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Plurality and Affirmative Action:

The Social Requirement of Diversity

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### Abstract

This position paper argues that protection and encouragement of cultural diversity is necessary to protect individual freedom to choose and express values and beliefs. This freedom is implied under the First Amendment to the *U.S. Constitution*, and such values are an inherent part of an individual's cultural or ethnic language and identity. This paper exposes and refutes the myth that homogenization at the expense of diversity is necessary for social progress. The paper further argues that affirmative action programs are necessary to maintain such protection. The paper offers a critique of the procedures used in determining affirmative action criteria, such as strict use of reductionistic sociological categories, and offers an answer to calls for limiting the number or types of groups which can apply for minority status as per the Maine and Colorado initiatives.

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Introduction

Recent national<sup>1</sup> and international<sup>2</sup> events, state referendums<sup>3</sup>, state and federal court rulings<sup>4</sup>, and federal legislative actions<sup>5</sup> demonstrate how issues of civil rights are at the forefront of the American debate. Recently the University of California Board of Regents voted to eliminate race-based preferences in hiring, contracting and student admissions. Even in academia where the richness of diversity is highlighted, the debate on politically-correct speech and affirmative action is loud.<sup>6</sup> In *U.S. News and World Report's* annual guide to U.S. colleges and universities, a poll reports considerable differences in opinion between student editors and administrators on what constitutes equal rights in affirmative action programs. A large percentage of students are reported to believe that preferences should not be based solely on race, but economic disadvantage should be demonstrated in preferential hiring or admission.<sup>7</sup> <sup>8</sup>Yet, there is a larger issue here than simply preferential hiring. The totality of debate on civil and human rights seems to point to concerns over the American ideal of "cultural" integration, the great melting pot, and the social need for diversity. As Americans watch

<sup>1</sup> Such as the Million Man March on Washington and civil unrest in Los Angeles and other cities following police and court actions with racial overtones.

<sup>2</sup> Such as ethnic cleansing in Bosnia-Herzegovina, Rwanda, Somalia, Guatemala (which have been referenced through recent foreign policy initiatives).

<sup>3</sup> Such as the state of Maine's referendum on limiting the number of groups which can apply for minority status, and Colorado's referendum to eliminate "special rights" for homosexuals.

<sup>4</sup> Such as the Colorado Court ruling to overturn Colorado's referendum (see footnote 3), and the Supreme Court ruling reinterpreting the constitutionality of the numerical basis for Affirmative Action enforcement.

<sup>5</sup> Such as the Republican House sponsored Equal Opportunity Act, which seeks to eliminate the numerical basis for the enforcement of Affirmative Action.

<sup>6</sup> See Kit Lively, Jeannie Wong, Jack McCurdy, Patrick Healy, and Stephen Burd, "California Students Rally for Affirmative Action." *Chronicle of Higher Education*, vXLII, n8, (October 20, 1995), pp. A28-A29.

<sup>7</sup> See Mortimer B. Zuckerman [Editor], "America's Best Colleges: The 1996 Directory of Colleges and Universities." *U. S. News and World Report*, (1995), Washington DC, p. 9.

<sup>8</sup> See also Christopher Shea, "New Students Uncertain About Racial Preferences'." *Chronicle of Higher Education*, vXLII, n18, (January 12, 1996), p. A33.

cultural and ethnic clashes which occur in foreign lands, we question our role in promoting tolerance and diversity.

I, as a South Louisianian with an Acadian ethnic heritage, watched with great interest the Quebec referendum for independence. However, the referendum was not simply about the desire of one group to separate themselves from another group. The referendum was about four-hundred years of history and a desire for a sense of identity that would be recognized by the world. Throughout the world, like in Chiapas, Mexico, groups of people are struggling for recognition of their ethnic identity and their right to live according to their own sense of value to the degree that others are. The United States has a unique history in that peoples from many parts of the world immigrated to its shores to obtain that right. These people came with their own sense of identity and own set of cultural values to a land that promised that freedom.

Yet, not all of the peoples who came to this shore came of their own volition. Some peoples were brought here for the economic advantage of others, and other peoples who lived on the land previous to the great migrations were removed from their ancestral homes for the "progress" of others. Internal migrations occurred for groups who sought a better life and freedom to practice religious beliefs and values. Even groups of people who migrated to these shores from Europe were forcibly removed from the new lands they called home<sup>9</sup>.

The history of the United States provides examples of strife based on differences in cultural values. The ideal of integration is in dialectical opposition to the

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<sup>9</sup> Acadians were deported from Acadia by the British in the middle to late 1700s, (beginning 1755) even though the Acadians had been living there for over one hundred fifty years (since 1604). At the time, laws existed in some of the colonies prohibiting the settling of Catholics, and a great distrust of persons of French descent existed all along the Atlantic seaboard. See James H. Dornon, *The People Called Cajuns: An Introduction to an Ethnography*. Lafayette LA: The Center for Louisiana Studies, Southwestern Louisiana University, (1983).

needs of cultural identity. And, this conflict is demonstrated in the United States today. An example of this can be found in House Speaker Newt Gingrich's response to the Quebec referendum, "This demonstrates the dangers of bilingualism." Gingrich (and Senate Majority Leader Bob Dole) continued by calling for the constitutional establishment of English as the official language of the United States, which is not unlike various states (including Illinois) moves to establish "English only" laws<sup>10</sup>.

Given this historical context, this paper seeks to demonstrate the connection between cultural identity and civil rights, and between the social requirement of diversity and the promotion of equality through proactive measures such as affirmative action. To accomplish these goals, the paper will offer an interpretation of the First Amendment to the *U.S. Constitution* which implies protection of cultural values.

### The Social Requirement of Diversity

Many metaphors of common usage pay tribute to the history of this country as a land of immigrants. However, in our need to become "One Nation," many ethnic groups have attempted to mainstream into the "American" way of life by forgetting the old ways and languages. Our common history is rife with examples of ethnic groups immigrating into large city ghettos, particularly European immigrants of the early twentieth century, and moving out. To be sure, this has not been the experience of all ethnic groups. Nor is it true that all ethnic groups maintain a sense of community with each other. Yet, in the present generation, there appears to be renewed interest among some groups to re-establish ethnic self-identity. In the universities, multi-cultural awareness has

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<sup>10</sup> i.e. Illinois and twenty-one others. See Brian Lee, "Immigration: An Illinois Portrait." *Illinois Issues*, vXXII, n1, (January 1996), pp. 17-21.

become a major theme in the core curriculum. Indeed, interest in the "other" has paralleled increase in ethnic strife both here and abroad.

Yet, with that increased interest in ethnic self-identity, has come stressors in our country regarding our attempts to ensure equality. The Civil Rights movement which ultimately started with the founding of this country, and struggled through the centuries to the signing into law the Civil Rights Act of 1964, is currently under attack. Causes for this can be as obvious as economic strife or as pervasive as a weariness of our collective guilt for not meeting the ideals we, as a nation, profess to believe. When a group of people feel threatened by another group, one possible reaction is protectionism, "a retreat into the fortress instead of openness, association, interaction and harmony."<sup>11</sup> Herein lies our responsibility to recognize the importance of our diversity, and how equality requires tolerance and promotion of that diversity.

Thomas Jefferson, and those who helped compose the *Declaration of Independence*, and ultimately the Continental Congress recognized the inalienable right of the citizen to pursue his or her individual course. It became apparent with the birth of the new nation, that governance should be "for the people," and so a constitution was drafted to protect the individual from the possibility of the tyranny of the government. The *Bill of Rights* which sought those protections became the first amendments of the *U.S. Constitution*. The most essential of those rights became the First Amendment. "The First Amendment enables that pursuit (to follow one's own course specified in the *Declaration of Independence*) by reserving the right to the individual the option to believe or not believe, to speak, to write, to assemble, and to

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<sup>11</sup> See Federico Mayor, "Unfettered Freedom." *UNESCO Courier*, (May 1995), p. 38.

criticize the government."<sup>12</sup> "The American Government is premised on the theory that if the mind of man is to be free, his ideas, his beliefs, his ideology, his philosophy must be placed beyond the reach of the government."<sup>13</sup> This amendment assured citizens the right to choose to believe (freedom of religion) and express those beliefs (freedom of speech) without fear of repression. It also allowed for individuals to assemble, for whatever purpose, without government interference. These rights were not granted unconditionally, but provided for the possibility of limitation on the grounds that the rights of others were not unduly fettered by the actions of an individual or group. That is, the First Amendment provided for equality by requiring the allowance of a diversity of beliefs and expressions: One voice would not be allowed to silence others.

Some constitutional scholars have argued that the community, whether local or national, maintains the right to limit speech which it deems harmful. The example of pornography and other forms of mediated communication come to mind. The argument of social harm was also used to silence the American Communist Party in the early part of this century. The basis for this argument is the notion that a democracy progresses through the competition of ideas, and that the majority will come to the best conclusions about the direction of their community and what constitutes harm. Therefore, those ideas which are rejected by the majority can be limited. This collectivist notion places the responsibility for making the determination regarding which ideas will be allowed clearly with the majority, or with those responsible for enforcing the wishes of the majority. However, the [Meiklejohnian] notion that government can and should

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<sup>12</sup> John Frohnmeyer, "Freedom, Order, and the Right to Speak." *The Masthead*, v47, n1, (Spring 1995), p. 18.

<sup>13</sup> William O. Douglas, "Interview." *New York Times*, (October 29, 1973).; cited in George Seldes, *The Great Thoughts*, New York: Ballantine Books, (1985), p. 113.

"distinguish between speech that is worth hearing versus speech that is not worth hearing" was questioned in *Cohen v. California* (1971): Public discourse occurs to ensure that differing opinions are heard.<sup>14</sup> Indeed, as we shall see below, meaning, understanding and knowledge itself is gained through discourse.

Yet, the freedom of speech clause should be internally consistent with the freedom of religion clause. The framers of the *Constitution* placed these two freedoms within the same amendment presumably due to their relatedness. The freedom to express a belief is inextricably tied to the freedom to have a belief. And, the freedom to have a belief is an inalienable human right (see following argument). "The "establishment of religion" clause of the First Amendment means at least this: Neither a state nor the Federal Government can set up a church. Neither can pass laws which aid one religion, aid all religions, or prefer one religion over another."<sup>15</sup> In other words, the First Amendment specifies a strict separation of church and state. What is the purpose of this separation? This separation allows the individual to believe as he or she sees fit without interference from the government.

Although the freedom of religion clause uses the term "religion," it implies, and has been widely interpreted to mean, the freedom to choose one's beliefs. It may also be interpreted to mean the freedom to choose one's own values since values are often considered a product of religious socialization. Yet, value systems are not merely a product of religious socialization but also a product of cultural and ethnic identity. Religion, culture and ethnicity often correlate, though not necessarily always, in highly predictable ways. Religion and culture, to be sure, are defined by systems of values.

<sup>14</sup> Jeffrey Rosen, "Democracy and the Problem of Free Speech." *The New Republic*, v210, n6, (February 7, 1994), p. 35.

<sup>15</sup> Hugo L. Black, Majority Opinion, *Emerson v. Board of Education*, 330 U. S. 1 (1947).

Although religion may be recognized by its formal institutions, what differentiates one religion from another are the shared symbols of its practitioners, not unlike a culture. Ethnicity is also recognized by its shared symbols. The main example of shared symbol systems which distinguish ethnic groups is language.

"Language and culture are inseparable."<sup>16</sup> Indeed, social history is revealed through language, and individuals are socialized through language. It is in this sense that language produces knowledge.<sup>17</sup> Michel Foucault argued that knowledge is created through discourse which is dependent upon the rules of the community of communicators (the culture).<sup>18</sup> Values create expectations (or rules) by which meaning is constructed by participants in their discourse. Meaning is a function of interpretation,<sup>19</sup> which is dependent upon the already existing rules of the culture. It is the dialogic process which fertilizes thought.<sup>20</sup>

Values, constituted through and by language, are also inextricably linked to culture. If the freedom to choose one's values is implied by the First Amendment, then also implied by the First Amendment's protection of religion is protection of culture. Although this connection between religion and culture, and between beliefs and values, has not been made formally through judicial interpretations, it can be shown that the ideals of freedom and equality otherwise require attention to culture and value.

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<sup>16</sup> See Patricia Bizzell and Bruce Herzberg's discussion of the rhetorical theories of Henry Louis Gates, Jr., in *The Rhetorical Tradition: Readings From Classical Times to the Present*. Boston: Bedford Books of St. Martin's Press, (1990), p. 1186.

<sup>17</sup> Giambattista Vico, *On the Study Methods of Our Times*, (1709). Edited and translated by Elio Gianturco, New York: Macmillan (1965).

<sup>18</sup> Michel Foucault, *Archaeology of Knowledge*, (1969). Translated by A. M. Sheridan Smith, New York: Pantheon Books (1972).

<sup>19</sup> I. A. Richards and C. K. Ogden, *The Meaning of Meaning*. London: Routledge & Kegan Paul, Ltd. (1923).

<sup>20</sup> Giambattista Vico, *On the Study Methods of Our Times*, (1709). Edited and translated by Elio Gianturco, New York: Macmillan (1965).

It has been observed by philosophers, such as Thomas Aquinas, that the individual has an essential freedom of will, which is the ability to choose and to interpret. This essential freedom to choose allows the individual to construct a self-identity. However, this self-identity is not completely self-imposed. Self-identity, as is language, is constructed through discourse with the other. Ruesch and Bateson offered a model for describing the development of self-identity through discourse.<sup>21</sup> They argued that the individual develops self-identity not only through private interpretation, but also through interpersonal interaction with another and the discourse which occurs at the social and cultural level. Ultimately the individual has to choose which messages will describe his or her self-identity, and these acts of will make the self.<sup>22</sup> <sup>23</sup>It is the ability to act upon the will that allows for the construction of self-identity. In this way the connection between essential and effective or existential freedom is necessary. The expression of one's belief about self, and the attendant values that make up the self, is necessary for the development of the self. Discourse allows for the development of self and a sense of identity. Without such discourse, the project of the development of self-identity would be difficult, if not impossible, to maintain.

If the self is developed through discourse with one's own culture, then the culture, as well as the self, must be granted the same freedoms. The presence of one culture does not negate others, although the presence of many cultures, in one society, may necessitate the need for tolerance and protection of all of those cultures.

Tolerance and protection of a culture may appear as restrictions upon other cultures.

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<sup>21</sup> Jergen Ruesch and Gregory Bateson, *Communication: The Social Matrix of Psychiatry*. New York: W. W. Norton (1951).

<sup>22</sup> See Bernard Lonergan, *Understanding and Being: An Introduction and Companion to "Insight," the Halifax Lectures*. New York: Edwin Mellon Press (1980).

<sup>23</sup> See Frithjof Bergman, *On Being Free*. Notre Dame IN: University of Notre Dame Press (1987).

However, ". . . true freedom is not . . . an absence of restrictions but a real opportunity to make projects and to carry out those projects in one's life."<sup>24</sup> Such projects include the development of self-identity. As Thomas Paine observed, "He who would make his own liberty must guard even his enemy from oppression; for if he violates this principle, he establishes a precedent that will reach himself."<sup>25</sup>

As argued above, some scholars maintain that the public good (collectivist) principle should be applied to interpretations of the First Amendment. A widely held idea which has often been termed "cultural imperialism" concludes that the homogenization of American culture is necessary for progress. Adherents to this notion call for "English Only" laws as well as an adherence to an orthodoxy of learned texts. The problem of who gets to choose what constitutes the important texts of the American culture is never addressed beyond the conclusion that the majority shall decide. What is ignored in the discussion is the fact that ". . . the First Amendment absolutely protects individual conscience from majority rule."<sup>26</sup> If the individual is defined by the discourse in which he or she engages, then the individual is not truly free when the discourse is determined by majority rule.

Although the individual may choose to participate with the mainstream culture, unwanted homogenization of self-identity amounts to forced cultural assimilation, which is an imposition of values on the individual: Homogenization is clearly not in the spirit of the *Constitution and Declaration of Independence* as interpreted through the centuries. Such imposition misses the value of the other, and interprets the value of the other

<sup>24</sup> Julian Marias, cited in Federico Mayor, "Unfettered Freedom." *UNESCO Courier*, (May 1995), p. 38.

<sup>25</sup> Thomas Paine, cited in John Frohnmeyer, "Freedom, Order, and the Right to Speak." *The Masthead*, v47, n1, (Spring 1995), p. 18.

<sup>26</sup> John Frohnmeyer, "Freedom, Order, and the Right to Speak." *The Masthead*, v47, n1, (Spring 1995), p. 18.

without consideration of the context of self-identity within one's own culture, therefore limiting the individual's ability to exercise his or her essential and existential freedom. Furthermore, such imposition devalues the importance of the dialogic process, which is necessary for social progress.

If society espouses the ideals of freedom, it must allow for the diversity of values. In a pluralistic society, great care must be taken to safeguard such diversity.

### Plurality and Affirmative Action

If it is the case that promotion of equality is a social and constitutional requirement of our society, then our society must take measures to achieve such equality by allowing diversity. The reality of inequality based on the intolerance of diversity demands proactive measures. As John F. Kennedy requested<sup>27</sup>, as a nation we must make equality a reality in voluntary and legislative action. Affirmative Action is one such measure.

However, the implementation of Affirmative Action must take in a wider scope of individual characteristics than the simplistic and reductionistic sociological category of race in order to ensure ethnic and cultural diversity which may exist within and between racial groups. The taxonomic category of race pertains to physical characteristics of descention. These characteristics of race are often associated, and therefore confused, with ethnic and cultural identity because of historical tendencies of individuals to associate and therefore marry within their own communities. This argument does not purport to deny the history and present existence of race based discrimination. Yet, the reality of our American experience is that through the exchange of ideas and values,

<sup>27</sup> Civil Rights Message of June 11, 1963. Speech transcribed and published in James R. Andrews and David Zarefsky, *Contemporary American Voices: Significant Speeches in American History, 1945-Present*. New York: Longman, (1992), pp. 73-77.

individuals of varying racial characteristics have been allowed to choose, in more or less restricted ways, the cultural community with which they wish to associate. If the goal of Affirmative Action is to promote the equality of persons in a diverse society, then it must take into consideration that diversity.

The promotion of the ideals of equality require diversity. Calls for limiting the number of groups which can apply for minority status, as per the Maine and Colorado initiatives, work against such ideals in the name of the "public good" or by ascribing to a criteria of equality which ignores the historical and present exigencies. Tendencies to reduce issues of equality to a binary opposition between members of opposing classes, whether it be by gender, race or any other classification, ignore the complexities of self-identity and the resulting personal experiences of individuals and communities. The documents upon which the governance of this country are based, the *Declaration of Independence* and the *Constitution*, demand adherence to the ideals of equality for all. As Justice Harlan stated, "our *Constitution* is color-blind and neither knows nor tolerates classes among citizens."<sup>28</sup> It is the responsibility of the citizenry, and those elected to represent the citizenry, to assure through voluntary acts and through legislation that the ideals of equality for all are protected, maintained and ultimately reached. For in the often quoted words of Thomas Paine, "We hold these truths to be self evident; that all men [sic] are created equal . . ."<sup>29</sup> there lies our responsibility.

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<sup>28</sup> Justice John Marshall Harlan, Sole dissent, *Plessy v. Ferguson*, 165 U. S. 537 (1896).

<sup>29</sup> Submitted to Jefferson by Paine; and ultimately embodied in the *Declaration of Independence*.

### Recommendations

1. Promotion of the goals of Affirmative Action requires attention to the historical and present exigencies of inequality and diversity, whether they be racial, cultural or of some other sort.
2. Attention to the connection between the protections guaranteed by the First Amendment of the *Constitution* and the promotion of diversity, must be forthcoming in policy statements regarding legislation insuring equality, such as Affirmative Action.
3. The implementation of programs promoting equality must be uniformly applied so as not to "silence some for the benefit of others," but rather to give voice to all for the benefit of all.
4. Giving voice to all requires the allowance of differing voices. Therefore, promotion of the goals of Affirmative Action should be opposed to the imposition of "Official Language" legislation.

## Vita

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