

Is Affirmative Action Justified in School Admission Processes?

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Abstract: From 1961 onwards, affirmative action has been a critical part of American legislation to combat societal discrimination and inequality. The recent *Students for Fair Admissions v. Harvard* case has brought the discussion of the justification of affirmative action back to the public eye. Giving college admission chances to students with lower academic achievement across the board only because of the social identification they behold should not be considered just. This article argues against the common ideas withheld by supporters of affirmative action. The old ideas of repayment for past evil deeds could not stand as a fair argument, and the long-term social benefit of affirmative action signifies it could not stand from a practical standpoint. Most importantly, the strengthening awareness of social identities would lead to more profound discrimination and a chaotic society.

Keywords: affirmative action, utilitarianism, deontology, social justice, social inequality, discrimination, class inequality

1. Introduction

According to the National Bureau of Economic Research (NBER) report, Affirmative Action refers to “special preferential rights are given to underrepresented minorities in various fields of society in the allocation of public resources such as employment and education.” Historically, President Kennedy signed an executive order against discrimination in the public sphere in 1961, near the height of the civil rights movement. This is the first time affirmative action law has entered the public eye, and successive presidents have continuously expanded it. Eventually, it became a vital bill affecting American social and public policy. Among them, in 1965, President Johnson expanded the coverage of the Act to the entire labor market in the form of a federal program. In 1969, President Nixon again expanded the scope of the Act. After years of development, this policy has now been widely used in public service, employment, and higher education, and at the same time, it has caused great controversy. Since 2003, seven states have passed legislation prohibiting affirmative action in college admissions. The debate has also heated up with the prohibition and

implementation of the bill. The most drastic of these came in 2011 when President Obama decided to use an executive order to expand the impact of affirmative action in higher education. Conservatives and Asians have strongly criticized the move, and some whites, claiming it has formed “reverse-discrimination” against Asian and white students by giving special care to African Americans, Hispanics, and other minorities. In 2014, with funding from Students for Fair Admission, Asian-American and white students launched a federal lawsuit against Harvard University and the University of North Carolina, accusing the two schools of discriminating against Asian-American and white students in the admissions process. In 2008, the *Abigail Fisher v. UT Austin* case came to the forefront again. When the conservative representative Trump took office in 2017, he also announced that he would investigate the problem of reverse discrimination against Asians and whites in American universities such as the Ivy League.

2. Background

Chief justice John Robert in an earlier case, stated that one way to stop discrimination based on race is to stop discriminating based on race [1]. This is one crucial reason why affirmative action is essential to discuss. I will introduce what most people think about affirmative action and whether affirmative action is appropriate according to different theories.

Firstly, one will explain affirmative action according to Hobbes’ theories. Hobbes’ state of nature is a miserable state of war in which none of our important human ends are reliably realizable. In this situation, people have equal rights to everything, even everyone around them. Thus, they have to defend themselves carefully. People must make contact to correct this situation and make people live peacefully. In this kind of contract, people have to give up some of their rights to ensure they have equal rights to some basic needs for their living. And in this way, people can live peacefully and reliably. Compared *to* our modern society, the things that can provide people with necessities are educational resources and job opportunities. Thus, ensuring people’s equal rights to these things is essential. And only when people can get those necessities in the modern world by equal access can they live in peace and reliability. Because they do not have to loot or panic about their basic living. Therefore, any unfair treatment in affirmative action is not proper. In conclusion, Hobbes may disagree with affirmative action.

Secondly, Lock has another way to make sure people’s peaceful living. In the state of nature, it’s hard to ensure people’s right to some things because people have the right to everything. But according to Lock, people can have rights depending on their labor. It means they can have the right to the things they get for themselves or what they are working on. In modern society, students study hard to take exams to enter universities. And laborers work hard to get job chances. Therefore, chances to enter colleges and contract jobs are people’s fruits of labor. So, according to lock’s theories, people’s fruits of work should not be infringed by some unfairness created by affirmative action.

Moreover, in Plato’s ideal state, people are divided into philosophers, soldiers, and laborers.

Each type has a different kind of work to do for the country. The philosopher is the governor of the state; a soldier is the defender of the state; the laborer’s job is products such as farming. But how determining a person belongs to a type is essential. These days, classifying people can depend on their educational achievement. However, affirmative action makes people enter college through unfair access; for example, their sat score requirement differs. So, it’s hard to determine their educational achievement by what college they graduated from or entered because they are not treated equally. Thus, according to Plato, society cannot use people by their types effectively, and the state cannot operate effectively.

However, defenders and attackers of affirmative action may fail to recognize that affirmative action can achieve many different goals. Critics may attack the most extreme forms of affirmative

action, such as rigid quotas adopted based on a general desire to help minorities. At the same time, supporters defend using race to help proven victims of past discrimination. Discussing affirmative action by focusing on what types of activities are permissible under what circumstances is appropriate.

3. Main Argument

Despite claims to the contrary, the central issue with affirmative action policies today is that they are unjust. This is because something is just if and only if it treats people as they deserve to be treated. However, affirmative action policies do not treat people as they deserve to be treated. Though they are often promoted in the name of justice, since affirmative action policies often overlook how people deserve to be treated and instead favor people primarily based on their race or gender, such policies are unjust. To defend the definition of justice I have presented, notice that when people do bad things, some sort of negative consequence for their actions is fitting. For example, some negative impact (e.g., a fine, jail time, etc.) is suitable when someone steals something. But there is a symmetry between when people do bad things and when people do good things. Of course, there is a pronounced asymmetry between right and wrong actions in that the former is permissible and impermissible. However, right and wrong steps are the same because consequences can fit both. Therefore, when people do good things, some positive impact of their actions is fitting. For example, when someone wins a sports competition, such as a tennis match, an award (e.g., a monetary prize) for that win is fitting. Or, as another example, when one person saves another person's life, such as when a firefighter saves someone from a burning building, some sort of positive consequence (e.g., praise; public recognition) is fitting. Therefore, when people perform morally evaluable actions (i.e., right or wrong), some sort of consequence (i.e., positive or negative) is fitting.

Yet, if some consequence is fitting for someone's morally evaluable action, then the person who performed that action deserves that consequence. The reason for this is that it seems wrong to hold that someone does not earn something, but that is nevertheless fitting. For example, it would be unfair to have someone who does not deserve praise, but praise for that person is appropriate. So, when people perform morally evaluable actions, they deserve fitting consequences.

As a result, people deserve to be treated in ways that fit their actions. But affirmative action policies do not treat people in ways that include the steps they have performed. For example, even if someone has not done as well in school as someone else, the first person may receive better consequences (i.e., college admission) than the second person. Therefore, affirmative action policies do not treat people as they deserve to be treated, so affirmative action policies are unjust.

As an additional argument for the claim that affirmative action policies are unjust note that affirmative action policies treat people based on their race or gender in the same way that racial segregation policies treat people based on their race; that is, both affirmative action policies and racial segregation policies treat people solely based on their skin color or their gender, rather than on how they deserve to be treated. However, how racial segregation policies treated people based on race was/is unjust. Therefore, affirmative action policies, too, are unfair.

But you might object that affirmative action policy does not treat people based on their skin color or gender. For example, the majority decision in the Supreme Court case *Gruner v. Bollinger* says that affirmative action policies are acceptable if the schools consider other factors besides race.

However, either these other factors that schools must consider in their admissions processes are merit-based, or they are not. If they are merit-based, then it would be unjust to discount someone's application despite when they merit admission. But if schools do not ignore people's applications despite when they deserve entries, this is counterproductive to what affirmative action policies are supposed to do.

Yet, if the other factors are not merit-based, they treat people based on their race like racial segregation policies did (which is unjust) or rely on problematic consequentialist grounds. The consequentialist soils would be difficult because unjust actions would be justified to promote the desired consequence, which, as in *Grutter v. Bollinger*, is a diverse student body. For instance, if the main result that affirmative action policies promote is a diverse student body, then not only would it be permissible for schools to privilege people just based on their skin color or gender, thereby denying admission to other students, but it would also be permissible for schools to kick already admitted students out in the name of having a more diverse student body. But since the latter is unjust, it also seems the former is unfair.

4. Objections to the Position

4.1. Objection # 1

However, most people would consider the special treatment in college admission for the underprivileged as right from a deontological perspective because the essential goodness of people seems to be what most people want to believe. Deontology does not care about consequences. It is sometimes called “responsibility” or “should do” or ethics defined by rules, emphasizing that the objective basis of moral judgment is “goodwill,” attaching importance to behavior motives and believing that good deeds should be done unconditionally out of obligation. And there are two ways that people usually will use to judge an action as right or not. First, people rely on their conscience or intuition to consider a unique ethical occasion.

People have a conscience to pity the underprivileged and consider it justified that they are given special treatment on college admission. Like the author would sometimes do some charities to help the poverty in our daily life knowingly or unknowingly. Pity for the weak seems to be human nature. Second, there are universal and correct moral rules. As long as people behave by these rules, it is honest and just. The U.S. is a country consisting of different races. It is known for its liberal and open mind, tolerance of diversity is consistent with U.S. constitutional essence, and this seems to be mainstream in the U.S. It is justified that college admission takes to race, sex, etc., into account to allow more underprivileged people to have opportunity to receive higher education. In this way, all ethnic groups prosper together. Human beings have not lost their conscience because of reason, nor should they lose their conscience because of defense. Therefore, the author objects to canceling affirmative action in college admission from a deontological perspective.

4.2. Objection # 2

It would be easy to dismiss affirmative action as unjust since it added the variable of race to college admission, making some underperformed to be accepted and taking away the chances for those who worked hard while not having any beneficial consequences.

However, in the current background, the opposition might argue that justice is not an effective rebuttal against affirmative action. As Hobbes has stated, “*Justice is the constant will of giving to every man his own*” when there is no own, there cannot be an existing justice. When there is no social contract, there is no own. This is based on the social contract where every man is equal, and those who try to break the social contract will shift back to the state of nature. However, this is not the case with the status quo, the author is in a condition where the liberty of minorities is being compromised, but the author is not back to the state of nature. Society and the social contract, along with it, have mistreated minorities; they have not been given the equal rights of all or equal deterrence for all. They have not broken the social contract themselves but are forced to be treated like one for only the ill-written social agreement drafted by the majority.

African Americans possessed an uncompetitive starting ground. The centuries of mistreatment

gave them an economical and resource deficit. When the whites reached economic prosperity through agriculture and trade, it was African Americans' slaved ancestors that did the heavy work while having no payback. The unpleasant state of African Americans now results from deeply rooted discrimination. On the other hand, the strict rule of migration policies has secluded Asians with low economic and labor abilities. Compensation is needed for all. It is unrealistic *to* believe that African Americans, with one-tenth the income of other groups and living in a discriminating society, are necessary to compete without any compensation [2]. The opposing side never pictured a scenario where African Americans have identical scores and achievements to white students in college admission. The unconscious bias of the admission officer could favor the white student, giving it the offer. Would this still be a justice action when the implicit racial bias compensates for the white? The black student worked even harder to reach the same academic achievement as the white or Asian because of resource constraints. Isn't it the same unjust that the author has been arguing against affirmative action? A soft quota affirmative action here would counterbalance the bias in mind; in a way, it is only with affirmative action that their actions determine college admission. To illustrate it more clearly, take an example of a running competition. An African American student accomplished the same time of 100m as a white or Asian student, only that the African American had to run in a mud pool (representing the inferior resource).

In contrast, Asian and white could run on a legit running track. If looking at each student's action, the African American student should be crowned. Even if it was only one-tenth of a second down, it required more effort and deserved to be crowned as the student who worked hardest in the competition.

The opposition might be thrilled with the idea of the trolley problem and disputed that it could be used to their advantage. Based on the words of Brian Barry, affirmative action is not immoral as it does not violate procedural justice [3]. In the book, he states that procedural justice can only be achieved when background justice is in place. However, in this society now, background justice is not in place. So, saying that affirmative action is immoral is not a valid refutation. Again, with the example of the running competition, it could be argued that it is perfectly fair to award the student who can reach the finish line first, but would this fairness still stand when the starting point and running distance differentiate across different groups? No is probably the answer. Continuing about the trolley problem, the state that minorities face is not originated from them but from the majority through years of unjust treatment. It is not letting die and killing one believed scenario but making the patient ill and then killing it through bias. The arguments around morality should not stand in the first place; even if it does, affirmative action is the more moral decision. Regarding students purposefully identifying themselves as a minority, this concern is out of the context of the current argument, for it is not a problem of affirmative action but the regulatory and audit system in college admission.

4.3. Objection # 3

Finally, from a Utilitarianism calculation, the utility of allowing disadvantaged groups to enter college through affirmative action is far greater than the utility of no affirmative action in the first place. Firstly, a study shows that the wages of the disadvantaged will increase substantially, while the wages of whites will not change through affirmative action in college admission. If in that case, the total social utility will increase. Second, it can improve the quality and effectiveness of education for all. Research shows that diverse working groups are more productive, creative, and innovative than homogeneous groups. And the educational benefits will also extend into the marketplace. It specifically found that campus-based exposure to widely diverse people, cultures, ideas, and viewpoints brought about skills currently needed by U.S. businesses and the military. It promotes the total productivity of the whole country. In addition, it can improve interracial relations,

promoting the social development of society. These educated disadvantaged groups will have a higher status in society, allowing them to speak for their group, transmit their own culture, and let more people know about it, eliminate cultural conflicts, and unite the nations of this country. Therefore, from the above, enforcing affirmative action in college admission in college admission to maximize the utility is more justified.

5. Answers to Objections

5.1. Answers to Objection # 1

Deontology is a theory that considers whether an action should be taken or not should be based on rules of rights and wrongs. If something is right and justified to conduct, there is a moral duty for one to take responsibility obligatorily [4]. In this case, moral obligation is defined by the fact that the disadvantaged groups are in inferior positions and thus justified to make additional attempts to help the groups.

Nonetheless, let's only consider the moral duty of affirmative action in determining whether it is justified. It carries potential crises that may erupt and cause unwanted severe results. According to Hobbes, self-preservation is human nature, indicating that possessing valuables is indigenous. And if the author puts this into a broader scale, humans act in terms of their interests. Thus, when being in a disadvantaged position equals having superiority in society, people could claim or pretend to be the disadvantaged group. For instance, when a heterosexual man realized that being a minority and previously oppressed group may benefit his school admission, he could pretend *to* be homosexual and tells a story of what he had been through during the school admission process. If the school adopted affirmative action, that man would have a higher possibility and advantage of getting admitted. And this potential chaos in society, in a deontological view, is justified. But if this were allowed in the admission system, more people would state themselves as a disadvantaged group to possess valuables with any strategy not restricted by law. Though advocates may try *to* avoid this scenario by suggesting reviewing applicants' profiles closely and making background investigations, verifying the authenticity of thousands of profiles takes years. Thus, if candidates were to lower their possibility of being forced to quit school, they may maintain their fake identity for extended periods. And this is, at best, causing trouble for admission officers to verify the candidates' identities and, at worst, generating social identification chaos.

And now consider the part: "it is justified to treat the underprivileged especially." Firstly, is diversification as good as its advocates claim? Advocates commonly argue that promoting diversification can offer a more diversified cultural context, thus providing opportunities for people of different backgrounds to socialize and inspire new integrated thoughts. However, if the author considers the conflict, discrimination, clique, and unstopping argument, diversification has unsolvable disadvantages that will cause large-scale threats and dangers.

According to the Social Contract theory, a state is built on a covenant in which individuals give up some parts of their natural rights to exit the natural shape and end the chaos [5]. Since all men waived the same rights according to the state's rules, all men should be provided with the same life and health rights. And educational rights need to be offered equally to every person. The equal protection clause in the 14th amendment was generated on this ground. It states that the state should not deny to any person within its jurisdiction the equal protection of the laws. And in this case, it means to race, gender, and more should not be a concern as long as it is within the state's jurisdiction. Moreover, because citizens have enjoyed the protection and welfare the state offers, one should follow the laws enacted by the country. Thus, based on the equality of different individuals and the duty to follow the rules, the author should prohibit affirmative action or preferential treatment based on race, sex, and more.

Locke argued that each individual “owns” himself, so everyone is equally accessible and has equal rights in the state of nature. To this end, every man can own the product of his labor. An apple that grows on a tree is of no use to anyone. Only when someone harvests do the apple become that person’s property, and that person has the right to eat, sell, or throw away the apple. Apple is not assigned to anyone in a natural situation; the one who conducted the labor will own the apple. Therefore, everyone should have the same opportunity and the same number of rights to own that apple. No one should be preferentially treated in school admission because it is against fair chance and the requirement of the same individual rights.

5.2. Answers to Objection # 2

In Foot’s trolley problem, she introduced a scenario when a surgeon made a mistake and caused five patients’ impending death [6]. Should the surgeon kill one innocent,

14) healthy patient to compensate for his mistake and save five lives? Foot’s answer was based on the rationality that killing one is worse than letting five die. And in the case of affirmative action, compensating for the mistreatment of disadvantaged groups by depriving another group’s existing and justified rights resembles killing one. For example, in the school admission situation, a previously poor student enters the university by replacing another student’s existing rights and qualifications to enroll. And this is not even a killing one versus letting five die situation; this is a killing one versus letting one die situation. Killing is morally worse than allowing others to pass, as it unfairly treats people as a means to promote others. Thus, affirmative action should not be applied on the ground of compensation.

Indeed, the essential purpose of affirmative action is to provide more opportunities for disadvantaged people living in poor or remote areas (because the rich has not encountered many difficulties). However, affirmative action generally provides more opportunities to people such as upper-class African Americans and does not fulfill its fundamental aspiration. Instead, it creates more significant hierarchical gaps and class conflicts inside disadvantaged groups.

The author acknowledges that slavery, female discrimination, et cetera, that existed in the United States’ school admission system has caused considerable harm to disadvantaged groups, but who should be held truly responsible for this? Only those historical enslavers or those who practiced institutional sexual discrimination can be held accountable, and it would be unjust to have anyone else responsible, including their children and grandchildren. Even if an unfair act benefits an innocent person, compensatory justice should not require that the clear beneficiary pay compensation for those damages [7]. Indeed, many people today are not descendants of enslavers or institutional sexists. They may be descendants of people from the free states of the North or descendants of those who immigrated from Europe and other places after slavery or institutional sexism ended. Moreover, some of their ancestors may have been abolitionists at the time or may have taken credit for abolishing institutional discrimination. Should these people ever be held responsible for the historical harm to disadvantaged people? Since the historically loyal subjects have passed away and there is no way to distinguish who is liable for the damage traditionally done to the groups, affirmative action inevitably leaves the innocent to take the blame. This indiscriminate, punitive blaming and compensation is even worse and more unjustified.

5.3. Answers to Objection # 3

The objection is only considering utilitarianism from a narrow and short-sight view. When considering utilitarianism on a broader scale, the long-term happiness of individuals and society should be considered.

First, the author needs to consider a person’s happiness. Here, the author will specifically use the

SAT to elaborate. After affirmative actions are applied, the SAT score threshold for disadvantaged groups will be lowered. For example, assume the SAT threshold for Anglo-Saxonian people is 1400 and 1300 for African Americans. Because SAT contains reading, writing, and math, it shows a student's knowledge level and skills. This difference in knowledge levels means that some African Americans admitted into college have a lower knowledge level than others.

Given that the contents and courses students have to deal with and learn in college are identical, their performance will not be worse than others, but it also leads to potential depression issues. Moreover, this could affect their happiness after graduation. Research from SLS shows that disadvantaged groups admitted into schools with lower standards and scores have a relatively higher dropout rate, and those who studied in law schools pass the bar exam at a lower rate [8]. All of these lower the total happiness of individuals in the long run.

Second, affirmative action will not be beneficial for interracial or intersexual relationships. It is treating those previously disadvantaged better places them in an advantaged position, causing reverse discrimination towards groups like Anglo-Saxonian people and males. This irritates these groups and will cause more significant conflicts between the groups in society, leading to less happiness for the community. Moreover, the previously disadvantaged people will not be happier. Since the previously advantaged groups have hatred towards the once poor people, they will discriminate against them more, thus causing more bullying and, therefore, less happiness for groups like African Americans or women.

In addition, as mentioned above, the available profit and outcome the society gains are less due to the higher dropout rates and lower knowledge levels. Consequentialism states that whether an act is morally right is determined solely by its consequences. In this context, creating less profit for society means that affirmative action is improper. Without affirmative action, the community could have generated more value when educational resources are equally offered to equally qualified people.

6. Conclusion

In this essay, the author has argued that affirmative action policies are unjust. Affirmative action policies do not treat people as they deserve to be treated, they wrongly focus only on people's race or gender rather than the sorts of people they are, and they often have harmful consequences for those the policies were intended to help. The author has also argued that common justifications for affirmative action policies are unsuccessful. For instance, the author has argued that affirmative action policies cannot be used as tools to correct past injustices since identifying those who are culpable for past injustices and those who past injustices have harmed is unfeasible. Our argument has drawn from several different ethical theories to defend our claim, strengthening the support for our claim and avoiding the criticism that affirmative action policies could be unjust from one perspective but not from another.

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