

Revisiting Justice Powell's Affirmative Action Legacy

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Asad Rahim, *Diversity to Deradicalize*, available at [SSRN](#).

It is difficult to say anything new about affirmative action. Scholars have analyzed the effect of affirmative action on white students and on people of color through the lenses of many disciplines. They have considered the philosophical consequences of a system that takes account of race in comparison to one that is race blind. They have asked whether a system *can* be race blind. Perhaps more than any other topic, scholars have exhaustively discussed diversity. The focus is not surprising, given that diversity is the only rationale for affirmative action that will withstand strict scrutiny, absent a narrow exception for institutions attempting to remedy their own past discrimination. But to offer anything new about diversity is a difficult task.

Despite the rich work already available, in *Diversity to Deradicalize* Asad Rahim offers a provocative and novel addition to the affirmative action canon. His sharp look at *Bakke* and diversity hones in on the father of the diversity rationale, Justice Lewis Powell. Justice Powell's solo concurrence in *Bakke v. Regents of the University of California* first articulated the diversity rationale for lower courts and institutions of higher learning. Powell's opinion has drawn praise and criticism. Some saw it as a unifying opinion that furthered racial harmony by demonstrating that integration is good for those of all races. Others have criticized the diversity rationale for affirmative action as ahistorical, ignoring centuries of racial injustice in favor of a rationale that emphasized what people of color could do for white people. Whatever their beliefs, litigants have found themselves advocating forcefully for the merits of diversity in order to preserve affirmative action at state schools.

Rahim's paper calls into question a critical component of this narrative: that Justice Powell was motivated by integrationist aims. By examining speeches, personal notes, and other writings from Powell's archives that offer insight into his racial views, Rahim undermines the received wisdom that Powell was a segregationist prior to his appointment to the Supreme Court, but that he became an integrationist during his time on the bench. He demonstrates "significant continuity" between Powell's "views before he joined the Court and the way he voted as a Justice on key cases involving race and education during his tenure." In the big picture, Rahim concludes, "Justice Powell spent considerable jurisprudential effort to limit the reach and effectiveness of racial integration."

If racial integration did not account for Justice Powell's embrace of diversity in his *Bakke* concurrence, what did? This is where Rahim's work really shines. He advances a fascinating new explanation: Justice Powell grew attracted to the idea of diversity because he feared radicalism. He believed that institutions of higher education were the site of radicalization for college students, who were targeted by radicals intent upon "infiltrat[ing] American universities in order to 'brainwash' the nation's future leaders with anti-American propaganda." Powell's fears were stoked by waves of campus protests during the 1960s and 1970s. Importantly, however, Powell did not see radicals as predominantly non-white. Rather, he argued, "[t]he most visible element of the revolutionary movement is basically white and campus oriented." Diversity, he believed, would serve as an antidote to such radicalization. But not just any diversity: the kind of intellectual diversity that would serve as a counterweight to the "new left" and moderate the radical forces on campus. This fascinating look into Justice Powell's thinking explains why, for example, he quoted with approval Harvard's statement that "[a] farm boy from Idaho can bring

something to Harvard College that a Bostonian cannot offer.” Yes, diversity could include race, but mostly it was about neutralizing leftist forces.

Rahim’s work really made me think. For this race scholar who has been writing (sometimes wearily) about diversity for fifteen years, *Diversity to Deradicalize* brought new life. I liked it a lot.

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