

THE  
CONSTITUTIONAL  
LOGIC OF  
AFFIRMATIVE  
ACTION



MAKING  
THE  
CASE  
FOR  
QUOTAS

RONALD J. FISCUS

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FOREWORD BY STANLEY FISH



# The Constitutional Logic Of Affirmative Action

**Melvin I. Urofsky**



## **The Constitutional Logic Of Affirmative Action:**

**The Constitutional Logic of Affirmative Action** Ronald J. Fiscus, 1992-01-30 Few issues are as mired in rhetoric and controversy as affirmative action This is certainly no less true now as when Ronald J Fiscus s *The Constitutional Logic of Affirmative Action* was first published in 1992 The controversy has perhaps become more charged over the past few years With this compelling and rigorously reasoned argument for a constitutional rationale of affirmative action Fiscus clarifies the moral and legal ramifications of this complex subject and presents an important view in the context of the ongoing debate Beginning with a distinction drawn between principles of compensatory and distributive justice Fiscus argues that the former although often the basis for judgments made in individual discrimination cases cannot sufficiently justify broad programs of affirmative action Only a theory of distributive justice one that assumes minorities have a right to what they would have gained proportionally in a nonracist society can persuasively provide that justification On this basis the author argues in favor of proportional racial quotas and challenges the charge of reverse discrimination raised in protest in the name of the innocent victims of affirmative action as an action necessary to approach the goals of fairness and equality *The Constitutional Logic of Affirmative Action* focuses on Supreme Court affirmative action rulings from *Bakke* 1976 to *Croson* 1989 and includes an epilogue by editor Stephen L Wasby that considers developments through 1995 General readers concerned with racial justice affirmative action and public policy as well as legal specialists and constitutional scholars will find Fiscus s argument passionate balanced and persuasive

*Affirmative Action* Albert G. Mosley, Nicholas Capaldi, 1996 In this book two distinguished philosophers debate one of the most controversial public policy issues of the late 20th century Each begins by making a case for or against affirmative action laying out the major arguments on both sides Each author then responds to the other s essay Written in an engaging accessible style *Affirmative Action* is an excellent text for junior level philosophy political theory public policy and African American studies courses as well as a guide for professionals navigating this important debate

*Affirmative Action, Hate Speech, and Tenure* Benjamin Baez, 2013-12-16 Uniquely positioned as both a scholar and an attorney Benjamin Baez provides a thought provoking exploration on the current debate surrounding race and academic institutions

*Equality, Affirmative Action and Justice* Johan Rabe, 2001

**Basic Equality and Discrimination** Nicholas Mark Smith, 2016-04-15 The focus of this book is the idea of equality as a moral political and jurisprudential concept The author is motivated primarily by a concern to better understand conundrums in the justification interpretation and application of discrimination law Nicholas Smith aims to provide a clearer understanding of the nature of the value that the law is trying to uphold equality He rejects the notion that the concept of equality is vacuous and defends the idea as the proper range of moral concern After discussing the general characteristics of the denial of equality and some types of discrimination Smith considers prominent views on the point of equality law He argues that human rights lawyers should step back from the business of trying to steer courts towards vague equality goals informed by conceptions of equality that

are either empty or even more abstract than the notion of equality itself If they do Smith thinks that the meaning of equality will be apparent though abstract and our difficulties will be shown to be in the first instance moral ones These moral issues will require more rigorous attention before we can draft discrimination law which gives clear effect to a widely legitimate understanding of what it means to uphold and promote equality This book will be a valuable resource for students and researchers working in the areas of legal philosophy political theory public law and human rights law

**Civil Rights in the White Literary Imagination** Jonathan W. Gray, 2013-02 The statement The Civil Rights Movement changed America though true has become something of a clich Civil rights in the White Literary Imagination seeks to determine how exactly the Civil Rights Movement changed the literary possibilities of four iconic American writers Robert Penn Warren Norman Mailer Eudora Welty and William Styron Each of these writers published significant works prior to the Brown v Board of Education case in 1954 and the Montgomery Bus Boycott that began in December of the following year making it possible to trace their evolution in reaction to these events The work these writers crafted in response to the upheaval of the day from Warren's Who Speaks for the Negro to Mailer's The White Negro to Welty's Where Is the Voice Coming From to Styron's Confessions of Nat Turner reveal much about their own feeling in the moment even as they contribute to the national conversation that centered on race and democracy By examining these works closely Gray posits the argument that these writers significantly shaped discourse on civil rights as the movement was occurring but did so in ways that intentionally or not often relied upon a notion of the relative innocence of the South with regard to racial affairs and on a construct of African Americans as politically and or culturally naïve As these writers grappled with race and the myth of southern nobility their work developed in ways that were simultaneously sympathetic of and condescending to black intellectual thought occurring at the same time

**Ethics and the Autonomy of Philosophy** Bernard James Walker, 2014-11-06 In Ethics and the Autonomy of Philosophy Bernard Walker sets out with two objectives First Walker argues that ethics is autonomous as a discipline Oftentimes ethics books from a Christian perspective lean toward grounding ethics in theology or in biblical proof texting Walker departs from this tradition Ethics grounded in theology entails a limited scope for those doing ethics in that the Christian God must be assumed for both Christian and non Christian when at the table of ethical dialogue For the non Christian this loads the dice and shuts down ethical consensus and dialogue if not ethical truth With that said this book does not depart from Christian ethical views on such issues as the sanctity of life antiracism the death penalty the objectivity of ethics and the importance of integrating faith into ethics however Walker does so from a common denominator of philosophy rather than theology Second Walker ventures into the streets and engages the man woman on the streets approach to ethics and ethical decision making He points out the shortcomings of the ubiquitous views of the man woman on the streets viz cultural relativism skepticism and the attitude that ethics is merely a matter of personal choice

Bureaucratic Representation H. T. Wilson, 2001 This text discusses the central role of bureaucratic representation as a key vehicle for representing the general interests of most

citizens Though formal elections remain indispensable bureaucracies in the capital public and social sectors have used their superior expertise and continuity to achieve responsible discretion and creative implementation *Pursuing Equal Opportunities* Lesley A. Jacobs, 2004 This book offers original and innovative contributions to the debate about equality of opportunity The first part sets out a theory of equality of opportunity that presents equal opportunities as a normative device for the regulation of competition for scarce resources The second part shifts the focus to the consideration of the practical application by courts or legislatures or public policy makers of policies for addressing racial class or gender injustices The author examines standardized tests affirmative action workfare universal health care comparable worth and the economic consequences of divorce

**Walter Feinberg's Democratic Vision** Walter Feinberg, 2025-05-01 Collects Walter Feinberg's classic writings on the meaning of democracy for public education For over fifty years Walter Feinberg has been a leader in interpreting democracy in and its meaning for public education In this collection Feinberg explores the question of how to study education the necessary role of history and philosophy in this endeavor and the need for educational theorists to engage with the lived realities of students parents and teachers through philosophical anthropology He demonstrates a particular way of paying attention to public education that brings an interpretive sensitivity for others to the big philosophical questions of what public schooling should be in democratic societies Feinberg explores many of the central questions that vex educational policy and practice What should be the purpose of public schools What should we think of school choice proposals What are the relationships between religion and public schools Should schools promote an American identity How should we think about affirmative action In this tour of educational ideas democracy is the central concern as it both presents questions that demand answers and becomes an approach to studying education with rigor and sensitivity

**The Harvard Guide to African-American History** Evelyn Brooks Higginbotham, 2001 This massive guide sponsored by the W E B Du Bois Institute for Afro American Research at Harvard University and compiled by renowned experts offers a compendium of information and interpretation on over 500 years of black experience in America

**The Challenge to Racial Stratification** Matthew Holden, Jr., 1994-01-01 The National Political Science Review is the official publication of the National Conference of Black Political Scientists This series now entering its fourth volume includes significant scholarly research reflecting the diverse interests of scholars from various backgrounds who use different models approaches and methodologies The central focus is on politics and policies that advantage or disadvantage groups because of race ethnicity gender and other major variables In his introduction to this volume Matthew Holden describes the rationale for the creation of American racial stratification and boldly shows how American intellectuals have helped reinforce that stratification Several chapters discuss conflicts in contemporary views of the United States ranging from a belief in its being a free society to the historical reality of the nation's background as a slave society Other chapters address the international problem of racial stratification concentrating on Nigeria and South Africa

Morals and Consent Malcolm Murray, 2017-09-27 How are we

meant to behave And how are we to defend whatever answer we give

**Morals and Consent** grounds our notion of morality in natural evolution and from that basis Malcolm Murray shows why contractarianism is a far more viable moral theory than is widely believed The scope of **Morals and Consent** has two main parts theory and application In his discussion of theory Murray defends contractarianism by appealing to evolutionary game theory and metaethical analyses His main argument is that we are not going to find morality as an objective fact in the world and that instead we can understand morality as a reciprocal cooperative trait From this minimal moral architecture Murray derives his innovative consent principle The application of the theory detailing what contractarians can or ought to say about moral matters takes up the greater portion of the work Murray offers a trenchant examination of what moral constraints we can claim concerning death abortion euthanasia and capital punishment sex pornography prostitution and sexual assault beneficence toward present and future people animals and the environment and liberty genetic enhancement organ sales and torture By focusing on evolutionary contractarianism and the epistemic justification of our moral claims or lack thereof Malcolm Murray's **Morals and Consent** is a serious advance in the field of applied ethics and fills an important void

Minority Rights in the 'New' Europe Peter Cumper, Steven Wheatley, 1999-02

**Who Speaks for Roma?** Aidan McGarry, 2010-05-01 Aidan McGarry looks at the political participation and representation of the Romani community one of the most disadvantaged and excluded minority in Europe

**Unsettling Apologies** Melanie Judge, Dee Smythe, 2022-09-29 Drawing on the histories of injustice dispossession and violence in South Africa this book examines the cultural political and legal role and value of an apology

**Military Law Review**, 1993

**Affirmative Action on Trial** Melvin I. Urofsky, 1997 Affirmative action continues to be one of the most hotly contested issues in America Volatile and divisive the debates over its legitimacy have inspired a number of reverse discrimination suits in the federal courts Like the landmark 1978 Bakke decision most of these have focused on preferential treatment given racial minorities In Johnson v Santa Clara however the central issue was gender not race discrimination and the Supreme Court's decision in that case marked a resounding victory for women in the work force Johnson v Santa Clara involved two people who in 1980 competed for a dispatcher position with the transportation department of Santa Clara County California Paul Johnson had more experience and slightly higher test scores but Diane Joyce was given the job based on affirmative action An irate Johnson sued the county and won only to have the decision reversed in appellate court That reversal was subsequently upheld in the Supreme Court's 1987 decision reaffirming that it was legitimate for employers to consider gender in hiring

Preeminent legal historian Melvin Urofsky proves an exemplary guide through the complexities of this case as he takes us from the workplace through the various levels of our federal court system Balancing the particulars of the case with an overview of constitutional law and judicial process he creates a model legal history that is both appealing and enlightening for the non scholar Urofsky is especially good at highlighting the fundamental human drama of this case and shows how Johnson and Joyce were simply ordinary people each with valid reasons for their actions but both ultimately

caught up in legal and social issues that reached well beyond their own lives Affirmative Action on Trial pointedly addresses the issue of sex discrimination and the broader controversy over the place of affirmative action in American society The latter continues to generate headlines like those that followed the 1996 Supreme Court decision to let stand a lower court ruling that race cannot be used as a determination for admission to academic programs More recently several states have even taken steps to end affirmative action altogether While it s hard to tell how such actions will ultimately impact affirmative action there s no question that the rulings in cases like Johnson v Santa Clara will continue to guide and influence the debates both inside and outside the courtroom

**Encyclopedia of Constitutional Amendments, Proposed Amendments, and Amending Issues, 1789-2015** John R. Vile, 2015-07-20 Now in its fourth edition and completely updated this is the most comprehensive book on constitutional amendments and proposed amendments available Although only 27 amendments have ever been added to the U S Constitution the last one having been ratified in 1992 throughout American history members of Congress have introduced more than 11 000 amendments and countless individuals outside of Congress have advanced their own proposals to revise the Constitution the wellspring of America s legal political and cultural foundations At a time when calls for a new constitutional convention are on the rise it is essential for students of political science and history as well as American citizens to understand proposed alternatives This updated edition of the established standard for high school and college libraries as well as public and law libraries serves as the go to reference for learning about existing constitutional amendments proposed amendments and the issues related to them An alphabetically arranged two volume set it contains more than 500 entries that discuss amendments that have been proposed in Congress from 1789 to the present It also discusses prominent proposals for extensive constitutional changes introduced outside Congress as well as discussions of major amending issues

**Taming the Past** Robert W. Gordon, 2017-06-09 Lawyers and judges often make arguments based on history on the authority of precedent and original constitutional understandings They argue both to preserve the inspirational heroic past and to discard its darker pieces such as feudalism and slavery the tyranny of princes and priests and the subordination of women In doing so lawyers tame the unruly ugly embarrassing elements of the past smoothing them into reassuring tales of progress In a series of essays and lectures written over forty years Robert W Gordon describes and analyses how lawyers approach the past and the strategies they use to recruit history for present use while erasing or keeping at bay its threatening or inconvenient aspects Together the corpus of work featured in Taming the Past offers an analysis of American law and society and its leading historians since 1900

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