

# Affirmative Action vs. Diversity - By Shirley J. Wilcher

## *The Quest for Opportunity in a 21st Century World*

There has been much debate about affirmative action and diversity since President John F. Kennedy signed Executive Order 10925 in 1961.<sup>2</sup> As we approach the 50th Anniversary of the Order it is timely to reflect upon affirmative action and the difference between this concept and the more recent theory and practice of “diversity.” While the terms are often used interchangeably, there are fundamental differences between the two, but they are inextricably linked.

In its Final Report to President Eisenhower, the President's Committee on Government Contracts, headed by vice president Richard Nixon, concluded:

*Overt discrimination, in the sense that an employer actually refuses to hire solely because of race, religion, color, or national origin is not as prevalent as is generally believed. To a greater degree, the indifference of employers to establishing a positive policy of nondiscrimination hinders qualified applicants and employees from being hired and promoted on the basis of equality.*<sup>3</sup>

President Kennedy incorporated the concept of “affirmative action” into Executive Order 10925, which he issued in 1961. Executive Order 10925 imposed on all covered contractors a general obligation requiring positive steps designed to overcome obstacles to equal employment opportunity.

In 1965, President Lyndon Baines Johnson signed Executive Order 11246, which gave the Secretary of Labor responsibility for administration and enforcement of the Order mandating that contractors not discriminate against any employees or qualified applicants because of race, color, religion, sex or national origin. Contractors were to take affirmative action to ensure nondiscrimination in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation, and selection for training, including apprenticeship.

Before signing the order in September 1965, President Johnson uttered the words that continue to resonate today:

*Freedom is not enough. ... You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and then say, “You are free to compete with all the others,” and still justly believe that you have been completely fair.*<sup>4</sup>

The quest for equality as a right and as a result has taken more than 40 years. It has faced much success, as evidenced in the marked increases of women and persons of color in private industry, in government, and in the Academy. It has also faced considerable challenges, rhetorical and legal, waxing in certain presidential administrations, waning in others.

## WHAT IS AFFIRMATIVE ACTION?

Affirmative action has varying definitions depending upon the sector in which it is found, e.g., education, government contracting and employment. Executive Order 11246 and its regulations<sup>5</sup> refer to a process that requires a government contractor to examine and evaluate the total scope of its personnel practices for the purpose of identifying and correcting any barriers to equal employment opportunity. Where problems are identified, the contractor is required to develop a program that is precisely tailored to correct the deficiencies. Where appropriate, the contractor is required to establish reasonable goals to measure success toward achieving that result. The affirmative action program incorporated in the regulations has its origins in the private sector, where contractor “Plans for Progress” were reportedly designed to take positive action and prevent discrimination lawsuits.

Affirmative action programs encompass more than outreach and recruitment, however, and include efforts to prevent discrimination by eliminating barriers to equal employment opportunity. The inverse relationship between affirmative action and discrimination is reflected in the Executive Order itself, which begins with a prohibition against discrimination.<sup>6</sup> In essence, affirmative action creates an environment where equal employment opportunity can prevail.<sup>7</sup> Affirmative action, especially as it is mandated in employment discrimination litigation, is also compensatory and serves to remedy the effects of discrimination.

Affirmative action has been criticized by conservatives as constituting reverse discrimination, preferential treatment, stigmatizing to beneficiaries and contravening principles of merit.<sup>8</sup> Spearheaded by these organizations voters in the states of California, Washington, Michigan, Nebraska and Arizona have passed initiatives to prohibit affirmative action.

### THE EMERGENCE OF “DIVERSITY”

“Diversity” as a term of art used in the context of affirmative action law and policy gained prominence in the Supreme Court decision of *Regents of the University of California v. Bakke*.<sup>9</sup> In *Bakke*, the Court ruled that the attainment of diversity in university admissions was a constitutionally permissible goal.<sup>10</sup> Diversity as one factor among many in higher education admissions was later upheld in the Supreme Court’s 2003 decision of *Grutter v. Bollinger*.<sup>11</sup>

In employment, “diversity management” gained prominence in the 1990s as a voluntary effort by corporate America, unrelated to the mandatory compliance embodied in the law. Unlike the Executive Order regulations, there is no standardized method for attaining diversity. Diversity programs have different definitions and appear to vary from organization to organization.

Dr. Roosevelt Thomas, founder of the American Institute for Managing Diversity and author of *Beyond Race and Gender: Unleashing the Power of your Total Workforce by Managing Diversity*, argues that diversity is “any collective mixture characterized by similarities (ties that bind) and differences (differences that distinguish).”<sup>12</sup> Thomas views diversity management as an evolution beyond affirmative action and its focus on race and gender. He sees affirmative action as a “band-aid” approach that focuses on the symptom, not the problem. According to Dr. Thomas, affirmative action has not enabled the nation to move toward an appreciation for diversity in its many forms.<sup>13</sup>

Dr. Thomas does not call for the end of affirmative action, however, despite the increasingly vocal criticisms that have been raised by opponents. He argues that until communities are modified around the reality of diversity, affirmative action will serve as a “band-aid” approach that allows the accommodation of diversity to a limited extent. “The solution is to move forward with remodeling organizations and society around assumptions of all kinds of diversity.”<sup>14</sup> Thomas seeks a more inclusive and empowering style that creates an environment for performance.

A United Nations study on Best Practices in Diversity Management defines affirmative action as the “framework for a diversity management program.”

Diversity Management means looking at: “1) the mindset of an organization; 2) the climate of an organization; and 3) the different perspectives people bring to an organization due to race, workplace styles, disabilities, and other differences.”<sup>15</sup>

In evaluating state diversity management programs, the study suggested that best practice organizations “value people and cultivate an environment where cultural awareness, sensitivity, fairness and integrity prosper.” All employees believe they can prosper if they are qualified, motivated and work hard. Specifically, best practice organizations maintain a formal diversity management program, have decentralized efforts that promote a sense of ownership, provide diversity training to the entire workforce and incorporate diversity management in leadership training and mentoring efforts. Successful programs

use workforce data and demographics and identify occupations with “underutilization.” This organization encouraged the presence of government-mandated affirmative action programs, endorsed review committees to establish policies and monitor progress, and supported accountability structures through the use of such tools as metrics, surveys, focus groups and evaluations.<sup>16</sup>

There are many similarities between methods used for affirmative action programs and diversity management programs. Affirmative action programs require policy statements from senior management, workforce analyses, measures of underutilization of protected groups, placement goals where necessary and action oriented programs. The Department of Labor’s Office of Federal Contract Compliance Programs, which enforces Executive Order 11246 and other laws, also investigates access to senior executive levels (“the glass ceiling”) and focuses on recruitment and retention. CEO commitment is essential to a successful affirmative action program and senior management is required to sign the affirmative action plan for the contractor. In the 2000 amendments to the Executive Order 11246 regulations, the Department of Labor emphasized that the affirmative action program is a management tool, a diagnostic process used to promote equal opportunity, not simply a paper exercise.<sup>17</sup>

The diversity management profession has grown in recent years. The position of Chief Diversity Officer (CDO) has emerged and many CDOs report to the CEOs of their corporations. Diversity managers have attained a status that most often exceeds that of the affirmative action officer. In many cases, the affirmative action officer now reports to the diversity manager.

Stony Brook University’s discussion of the relationship between affirmative action and diversity addresses the results sought by both approaches:

Affirmative action is numbers oriented, aimed at changing the demographics within the organization. Managing diversity is behavioral, aimed at changing the organizational culture, and developing skills and policies that get the best from everyone. Affirmative action opens doors in the organization while managing diversity opens the culture and the system. Managing diversity does not replace affirmative action; rather, it builds on the critical foundation laid by workplace equity programs.

Affirmative action and managing diversity go hand-in-hand, each reinforcing the gains of the other. Without affirmative action’s commitment to hiring and promoting diverse employees, organizations would rarely have the diversity of staff to reach a stage where differences are valued and diversity is effectively managed.<sup>18</sup>

With diversity management programs, we have come full circle, where both affirmative action and diversity programs are creatures of the private sector. Both were initially designed to promote inclusion and to minimize the costs of exclusion, including litigation and reduced market share. While they share the same origins they are very different in concept and approach, however. Affirmative action programs promote access, equity and opportunity. They enable historically excluded groups including women, minorities, individuals with disabilities and disabled veterans to gain entry into and within the labor market. Diversity programs have a broader mandate, fusing the concepts of inclusion with corporate profitability and aiming to change the culture of the organization.

## QUESTIONS

While diversity management may temper the arguments against its more controversial predecessor and appear more palatable, one must question whether the shift in emphasis from the morality of equal opportunity to the “bottom line” will evade the “hard choices about equality and justice at work.”<sup>19</sup> Employment discrimination continues to exist, as the number of charges filed with the Equal Employment Opportunity Commission (EEOC) attest.<sup>20</sup> Removing the “D” word (“discrimination”) from the conversation will not solve the problem.

As important, how can we persuasively measure the success of diversity management programs? How will we know when the culture of the corporation has changed and the diversity of talents, abilities as well as

ethnicities, genders and orientations is truly welcome and contributes to the bottom line? When will government mandates, including affirmative action, be obsolete and we are truly beyond race and gender? Is diversity management the answer for the workforce of the 21st century?

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Footnotes can be found at: <http://bit.ly/cdBJZb>