging integration for the betterment of the entire society<sup>48</sup>.

Affirmative action has evolved to fit with an ever-evolving American society. Despite its deficiencies, the studies have provided evidence of it succeeding towards greater integration. Because the policy is malleable, it can be applied depending on the circumstances of the situation. In any case, affirmative action is a form of active voluntarism to create a more diverse population in the education and employment fields. The controversy arises when it comes to the degree of active voluntarism that should be enacted. Should France implement a more active recruitment program or establish goals and timetables as was the case in the United States during the 1970's. Would such a policy work to integrate and combat discrimination in France? What are the obstacles preventing its adaptation? Perhaps the goals and objectives in French society differ from those in American society which therefore render affirmative action incompatible.

#### **2.4. The Debate on Affirmative Action**

The evolution of affirmative action with its wide-ranging policies from outreach programs to specific goals reflects the heated debate between its supporters and its opponents. Ironically, many proponents for and opponents against affirmative action are generally in favor of the same result: to have a “color-blind”, just society. It is simply the methods with which they differ. Proponents believe affirmative action is the method to eventually achieve a “color-blind” society. They reason that because society is currently not color-blind, measures should be taken to recruit minorities to give them an equal opportunity. Opponents believe that by distinguishing a person by his or her race, it contributes to the problem rather than resolves it. A person should earn employment or education rather than it being given

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<sup>48</sup> Berry, Mary Frances. “Affirmative Action: Why We Need It, Why It Is Under Attack.” Curry: 305-306.

to him or her. This, however, assumes that a minority person who is as qualified is not discriminated against. If anything, he or she would have to work even harder to gain an equal opportunity.

Since its initiation, it has been a tug-of-war between the two groups with a myriad of activists wanting more policies geared towards equality while others aim for less policy-driven goals towards equality. Essentially, the debate focuses around two important principles, liberty, in that an employer or recruiter should be free to hire or enroll whomever he or she would like, versus equality, in that those who are deemed less equal or having fewer opportunities ought to receive preferential treatment in order to create a more fair and equal society. Supporters of affirmative action draw attention to the need for equality to help those who have been historically disadvantaged while opponents of affirmative action emphasize the liberty to select someone regardless of race, ethnicity, and/or sex.<sup>49</sup>

#### *2.4.1. The Arguments Advocating Affirmative Action*

Supporters of affirmative action believe that society must actively overcome discrimination if the society is to become one in which all receive equal opportunity. They believe that real progress towards equal opportunity did not succeed until there was government intervention in the form of affirmative action to punish discrimination and guide society towards integration and diversity. As seen in the early steps towards affirmative action, simply creating an agency that would hear complaints from victims of discrimination did not combat discrimination effectively since the burden lied on the victim to come forward and make a complaint against his or her employer. Already working in a hostile environment, he or she may not feel comfortable making such a complaint. Upon this realization, in order to ameliorate the situation, the government, in their eyes justifiably, became more involved. Without the government's intervention, pro-affirmative activists believe progress

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<sup>49</sup> Kellough: 75.

would have been slow at best. According to them, “justice delayed is, indeed, justice denied.”<sup>50</sup>

Also, there is the belief that society ought to make up for past wrongs instead of idealistically stopping discrimination and assuming the immediate existence of equal opportunity. Two analogies support this line of argument, one made by Samuel Krislov and the other by President Lyndon B. Johnson. Samuel Krislov uses the analogy of two runners in a race; one is made to carry a heavy burden. As the race begins, the unburdened runner logically gains a lead. Realizing the injustice, it would be unfair to relieve the runner of his burden and expect that everything is now fair after the other runner had gained a sizeable lead.<sup>51</sup> The newly unburdened runner should be aided to catch up in order to make the race fair. In 1965, President Johnson made the following analogy to defend affirmative action, “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 you have been completely fair.”<sup>52</sup>

Affirmative action advocates point to the benefits of a diverse workplace or student body. Numerous empirical studies have shown that having a diverse workplace can be beneficial in that it provides a wider range of ideas and alternatives that may not have otherwise been introduced in a homogeneous workplace. For example, when two groups are composed, one being homogeneous and the other heterogeneous, the homogeneous group is able to outperform the heterogeneous group in the beginning. Nevertheless, over time, the heterogeneous group outperforms the homogeneous group and is able to resolve more complex issues. In studies, the homogeneous group did not benefit in the long run from being composed of similar, like-minded people. A diverse group is able to provide many different angles to resolving an issue. The work of Patricia Gurin provides useful findings to the benefit of a diverse school body. “Exposure to a variety of views allows students

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<sup>50</sup> Kellough: 82.

<sup>51</sup> Kellough: 77.

<sup>52</sup> Johnson, Lyndon B. “To Fulfill These Rights.” Curry: 17.

the opportunity to evaluate and assess their own perspectives and prepares them after graduation to deal effectively with diversity in an increasingly interconnected and diverse world.”<sup>53</sup>

#### 2.4.2. *The Arguments in Opposition to Affirmative Action*

Several arguments are made against the policy of affirmative action. Among them is the idea that it violates the American idea of individual merit. A person’s achievements should be based on his hard work, motivation, and pursuit of the goal in question and not based on racial, ethnic, or sexual preferences. Opponents of affirmative action would rather have a strict non-discrimination policy implemented in which selection is based entirely on qualifications. The argument underlies the American idea of individuals being able to pursue a dream or a goal in contrast to a more collective society in which groups are the targets. The interests of a racial group should not trump or be at the expense of the rights of an individual. However, the use of preferences seems to only be of concern in regards to racial or sexual preferences. At the moment, there are many preferences given to other groups such as to disabled veterans. Business owners may hire a relative, and college admission officers may accept the son or daughter of a high paying donor. David Skrentny points out, “when it comes to affirmative action, it may not be the preference as such that is objectionable, but the fact that it goes to minorities or women who are deemed less deserving of special consideration, despite the sacrifices they have made and often continue to make because of discrimination directed against them.”<sup>54</sup> Despite this evidence, opponents still believe that, through their eyes, it is unreasonable to replace one form of discrimination with another.

Opponents also argue that affirmative action benefits the wrong individuals. They find it unjustifiable to give preference to an individual with no indication of having been disadvantaged. Minorities have made huge strides in gaining social equality, and now there is no need to create preferences for people who do not seem

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<sup>53</sup> Kellough: 79.

<sup>54</sup> Kellough: 84.



to be disadvantaged. Because schools have been desegregated, opponents argue, graduates have been, therefore, “accorded the same opportunities, and they have only their performance or seriousness of purpose to account for individual differences, without a credible racial excuse”.<sup>55</sup> As a counterargument, affirmative action was designed to advance equality among entire minority groups. Therefore, if a company previously excluded African-Americans or currently has an underrepresented minority workforce, then proponents argue, in this case, affirmative action is just despite the fact that an individual may not seem disadvantaged.

This, however, begs the question how long affirmative action should last. Being that it was designed to be a temporary policy, opponents may feel it is time to cease preferences while proponents believe society has yet to reach the level of equal opportunity that would justify scrapping affirmative action. Although affirmative action is perhaps less needed as in previous decades, disparities still persist among certain parts of society.

Affirmative action will place “the cost of compensation for past or present discrimination on people who may have never been guilty of discrimination themselves.”<sup>56</sup> Along this line of thinking, affirmative action is reverse discrimination in that it discriminates against white men. Those who work hard to should not be denied selection in the name of a “more balanced” student enrollment, a “more diverse” workplace, or a “more representative” contracting force. On the contrary, “to suggest that affirmative action treats white men unfairly is to suggest that their situation is equal to that of minorities.”<sup>57</sup> It is to suggest that society discriminates against white men, and it is they who need assistance in securing equal opportunity. White men fear losing some of the competitive advantage that they enjoyed all these years during the suppression of minorities.

Many challengers of affirmative action claim that minority persons will be judged as having benefited from affirmative action as opposed to deserving his or her

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<sup>55</sup> Kellough: 134.

<sup>56</sup> Kellough: 88.

<sup>57</sup> Kellough: 88.

employment position, college scholarship, or whatever the case may be. The stance disregards the fact that affirmative action policies do not stipulate selecting an under qualified minority person. Preferences are for those who are qualified. In a study that involved 52 black college students, stigmatization because of affirmative action programs did not seem to trouble them. In response to whether you would “fear that some white coworkers would think [you] had been hired through affirmative action and couldn’t do the job,” only 19% of the black students agreed with the statement. Similarly, when asked if you “would take the job, but [you] would worry that [your] white coworkers would think [you were] unqualified,” only 21% answered affirmatively.<sup>58</sup>

The passionate debate surrounding affirmative action is also a very complex and complicated one. As it is a matter of important, life changing opportunities, being accepted to college or finding employment, for example, some may not want to surrender any potential competitive advantage. Seeing as how it is an issue of those who “have” and those who “have not”, it is understandable the intensity generated by the debate.

### **3. DISCRIMINATION AND INTEGRATION IN FRANCE**

Affirmative action in French society conjures up many different reactions. It is viewed as an American invention that perpetuates discrimination rather than prevents it. Most importantly, affirmative action encourages statistical data on minority groups to measure the progress, or lack thereof, of integrating the minority population in areas of employment or education. Without the statistical data, it would be difficult for business leaders and educational institutions to know where affirmative actions should be implemented to benefit the under represented minority. The concept of statistical information goes strongly against the French republican ideals and policies of integration.

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<sup>58</sup> Eisaguirre: 109-110.

### 3.1. The French Republican Model

Under French republicanism, the private and public spheres are kept strictly separate. Article I of the French Constitution reinforces this idea by declaring France to be a secular nation: *La France est une république indivisible, laïque, démocratique et sociale*.<sup>59</sup> The passage of the 1905 Law on the Separation of Church and State officially prohibited the state from recognizing or funding any religion. Religion is to be kept in the private sphere while the state is to regard each citizen equally. In the public sphere, “citizenship makes all individuals equal before the State by transcending all individual associations (cultural, religious, social, economical, etc.).”<sup>60</sup> French law does not recognize any such differences. Hence, different communities do not exist in the ideal public sphere, according to the republican conception of the nation, and each individual is treated as an equal citizen of the French nation and not as a member of one of several groups. This stance reinforces one of France’s most influential philosophers, Jacques Rousseau, who believed that man is only truly free if there is no direct intermediate between him and the State.<sup>61</sup> Therefore, the State does not take statistical information that would highlight any differences or potential divisions within French society. However, French censuses do report information regarding those who are of French nationality and those who are foreign. Acquisition of French citizenship is the marker for integrating and committing to what it means to be a French citizen. The national identity of a French citizen is formed through political means and public opinion. According to Dominique Schnapper, “the national identity is not a biological fact, but rather political, in that one is French through the practice of one language, through the learning of one culture, through the willingness to participate in the economic and

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<sup>59</sup> Conseil Constitutionnel. “Constitution du 4 Octobre 1958.” 4 February 2008. 28 May 2008 <<http://www.conseil-constitutionnel.fr/textes/constit.htm>>

<sup>60</sup> Rea, Andrea and Maryse Tripier. *Sociologie de l’immigration*. La Découverte (Repères N° 364), 2003: 99.

<sup>61</sup> Bougrab, Jeannette. “Vers des « affirmative actions » à la française ?.” Conseil d’analyse de la société. *Pour une société de la nouvelle chance*. Paris: La Documentation Française, 2005: 51.

political life.”<sup>62</sup> France uses this colorblindness and disregard for all differences among its citizens as means to combat discrimination. Through its eyes, if the differences are not noticed, then it is impossible to discriminate. Regarding integration, by gaining French citizenship, each person belongs to the French society and is, therefore, committed to “French ideals”.

This approach towards integration and discrimination has been highly criticized for stigmatizing any public expression of identity from a person of immigrant descendants.<sup>63</sup> Also, it is idealistic to believe that the simple acquisition of French citizenship will lead to a commitment to Republican principles. Herein lies the problem for the French society on how to effectively fight discrimination and encourage integration. Sophie Body-Genrot sums up the problem facing the Republican approach as a “general amnesia, regarding the formation of the French nation and the consequences of the colonial wars, [that] endures which is disguised under the universal principles of the Republic which is supposed to magically unite all citizens.”<sup>64</sup> Is it possible for France to fight discrimination while integrating waves of immigrants and their children within the framework of the Republican policies?

### **3.2. Initiatives Fighting Discrimination in France**

#### *3.2.1. Initiatives in Employment*

Because France does not officially recognize the existence of minority groups, it has been difficult to gather any data illustrating the level of discrimination, especially against French citizens of Maghrebin background. Only the following information may be legally collected: last name, first name, nationality, former nationality when necessary, nationality or place of birth of parents, address.<sup>65</sup> This

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<sup>62</sup> Rea and Tripier: 99.

<sup>63</sup> Rea and Tripier: 100.

<sup>64</sup> Body-Gendrot: 19

<sup>65</sup> Pauwels, Marie-Christine. “Diversity Management in America and the Affirmative Action Debate in France.” University of Paris, France: 20.

makes it particularly problematic to collect information on the visible minorities of immigrant background since they and their parents could be French citizens, but also be discriminated against for being of immigrant background. In this case, the French government would not recognize the person as being any different, and it reinforces its refusal to differentiate its citizens by prohibiting the collection of statistical information.

The French government and French businesses have taken some initiative. In 1999, the French government created the *Observatoire du Groupe d'Etudes des Discrimination* (GED) whose objective is to observe and analyze discrimination, followed by alerting the general public and the social and political actors in order to assist them in finding the most adequate method for combating discrimination.<sup>66</sup> The GED was simply an observing institution, but could not in itself implement change. Also in 1999 was the creation of the *Commission Départementale d'Accès à la Citoyenneté* (CODAC) which aims to help people of immigrant background integrate into society by assisting with employment and lodging. Of the approximately four hundred cases that were brought to CODAC's attention, hardly twelve succeeded at condemning the perpetrator given the fact that it is difficult to prove discrimination.<sup>67</sup> In 2004, the *Haute Autorité de Lutte contre les Discriminations et pour l'Egalité* (HALDE) was established. Its main mission is to “fight against discrimination prohibited by law and to promote equality so that your actions are appreciated and spread.”<sup>68</sup> The HALDE assists those who claim discrimination by investigating the claim and informing the victim of possible legal proceedings.<sup>69</sup> Although the HALDE takes a more pro-active role in helping victims, it often relies on the forthcoming of victims to lodge a complaint. The burden of proof is also an obstacle

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<sup>66</sup> 28 May 2008 <[www.impact209.org/wp-content/uploads/2007/10/pauwels.pdf](http://www.impact209.org/wp-content/uploads/2007/10/pauwels.pdf)>

<sup>66</sup> Pauwels: 24.

<sup>67</sup> “Discriminations Raciales.” POINFORE. 4 July 2007.

28 May 2008 <[http://www.poinfore.org/document/rac\\_c003.pdf](http://www.poinfore.org/document/rac_c003.pdf)>

<sup>68</sup> HALDE. HALDE. “Missions et pouvoirs.”

28 May 2008 <<http://www.halde.fr/haute-autorite-1/missions-pouvoirs-24/missions-pouvoirs-5.html>>

<sup>69</sup> Pauwels: 25.

to proving discrimination. Outside of these institutions, France has taken other initiatives that are intended to give equal opportunity to all citizens in the fields of education and employment while also respecting the principles of a Republican society. That France has anti-discrimination policies that respect the Republican principles is debatable when it concerns education as will be later mentioned.

In the field of employment, for example, resumes exclude any reference to race, ethnicity, or religion. By this exclusion, employers are presumed to be colorblind and focus solely on the qualifications for the job. The individual with the most suitable qualifications for the position will be hired based on merit rather than race, ethnicity, or religion. This approach means, in an ideal situation, that the employer will not be able to make any racial, ethnic, or religious assumptions until having met the applicant for an interview, and would then, provided the interview was successful, hire the applicant regardless of race, ethnicity, or sex. Unfortunately, tests have proven the approach to be less than perfect.

Researchers have documented the discrimination of applicants based on whether the origin of his or her name. Resumes were sent out to employers with identical experiences, but one with a name of Arabic origin and another with a name of French origin. If the applicant's name seemed to be of Arabic origin, he or she received far fewer responses from employers in contrast to applicants with French names even though both applicants have the same qualifications. The applicant with an Arabic name has less than a 5% chance, a ratio of 1 to 20, of receiving a positive response.<sup>70</sup> In another study, 1,806 fictitious resumes were sent in response to 258 help-wanted advertisements for sales salespeople and managers. Around 30% of white men and 26% of white women received positive responses, but when the names were changed from French names to Arabic names, only 5% received positive responses.<sup>71</sup> Many of the applicants with Arabic-sounding names can attest to such

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<sup>70</sup> Bennhold, Katrin. "In France, Discrimination on Upswing as Violence Smolders." *The International Herald Tribune*. Yale Global Online. 10 December 2007. 28 May 2008 <<http://yaleglobal.yale.edu/display.article?id=10072>>

<sup>71</sup> Fuller, Thomas. "THE WORKPLACE: In France, worker bias has a name." The International Herald Tribune. 24 November 2004.

discrimination based on his or her name. Fatima Talbi, a French citizen, was so frustrated with the employment rejections that she decided to change her name to a more French-sounding name to look into whether changing her name would change her job perspectives. Having sent her resume under the name Catherine Lecomte, she finally received an interview for a position which she previously applied for twice under her real name, and twice she received rejections.<sup>72</sup> In another case, Farid Quesnel-Djedid, travel agent, goes by the name Xavier when at work because he has “learned long ago that having an Arab-sounding name in France can mean rejection by potential employers and clients.” Quesnel-Djedid claims, “If I call and say, ‘It’s Farid on the line,’ I won’t get the account.”<sup>73</sup>

In light of these studies, it has become clear that discrimination has continued by adapting to the Republican ideals and whose existence remains pervasive and difficult to thwart. To remedy the problem of name discrimination, policy makers have explored the option of anonymous resumes in which the name of applicants will not appear on his or her resume. The goal of anonymous resumes would be “to strip resumes of anything that could tip off recruiters to a person’s racial, ethnic and national background or other information that could be used to discriminate – name, age, sex, even residential postal code.”<sup>74</sup> The implementation of the anonymous resume policy may result in a more just recruitment favoring those who may otherwise be discriminated against. However, the policy does not resolve discrimination at its root. Instead, employers can discover the race, ethnicity, and sex during the interview process. The anonymous resume policy simply puts a blindfold over such information waiting to be uncovered at a later time. Employers can still discriminately refuse to hire an applicant. Mouloud Aounit, head of the anti-racism

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28 May 2008 <[http://www.iht.com/articles/2004/11/24/workcol\\_ed3\\_\\_0.php](http://www.iht.com/articles/2004/11/24/workcol_ed3__0.php)>

<sup>72</sup> “Anonymous resumes may fight discrimination in France.” *USA Today*. 6 December 2004.

28 May 2008 <[http://www.usatoday.com/money/world/2004-12-06-fighting-bias\\_x.htm](http://www.usatoday.com/money/world/2004-12-06-fighting-bias_x.htm)>

<sup>73</sup> Fuller, “THE WORKPLACE: In France, worker bias has a name.”

<sup>74</sup> Anderson, John Ward. “French Firm Test Colorblind Hiring.” *The Washington Post*. 29 January 2006.

28 May 2008 <<http://www.washingtonpost.com/wp-dyn/content/article/2006/01/28/AR2006012800834.html>>

group MRAP (*Mouvement contre le racisme et pour l'amitié entre les peuples*)<sup>75</sup>, summarizes this fear, “One can read an anonymous CV and call the person in. But who’s to say, when the name is Mohammed, when the skin is dark, the employer won’t throw the anonymous CV into the garbage.”<sup>76</sup> Implementing anonymous resumes will not result in a change of mentality and culture that is deep rooted in the minds of some employers.

### 3.2.2. *Initiatives in Education*

In the educational system, France has created the priority education areas (ZEP)<sup>77</sup> which consists of schools in “a disadvantaged social and cultural environment [making] educating the pupils especially difficult.”<sup>78</sup> The program is ironically a form of affirmative action and breaks with the traditional Republican values by allocating additional funds to schools that perform poorly, and by giving incentives to teachers for working in such these areas. Also, one of the criteria to receiving funds is that thirty percent of the students be of immigrant background.<sup>79</sup> The priority education areas are, therefore, primarily home to large, poor immigrant populations. The program seeks to provide better education to students who may not, otherwise, receive a standard education.

According to the INSEE (*Institut National de la Statistique et des Études Économiques*)<sup>80</sup>, the program of priority education areas has had “no significant

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<sup>75</sup> Translated into English: Movement Against Racism and for Friendship between Peoples.

<sup>76</sup> “Anonymous resumes may fight discrimination in France.” *USA Today*. 6 December 2004. 28 May 2008 <[http://www.usatoday.com/money/world/2004-12-06-fighting-bias\\_x.htm](http://www.usatoday.com/money/world/2004-12-06-fighting-bias_x.htm)>

<sup>77</sup> Priority education areas is translated from the French *Zones d'éducation prioritaires*

<sup>78</sup> “The Education System in France.” *Ministère des Affaires étrangères*, 2007. 20 April 2008 <[http://www.ambafrance-us.org/atoz/edu\\_fr.asp](http://www.ambafrance-us.org/atoz/edu_fr.asp)>

<sup>79</sup> Conley, Marjorie. “Sciences Po – an elite institution’s introspection on its power, position and worth in French society.” *New York University*. 9 September 2003. 28 May 2008 <<http://journalism.nyu.edu/portfolio/conley/sciencespo.html>>

<sup>80</sup> Translated into English: National Institute of Statistics and Economic Studies.



effect on the success of students”<sup>81</sup> based on the graduation rates. Schools in priority education zones become synonymous with poor standards and immigrants. As a result, many parents avoid sending their children to such schools. Parents conclude that the higher the percentage of immigrant children equates to the failure of education for all. This situation can pose a larger problem for schools in priority education zones as the good students, average students, and French students try to bypass having their children attend priority education schools, which consequently prevents integration and contributes to an overall decrease in the average classroom size in priority education schools, leaving the children of immigrants behind.<sup>82</sup> In addition, people start to make conclusions of school standards based on the reputation of the neighborhoods in which the schools are located. The priority education funding has made it clear to the public which schools are located in poorer areas that will be frequented by children of immigrants. Instead of forcing wealthier parents to send their children to poorer schools, which they would surely object to, perhaps it would be more practical to send some of the poorer students to wealthier schools in order to promote integration. This occurred temporarily in some schools in the United States during the 1970’s in order to increase integration.

In another attempt to integrate France’s school systems comes from the *Conventions d’Education Prioritaire (CEP)*, which is a program started by *L’Institut d’etudes politiques*, or commonly referred to as the Sciences Po, designed to make “new entrance criteria for students coming from less economically favored social strata.”<sup>83</sup> Traditionally, students needed to pass the *concours*, a rigorous test consisting of several essays that must be written under strict time limits, in order to be accepted to the Sciences Po. An overwhelming percent of the student body comes from the socially favored class. The *concours* exam is seen to be a major contributing factor to the inequality among the social classes. For example, the

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<sup>81</sup> Bénabou, Roland, Francis Kramarz, and Corinne Prost. “Zones d’éducation prioritaire : quels moyens pour quels resultants ?” *Économie et Statistique* N° 380, 2004: 18. 28 May 2008 <[http://www.insee.fr/fr/ffc/docs\\_ffc/es380a.pdf](http://www.insee.fr/fr/ffc/docs_ffc/es380a.pdf)>

<sup>82</sup> Rea and Tripier: 67-69.

<sup>83</sup> Conley, “Sciences Po.”

*concours* may require a dissertation on general culture or a test of language skills which exceed the academic curriculum and is often connected to belonging to a certain, more favored economic or cultural milieu<sup>84</sup>. Furthermore, most who pass the exam had attended a preparatory school specifically tailored towards aiding the student in passing the *concours*, while those who have not attended usually fail the exam. The school enforces demanding entrance requirements and also has limited availability. As a result, the Sciences Po has formed a partnership with the priority education areas to create a backdoor for students from less socially favored classes to be able to attend the elite school. Instead of having to pass the *concours*, these students must write an in-depth paper and defend it in a 40-minute interview. It may offset the widely perceived idea that the *concours* socially discriminates by providing a visible alternative to acceptance in the elite school. The students selected for the CEP must be students who attended a school in a priority education area. The result is that many of the students accepted to the Sciences Po through the CEP are of immigrant background. This unintended side effect has spurred much debate surrounding the CEP and its relation to affirmative action.<sup>85</sup>

Some argue that not allowing student admission through means other than the *concours* violates the Republican model of equality since there are now two paths to admission, and students are not admitted uniformly. Some also argue the CEP would result in a lowering of standards, while others see the diversity as a positive effect. Amongst heated debate, the National Assembly and the Senate in 2001 stated, “the Boards of Directors at Sciences Po was able to determine the conditions and modalities of admission, and it would be allowed to adopt procedures of admission to assure diverse recruitment.” To many, this screams of affirmative action. By definition, affirmative action must not focus on race or sex as the American Heritage Dictionary indicates it to mean, “a policy or program that seeks to redress past

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<sup>84</sup> Deschavanne, Eric. “La discrimination positive face à l’idéal républicain : définition, typologie, historique, arguments.” Conseil d’analyse de la société. Pour une société de la nouvelle chance. Paris: La Documentation Française, 2005: 117.

<sup>85</sup> Conley, “Sciences Po.”

discrimination through active measures to ensure equal opportunity.”<sup>86</sup> Under this definition, the CEP and ZEP programs could be considered affirmative action programs. With many French opposed to the quota systems that they associate with affirmative action, Cyril Delhay justifies the program since it focuses on the economic and social situations of students, not on their race, ethnicity, or sex. This can be contested however since thirty percent of students from the ZEP must be of immigrant background, but by claiming the policy is based on social and economic settings, the policy has been regarded as ideologically compatible with the Republican model by the French State Council. The resulting ethnic diversity that is attributed to the program is not recognized by the French state given that that would mean an acknowledgement of the failure to implement the Republican model of equality.<sup>87</sup>

These institutions and policies represent the efforts the French state and society are making to integrate their population while fighting discrimination within the context of a Republican society. However, many of these initiatives may not be strong enough to change the exclusion of France’s visible minority population. Some say that any further efforts to proactively support minority integration in the form of affirmative action would violate France’s Republican model of not recognizing differences among its citizens.

### 3.2.3. *Parity Law*

One of most interesting policies established in France in order to grant equal opportunity is the policy known as the parity law. On July 8, 1999, the French Parliament adopted a constitutional law aimed at creating equality between men and women. The parity law was highly debated since it seemed to contradict the French republican model of regarding French citizens as equal without any differences, yet it managed to receive support from many politicians and citizens. The new version of

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<sup>86</sup> “Affirmative Action.” Def. 3. [Dictionary.com](http://dictionary.reference.com). Lexico Publishing Group, LLC., 2008. 28 May 2008 <<http://dictionary.reference.com/browse/affirmative%20action>>

<sup>87</sup> Conley, “Sciences Po.”

the constitutional law would favor equal access between men and women to mandates and functions. The purpose of the constitutional revision was to provide legislators the basis for creating other laws, such as in article L 300 of the electoral Code, which mandated that women represent 50% of the listed candidates on the municipal (only pertains to cities with more than 3,500 habitants), regional, senatorial, and European levels.<sup>88</sup> If the party did not uphold this obligation, it could be financially disciplined through sanctions.<sup>89</sup> A requirement to assign women to 50% of the electoral positions is debatably a policy of affirmative action in the strictest, most extreme sense and seems to starkly contradict France’s policy of non-recognition of differences and beholding all French citizens as equal in the eyes of the State. The aim of the law itself could easily be considered to have come from an affirmative action policy. It states that “insufficient participation of women in public life and in its institutions has rendered necessary the promotion of parity between men and women through appropriate measures.”<sup>90</sup> Nonetheless, the French government managed, in its view, to balance the objective of equality with the Republican principles of equality.

According to advocates of the policy, “sex was the universal difference between human beings, division cutting across all other groups, categories, and communities.” Parity, therefore, does not involve quotas since it does not favor a specific minority group, but instead, calls for the equality between men and women, the “two halves of the human race”<sup>91</sup>. The parity law would not violate the Republican principles of equality, but would rather achieve them, they argued. Advocates made sex the universal difference amongst all citizens in order to avoid any attempts by other groups to attempt similar laws of equality, resulting in a

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<sup>88</sup> Mossuz-Lavau, Janine. “Gender Parity in Politics.” Images de la France (SIG). 28 May 2008 <<http://www.ambafrance-us.org/spip.php?article612>>

<sup>89</sup> Mossuz-Lavau, “Gender Parity in Politics.”

<sup>90</sup> Levade, Anne. “Discrimination positive et principe d’égalité en droit français.” Pouvoirs N° 111, November 2004: 67.

<sup>91</sup> Krook, Mona Lena. “Competing Claims: Quotas for Women and Minorities in India and France.” Washington University. 6-7 April 2006: 29. 28 May 2008 <[http://artsci.wustl.edu/~ppri/Workshop\\_Papers/KrookPaper.pdf](http://artsci.wustl.edu/~ppri/Workshop_Papers/KrookPaper.pdf)>

‘differentialism’ in French society. By passing the constitutional revision, equality between sexes became, instead of affirmative action, a constitutional mandate. Not surprisingly, many opponents use the same arguments against parity that are used against affirmative action. They believe parity would be to the detriment of men and encourages differentiation.

Whether for or against the policy, the result is one that does make a difference among the French population, albeit a “universal” difference. Such a universal difference could arguably be made between white French citizens and non-white French citizens, but because these differences are not core to society, they are not held in the same regard. Mandating that women represent one half of the candidates on party lists enforces “equality” in a manner that affirmative action does not mandate. Affirmative action programs in the United States do not legally require any set percentage of women in any field of public life.

### **3.3. The Arguments and Concerns of France**

In principle, the objectives of affirmative action, to promote equal opportunity and to fight discrimination, do not differ from the objectives of the French state. It is, however, the method in which to accomplish such objectives that triggers a heated debate surrounding the question of implementing affirmative action. The primary objection against affirmative action from a French point of view is its contradiction to the French Republican model that all citizens should be treated equally by the State, yet there are many arguments among French scholars for and against its implementation in French society. Many of the arguments taking place in France regarding affirmative action are similar to those debated in the United States. In addition to the French republican ideals, a couple arguments mark the difference between the United States and France. In France, some believe in the necessity for the state not to consider differences, namely to stay in line with its ideals. Also, opponents believe affirmative action is not historically legitimate as may be the case in the United States and is thus not applicable. They also fear affirmative action leads

to a society of communities. Advocates point out the existence of the parity law in France which many consider a variation of affirmative action.

### *3.3.1. The French Republican Ideals*

For French society, the notion of affirmative action conjures up the idea of a foreign concept aimed at creating equality through quotas and reverse discrimination that is inherently incompatible with French ideals of universalism and individualism. These ideals entail that each French citizen be regarded as equal without any adherence to one group based on his or her race, ethnicity, or sex.

Opponents of affirmative action are not so preoccupied with the neutrality of the State or equality opportunity, but rather the expression of the humanist ideal of a society in which each person is perceived as simply a person. In such a society, blindness towards differences creates a common humanity while affirmative action, by categorizing or appointing a specific identity to someone, may cause the person to place more importance on the specific identity in order to garner more rights. The argument corresponds with the fear that affirmative action would create a multicultural society that would threaten the universal culture. Affirmative action, they argue, would give rise to many cultures based on the race or ethnicity of the group. In the political arena, there would be representatives elected that would represent the diverse groups. Such a development would contradict the Republican principal of one nation, indivisible, in which elected representatives act for the general interest of the people or of the nation and not act for the interests of or as the defenders of a particular group's values. Also within the Republican ideology is the idea that race, sex, or ethnicity does not warrant preferential treatment. Instead, a person should be selected based solely on his or her qualifications, namely, the choices he or she has made as an individual to advance in society. Even if real equal opportunity is not attained, affirmative action is not seen as justification since its criteria is based not on what a person has done, but based on who the person is.

Lawyer and philosopher Ronald Dworkin believes the sole purpose of affirmative action is not to contend with individual rights or collective rights, but

rather to reduce the feelings of racial divisions in society. The goal is to respond to a political objective of the general interest which is to break down the structural discrimination that African-Americans have been victim to in American society. The goal is not to create distinct social groups, but to create a society in which all can be viewed as the same, as an individual. By employing more African-Americans, they will start to feel greater solidarity with the White majority which will result in all persons seeing one another as individuals. For Dworkin, affirmative action is an integration process that truly achieves a Republican society. He points out that the lackadaisical policies of the government did not stop the feeling of racial belonging, but rather may have encouraged it. According to Dworkin, “the United States will suffer racial divisions as long as the most important, most satisfying, and most lucrative careers remain the privilege of the white race, while others feel systematically excluded from the social and professional elite.”<sup>92</sup> In addition, “increasing the number of Blacks in liberal professions will reduce the feelings of frustration, injustice, and racial belonging in the black community to the point that they will start to see themselves as individuals likely to succeed as the others based on their talents and motivation.”<sup>93</sup> The connection between skin color and social failure plays a significant role in creating racial stereotypes and reinforcing the sense of belonging along racial lines. Affirmative action, therefore, helps unify a society by getting rid of this connection. Because skin color would not equate to social failure and vice-versa, such perpetuations of racial stereotypes would weaken. As African-Americans start to feel they have an equal chance at job employment and higher education as the rest, they would no longer feel the need to mobilize against the majority as a racial collectivity. France’s efforts to view each person as equal when simultaneously not providing an equal opportunity may be exacerbating the problem. Many French minorities do not have a visibility in the media, government, or other

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<sup>92</sup> Deschavanne, Eric. “La discrimination positive face à l’idéal républicain : définition, typologie, historique, arguments.” Conseil d’analyse de la société. Pour une société de la nouvelle chance. Paris: La Documentation Française, 2005: 153.

<sup>93</sup> Deschavanne: 153.

well-respected visible positions. It may perpetuate the idea of inevitable failure if there are hardly any role models or too few examples of successful minorities.<sup>94</sup>

The experience of Colin Powell can attest to the success of Dworkin's hypothesis. Powell, former American Secretary of State, grew up in a family that never felt "constrained by their poverty or by their race." He claims, "I never really knew I was supposed to feel in some way constrained by being an inner-city, public school black kid, the son of immigrants." Because Powell did not perceive himself as a constrained victim, he had a greater belief in his ability to succeed. As a leading politician, his interest does not lie with the African-American community, but rather with the American society as a whole. In response to being a role model, Powell replies, "not just a black role model in that stereotypical sense, but an example of what you can achieve if you are willing to work for it."<sup>95</sup> Many other African-Americans are not fortunate enough to have lived in a multi-ethnic neighborhood and to have found the Army, an organization that has the reputation of crossing racial boundaries, as Powell did. For those who have been confronted with blatant discrimination, policies such as affirmative action may assist them and create more cohesive environments as the one that Powell grew up in.

The fundamental democratic principle, for Dworkin, is that of equality of respect and consideration for all individuals, that is to say, it is not defined by the equality of treatment, but rather by the treatment as an equal. In other words, two persons should be treated equally in some cases, but policies such as affirmative action can be justified to compensate a *handicap* in which one individual may warrant different treatment.<sup>96</sup> Affirmative action is justified as being the means that allows for the treatment in equals which, in turn, is necessary for real equal opportunities.

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<sup>94</sup> Deschavanne: 151-160.

<sup>95</sup> Towers, Ebony. "Bridging the black class divide." MSNBC.com. 19 January 2004. 28 May 2008 <<http://www.msnbc.msn.com/id/3978165/>>

<sup>96</sup> Deschavanne: 159.



### 3.3.2. *Lacking Historical Legitimacy*

One of the main arguments used in the United States for implementing affirmative action programs is to correct a historical blunder that led to the discrimination and social exclusion of a specific segment of the population. In the United States, affirmative action was intended to aid the integration of African-Americans. The African-American community consists of some people whose ancestors were enslaved and others who more recently were subject to segregation throughout the early 20<sup>th</sup> century. The United States government pursued affirmative action programs, in part, because of the recognition of past historical discrimination. The government's recognition and consequent efforts further legitimized the affirmative action policy. Because the government had discriminated against the African-American group, the government should aid in assisting African-Americans to "catch up" to their white counterparts by assuring a more even playing field, namely equality of opportunity. The French government, on the other hand, has never sponsored such systematic segregation on its territory. In fact, many African-Americans during the time of segregation found retreat in France. The only case of systematic segregation was under the Vichy government that segregated the Jews. There is a lack of legitimacy that would favor changing its current approach towards one of affirmative action because, in France's view, it has not legally embraced slavery or segregation on its territory.<sup>97</sup> There is not a legitimization to help a specific group to "catch up" in French society. This view may be changing nowadays as more information and protests reveal the discrimination and lack of integration in French society.

On the other hand, there seems to be some politicians who are unwilling to recognize the discrimination under French rule that was inflicted upon Algerians prior to gaining its independence. The French government has not apologized for its brutality during French colonialism. To add fuel to the fire, a new law was proposed in 1995 that would require French history books to purport the history of French colonialism by "recognizing in particular the positive role of the French presence

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<sup>97</sup> Bougrab: 53.

overseas, especially in North Africa, and give an eminent place... to the sacrifices of fighters for the French army raised in these territories.”<sup>98</sup> To the relief of many Algerians, President Jacques Chirac scrapped that article of the law in 1996.<sup>99</sup> The many atrocities committed by the French government ought to give affirmative action programs historical legitimization in a similar respect as slavery does in the United States. The French government committed crimes and discriminated against a segment of population within the French territorial claims.

### 3.3.3. *Society of Communities*

The French fear the unintended consequences of implementing an affirmative action policy. By officially identifying the minorities through statistics, many French analysts believe it will cause a society of *communautarisme* meaning that French citizens will become identified and categorized by the community to which they belong. The recognition of difference would lead to the formation of communities. These communities may have their own culture and identity that is different or complimentary to the French culture and identity. The French want to maintain a united culture and identity and fear any divergence would be detrimental to French society. This fear of diverging cultural groups may be a result of judging American society because this categorization may arguably pertain to the United States since there often is a reference to “Black culture” or “Gay culture” or any other minority group. When the United States Supreme Court ruled that universities may give preferential treatment to minority university students in the aim of creating a diverse student body, it justified its position by declaring that “the effective participation of all members of racial and ethnic groups in the civic life of our Nation is essential for achieving the dream of a Nation, one and indivisible.”<sup>100</sup> The United States government recognizes the differences amongst its citizens and can group them

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<sup>98</sup> “Colonial abuses haunt France.” BBC News. 16 May 2005.

28 May 2008 <<http://news.bbc.co.uk/2/hi/europe/4552473.stm>>

<sup>99</sup> “Sarkozy Confronted by Algerian Anger.” Time. 3 December 2007.

28 May 2008 <<http://www.time.com/time/world/article/0,8599,1690197,00.html?xid=feed-cnn-topics>>

<sup>100</sup> Bougrab: 56.

thereby, while still maintaining similar objectives with those of France. France believes that such policies emphasizing the group have led to the formation of group cultures. The French government, therefore, does not recognize the grouping of its citizens, but by means of discrimination French society inevitably groups its citizens. Many analysts believe that implementation of affirmative action would equate to recognizing the groups of citizens, the minorities, which, in turn, would result in a *communautarisme* “à l’américaine” of French society.<sup>101</sup>

The argument is refuted by Éric Fassin who claims there is no definite connection between the recognition of minorities and the establishment of different communities. First, in order to understand his hypothesis, he specifies discrimination only in the case that a law does not allow the practice of inequality based on a citizen’s differences. It is not legally justified to treat someone unequally based on the color of skin, for example. However, treating a person differently based on nationality or age can be legitimate since there exists laws that pertain only to, for example, minors or foreigners. Fassin makes the distinction between legitimately distinguishing and illegitimately discriminating. The question then arises what criteria is necessary to pass from legitimately distinguishing to become illegitimately discriminating. What is considered “natural” by societal standards dictates the difference. The naturalization of groups can change over time as can be seen recently in history. It was only in 1920 and 1945 that the United States and France respectively awarded women the right to vote. The policy of apartheid in South Africa legally justified the separation of races. Based on these examples, what a society considers “natural” evolves over time. With the acceptance of a group, and it becoming “natural”, treating a member of that group differently is a form of discrimination, whereas it may not have previously been. Discrimination is, therefore, based on the naturalization of a group and the legal awareness of equality granted to this group. Fassin deduces that a minority is the group “naturalized

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<sup>101</sup> Fassin, Eric. “Penser la discrimination positive.” sous la dir. De Daniel Borrillo, Lutter contre les discriminations. La Découverte, 2003: 58.

through discrimination”<sup>102</sup>. It is discrimination that defines a minority.

Discrimination predetermines the existence of a minority, but the existence of a minority does not predetermine the formation of a community. Fassin asserts that the only link to be drawn from the existence of a minority is that of discrimination.

“Minority politics is not to be confused with identity politics.” He believes it is the French Republican rhetoric in addition to anti-Americanism that has confined the debate to “French” universalism and “American” *communautarisme*. Thus, when discussing such issues as *parité*, advocates refer to it as a theory based on the representation of the different sexes instead of, in reality, a policy geared toward a minority in order to justify the policy as not leading to *communautarisme*.<sup>103</sup>

However, if a certain degree of *communautarisme* were to develop, perhaps that would not be a negative occurrence. The riots that took place in France affected many French cities, yet one of its most diverse, heavily immigrant populated cities, Marseille, remained relatively unscathed compared to the hundreds of cars set ablaze in the Parisian suburbs and other large cities. Of the approximate 800,000 inhabitants living in Marseille, around 200,000 are Muslim, 80,000 are Armenian Orthodox, 80,000 are Jewish, and 3,000 are Buddhist. There are 68 Muslim prayer rooms, 41 synagogues, 29 Jewish schools, and several Buddhist temples.<sup>104</sup> In Marseille, there exist different communities with community leaders that often act in the interest of the entire city. A synagogue was burned several years ago resulting in Jewish parents canceling soccer matches located in Arab neighborhoods. Kader Tighilt, a Muslim leader for the mentoring association Future Generations, contacted a Jewish leader Clement Yana in order to organize a football match with the participation of Muslim and Jewish players. Having community leaders who can mobilize its community and promote intercultural understanding has proven beneficial to Marseille’s population. The mayor of Marseille describes Marseille’s unique attitude as “not [opposing] each

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<sup>102</sup> Fassin: 59.

<sup>103</sup> Fassin: 58-61.

<sup>104</sup> Purvis, Andrew. “Marseille’s Ethnic Bouillabaisse.” Smithsonian. December 2007: 90.

other. We are all heading in the same direction.”<sup>105</sup> There appears to be a collectiveness in Marseille that is highlighted by accepting differences and even celebrating them. The Union of Muslim Families was established in order to prevent their children from losing their roots. The same organization arranged a citywide celebration for the Muslim holiday Eid al-Adha and invited Muslims and non-Muslims alike.<sup>106</sup> Such events promote unity through diversity.

If affirmative action resulted in the unintended consequence of *communautarisme*, the effect may not be as disastrous as some French pondants would like to believe. Marseille is a perfect example of a city that recognizes the differences among its population, but can still unite, co-exist, and consider themselves equal. As France becomes more diverse, it is inevitable that some immigrants will want to hold on to their roots and express their heritage in the public sphere. Those who, for example, choose to wear headscarves in public should not be patronized for being different. Instead, as seems to be the case predominantly in Marseille, difference ought to be recognized, accepted, and even celebrated. Through these means, a population can become united.

## **4. OPENING NEW DOORS**

### **4.1. A Change in Politics**

The societal tensions have placed a direct burden on the political leaders who are expected to seek solutions and are held responsible for their actions or lack thereof. With the fairly new creation of parity, politicians may be open to similar ideas. Recently, there has been a new wave of ideas and suggestions regarding affirmative action. Political figures have stirred up the debate surrounding affirmative action. French president, Nicolas Sarkozy, caused a commotion by being open to affirmative action. In addition, the French prime minister requested a report

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<sup>105</sup> Purvis: 91.

<sup>106</sup> Purvis: 86-92.

from Claude Bébéar to review solutions for dealing with discrimination and integration.

The current French president, Nicolas Sarkozy, has broken one of France's political taboos by being open to affirmative action and not opposing a system of quotas in order to integrate France's minority population. He has been one of the few French heads of government to speak straightforwardly about the failures of the French integration system. "French integration only works unfortunately in one sole domain: sports!"<sup>107</sup> Although he believes it is not necessary to create quotas at the moment, he acknowledges its significance for being used to correct a static situation and to accelerate equality as a temporary means. Perhaps by setting a date to end affirmative action, he would gain more support from fellow politicians. It would also give the opportunity to review the effects in order to decide whether to continue with the policy more aggressively, to not continue the policy at all, or to maintain the status quo.<sup>108</sup>

Claude Bébéar is a corporate executive who realizes the correlation between the general society and a private business. He was asked by the Prime Minister of France to look into ways of resolving discrimination and integration problems. Claude Bébéar submitted a report in regards to his findings. Bébéar has made several proposals to improve the integration of those of immigration descent in the business world. Although he claims to be reserved towards the idea of affirmative action, some of his proposals reflect a similar policy, but to be pro-affirmative action would invoke an immediate repulsion amongst many French politicians. He recognizes the difficulty in measuring the degree of ethnic diversity since French laws prohibit the collection of ethnic data. However, he proposes distributing questionnaires so that employees can anonymously respond to questions regarding discrimination, such as "Do you feel discriminated against" or "Do you presume to be part of a *visible*

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<sup>107</sup> "Entretien avec Nicolas Sarkozy." Conseil d'analyse de la société. Pour une société de la nouvelle chance. Paris: La Documentation Française, 2005: 296.

<sup>108</sup> "Entretien avec Nicolas Sarkozy." 291-296.

*minority?”*<sup>109</sup> The former question may be important in measuring the progress of the fight against discrimination. The second question cleverly determines if an employee is part of a minority group, while refusing to recognize what minority group he or she may be a part of. The question itself does not recognize the different minority groups, but it does recognize the difference between the white majority and the ethnic minority. In addition, the respondent may naturally associate him or herself with the specific minority group which the French fear may lead to a communitaristic society. Hence, it is arguable whether such a questionnaire would be permitted under French law. Working in its favor is the fact that the questionnaire would be available to employees and not used as part of the hiring process. If it did affect hiring practices, it would result in the similar practices of affirmative action.

The goal of Bébéar’s second proposal was to secure the interview for qualified employees.<sup>110</sup> A recent study showed that many employers do not even receive the curriculum vitas from those living in difficult neighborhoods. In an experiment involving several different companies, SOS Racisme illustrated the mistake of companies not to review the curriculum vitas of those coming from difficult neighborhoods. The companies allowed SOS Racisme to choose appropriate CV’s corresponding to job openings and job descriptions. The companies had committed themselves, based on the CV selection of SOS Racisme, to give the job seeker an interview. The program has lead to the hiring of many applicants from difficult neighborhoods, creating a more diverse workforce. Both the employers and the president of SOS Racisme, Dominique Sopo, were pleased with the results. Sopo attributed the success to the realization that, “if kids from the suburbs [from difficult neighborhoods] make it to university, you can be sure that they are motivated and hard-working.”<sup>111</sup> Bébéar takes note of the initiative, describing it as “intelligent

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<sup>109</sup> “L’action positive dans l’entreprise.” Discussion avec Claude Bébéar. Conseil d’analyse de la société. Pour une société de la nouvelle chance. Paris: La Documentation Française, 2005: 241-243

<sup>110</sup> “L’action positive dans l’entreprise.” 243.

<sup>111</sup> Bennhold, Katrin. “Minority youth see odds stacked against them.” The International Herald Tribune. 10 November 2004.

discrimination”.<sup>112</sup> The program made companies conscious of the potential asset of applicants from difficult neighborhoods. Another initiative to discourage the automatic dismissal of an applicant’s CVs is to instate anonymous CVs so that employers do not know the applicant’s name which could reveal his or her ethnicity. Bébéar’s goal is to get the job seeker his or her first interview with the employer.<sup>113</sup>

His other proposals deal with the education and recruitment of young professionals seeking internships. He finds it necessary to encourage companies to give internships to *visible minorities*. He, additionally, wants to transcend the message throughout France that it is in France’s interest to accept its diversity and to reflect this diversity, for example, in the media.<sup>114</sup>

Many of Bébéar’s proposals bear the resemblance to affirmative action initiatives. The questionnaire’s aim is to reveal the number of *visible minorities* without directly asking his or her ethnic background. Encouraging companies to hire applicants from difficult neighborhoods, taking into account his or her struggles living in a difficult neighborhood, goes beyond the strict comparison of qualifications, which more extreme advocates of Republican ideals favor. Seeking to employ more *visible minority* interns is an endorsement of active recruitment, a cornerstone policy of affirmative action.

#### 4.2. Business Recognition of the Benefits of Diversity

As some businesses realize the economic opportunities in diversity, they play ever more important roles in both the United States and France in diversifying their workforces. In fact, business initiatives may have had greater influence than those coming from the government. In order to avoid intervention from outside actors, such as the state or federal government, “if business does not take the lead, then the government and civil rights groups will be able to place restrictions on business policy that business will never be able to remove.” Thus, some large businesses were

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28 May 2008 <<http://www.iht.com/articles/2005/11/10/news/youth.php>>

<sup>112</sup> L’action positive dans l’entreprise.” 244.

<sup>113</sup> L’action positive dans l’entreprise.” 243-245.

<sup>114</sup> L’action positive dans l’entreprise.” 244-248.



not hostile to affirmative action measures, and even before the Civil Rights Act in 1964, there were some companies that actively sought African-American employees. Nowadays, voluntary affirmative action is a common practice in business.<sup>115</sup>

In 2003, when the University of Michigan's preferential admissions policy was being challenged in the Supreme Court, over sixty companies, including Coca-Cola, American Airlines, Nike, Boeing, General Motors, and Intel, brought a letter before the Court supporting the university. They argued, "Only a well-educated, diverse workforce can maintain America's competitiveness in the increasingly diverse and interconnected world economy." The companies remained vague as to how the university should maintain a diverse student body, but favored whatever methodology that "operate[s] in such a way that students of all races, cultures and ethnic backgrounds are in fact meaningfully included."<sup>116</sup> Business clearly realizes the advantages to having diverse, educated university graduates entering the workforce.

Discriminating against a segment of the population costs businesses. By excluding a part of the population, an employer would need to replace the excluded qualified workers. If the cost of finding a replacement is too high, discrimination becomes less favorable. In addition, as the discriminated population becomes underpaid and under-employed, it becomes even more beneficial for businesses to hire them since they would be as qualified, if not more qualified, and willing to work for less. Another example favoring non-discrimination in the business world is the power of the buying force of minorities. If a company is perceived to discriminate, the minority group may boycott the company and a competitor may actively pursue the discriminated clientele. A competitor may even be able to charge more to the minority if the minority group feels it is worth the cost to pay a higher price as opposed to paying a lower price to a discriminating business. Market economics and

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<sup>115</sup> Pauwels: 2.

<sup>116</sup> Pauwels: 3.

the quest for profits can often influence discrimination patterns and have been “heralded as the best anti-discrimination tool.”<sup>117</sup>

In 2004, over forty companies signed the “Diversity Charter” for which they have pledged to “increase cultural, ethnic and social diversity inside their firms.”<sup>118</sup> The total number of companies having signed the charter exceeded 1,500 in 2007. In 2006, several French companies, manager organizations, and French labor unions promised:

*“To increase diversity and equal opportunity inside their firms and detail a host of measures and good practices to be adopted, as well as goals and timetables to be met. Communication initiatives are to be set up, management training sessions are to be held regularly, and a person called “correspondent égalité des chances” is put in charge of monitoring diversity progress.”*<sup>119</sup>

Although the agreement is not binding, it is certainly a signal from the labor forces towards making an effort to diversify the workforce. Accompanied by pressure from the HALDE and companies’ awareness of the trend towards diversity, companies may put in the effort to bring diversity to fruition. It has yet to be determined whether this agreement will actually lead to greater diversity. Without being able to collect statistics, it remains to be seen how and whether the progress can really be monitored. It is, nevertheless, an acknowledgement of the need for greater diversity within the workforce.

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<sup>117</sup> Block, W.E., ed. and M.A. Walker, ed. Discrimination, Affirmative Action, and Equal Opportunity. Vancouver: The Fraser Institute, 1981: 9-11.

<sup>118</sup> Pauwels: 26.

<sup>119</sup> Pauwels: 27.

## 5. CONCLUSION

It is in the interest of the United States and France to encourage integration and to fight discrimination. Both countries have made efforts to attain these goals. With both countries being rich, western democracies that boast of the freedom of its people, each certainly ought to bear in mind the developments occurring within the other country concerning integration oriented, anti-discrimination policies or programs in order to perhaps implement a similar initiative in one's own country. The positive and negative impact can be observed, and those aspects viewed as favorable and applicable to its population can then be endorsed and transposed in the other country. This is the case for affirmative action, a program in the United States that may prove valuable for France.

In light of recent events in France attributed to a lack of integration and a pervasive force of discrimination in the employment and educational fields, such as recent riots in 2005 and the strengthening of the extreme right in French politics, it is surely to France's benefit to take a more active role and consider the policy of affirmative action. Because of France's history and its Republican ideals, a direct transposition of affirmative action would be controversial; in fact, any mention of affirmative action is often met with protest. It is, therefore, necessary to decide on those aspects that are also compatible with French society.

France's efforts thus far have not fundamentally changed the nation's view of French citizens with an immigrant background. Some programs, such as the HALDE and the GED, have been established, but they are mostly reliable on the forthcoming of victims and have the burden of proving discrimination. The CEP does not apply to all universities and hence, it has a limited scope. Despite proposals such as sending anonymous CVs, it still proves difficult for applicants coming from poorer areas or having an Arab sounding name to get interviews, yet alone to be hired. France needs to establish a nation wide effort for employers and educational institutions to actively recruit qualified minorities. Unless the government gets involved, it may be difficult to create change. One of the main causes for discrimination is fear of difference.

People tend to associate with others who are similar to them. It is this fear that is not easy to overcome.

One of the most crucial requisites for monitoring the effectiveness of integration policies is to have data on the minority population and its progress in employment and higher education. An extreme under representation in a field of employment may hint to discriminate attitudes or just a lack of qualified minority workers, which may suggest the education system failing to produce capable minority workers. French monitoring agencies have performed several tests to the presence of discrimination or lack of integration, but not enough to then follow-up to know if the discrimination is receding over time. For that purpose, there needs to be statistical data on the presence of minorities. The French government has taken into account where a person and his or her parents were born, but that may have no bearing on whether or not the person is a *visible minority*. Acquiring the statistical data of each person's ancestral background is vital as a tool for improvement and to measure progress and shortcomings. The statistics should only be provided to an agency, such as the HALDE, for measuring the effectiveness of policies. Collecting statistical information on one's *visible minority* status is not a violation of Republican ideals since it, in itself, does not equate to treating a person differently. A person can still be treated as equal while having knowledge of his or her ethnic background. However, it does equate to recognition of difference, and if some still feel it violates the French Constitution, then they may consider the need to change it as was done in favor of the parity law. Without statistical information, it is much more difficult to assess the developments in discrimination and integration. On the other hand, statistical information can be misused, hence why it should perhaps only be provided to a government agency and should be optional to the applicants. In addition, statistical information does exclude all aspects of affirmative action.

Affirmative action does not mandate the use of statistical information. It encompasses the active recruitment of minority workers. In meaning, the French would perhaps begin to translate the term as many American proponents understand it, from *discrimination positive* to *action affirmative*, in which businesses and

educational institutions take a more active role in seeking to employ or enroll more minorities. Such a policy does not require statistical information. The French government is in the midst of trying to create this active voluntarism, but without the statistical data, it hampers the government from knowing whether its efforts are having an effect or falling on deaf ears.

It is important that affirmative action maintains its limits. Only those minorities with sufficient qualifications should be hired or enrolled. These qualifications should be considered on an individual basis. Simply being a minority worker should not automatically lead to recruitment, but also his or her qualifications should be taken into account, and how he or she acquired such qualifications. Preserving the individual basis will also defy any complaints of *communitarisme*. Coming from a poor neighborhood may exemplify strong motivation, while similar qualifications from a rich minority may not demonstrate such characteristics.

In any case, France's current situation mandates an active role in fighting discrimination and encouraging integration. Whether its current role proves to be sufficient and fruitful, only time will tell. France is now a diverse nation which ought to recognize and embrace its diversity. French society recognizes its diversity, but has not fully embraced this diversity. Hopefully, Marseille can lead by example and influence other French cities to celebrate the differences among its citizens. In the United States, it took decades before the African-American mobilized and demanded equality through the Civil Rights movement of civil disobedience. The United States responded with affirmative action programs. If a civil rights movement were to develop in France, hopefully it will be a peaceful movement. Before it gets to that scope, perhaps France will become more active and overcome its current problems or with any luck, its recent initiatives will prove effective.

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