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University Policy, Affirmative Action, and the Principles of Justice

Eric Wampler

The position I take in this paper will be that Affirmative Action policies in university admissions are in accord with the principles of justice. I am defending a strong form of Affirmative Action: given that both applicants are qualified to do the university course work and to graduate in a reasonable amount of time, a university acts justly in admitting a slightly less qualified minority over a slightly more qualified white.

One of the possible goals of Affirmative Action includes compensation for past centuries of injustice and injury. And while the compensation argument might be a defensible position and certainly appeals to our initial moral intuitions, I will not focus on it. Instead, I will focus on a forward-looking argument that strives for a fair distribution of resources and for social well-being; the ultimate end being a greater egalitarian society.

My defense of Affirmative Action contains two elements. First, I will argue that the ends, or goal, of Affirmative Action are just.

Second, I will argue that Affirmative Action does not use unjust means to reach its ends.¹

Ends of Affirmative Action

To begin with, then, it may be helpful to remember some facts that seem to suggest strong inequities in this society. In a 1995 report, for example, while 42 percent of white high school graduates, ages 18-24, attended college, only 35.8 percent of Latinos and 32.8 percent of blacks likewise attended an institution of higher education.² In 1988, 34 percent poor whites resided in the inner cities; this contrasts with the 57 percent of poor blacks who lived in the inner cities.³ The life expectancy of a black baby born in 1990 is 6-8 years less than that of a white baby.⁴ The infant mortality among whites is 7.5 per thousand live births; among blacks it is over double that: 16.5 per thousand live births.⁵ Maternal mortality rates during child birth among blacks are over three times that of whites,⁶ and blacks have an approximately 16 percent less likelihood than whites of surviving five years after diagnosed with cancer.⁷ And finally, while there are more whites than blacks below the poverty line, 9.4 percent of white families live below the poverty line compared with 31.3 percent of black families.⁸

Now since all of these things--making

money, surviving illness, and having healthy children--are things that most people desire, regardless of gender or race, the fact that minorities lack them to a greater proportional extent than whites suggests that the current system of resources, essential services, and opportunities is consciously or unconsciously unfair to minorities. In addition to this racial inequality, there is out-and-out racism, which is evident by the presence of hate crimes; high-profile, substantiated charges of housing and job discrimination; and sobering polls such as following: according to a University of Chicago General Social Survey, National Opinion Center (1994), approximately 15 percent of Americans answered 'yes' when asked if whites have a right to keep black out of their neighborhoods.⁹ It should be no surprise that the result of racial inequality and racism¹⁰ is an exacerbation of racial tensions which can further divide society: Peter Singer notes that

...when these inequalities coincide with an obvious difference between people like the differences between African Americans and Americans of European descent, or between males and females, they do more to produce a divided society with a sense of

superiority on the one side and a sense of inferiority on the other. Racial and sexual inequality may therefore have a more divisive effect than other forms of inequality.¹¹

A policy, then, that ameliorates racial tensions and helps bring about social harmony is a good policy, all other things being equal.

Affirmative Action in university admissions procedures tends to increase qualified minority representation in professional occupations like doctors, lawyers, and teachers. And since professional occupations tend to confer greater enjoyment of resources, this procedure brings about a more equitable distribution of resources. Also, as Singer points out,

Minority and female doctors and lawyers can serve as role models to other members of minority groups, and to women, breaking down the unconscious mental barriers against aspiring to such positions.¹²

Singer goes on to suggest that having more minority professionals would benefit more minorities in general, as minorities proportionally tend to provide more services for other minorities in typically professional-under-

represented areas. Also, having the universities more closely represent the diverse real world would better enable graduates to know the concerns and expectations that can differ across racial lines as well as differ widely within the same racial group, which would benefit both minorities and whites: according to Robert Atwell, president of the American Council on Education (representing 1,800 colleges and universities):

The whole basis of affirmative action is to recognize that we need to make the educated work force of this nation look like America if we're to compete in this world.¹³ [Note that Atwell's "whole basis" is only one goal in this paper.]

If these factual claims are true, then, Affirmative Action would represent a progression towards racial equality concerning our society's resources, which would help repair racial tension and promote social harmony. And, so, all other things being equal, Affirmative Action is a just policy as its ends are the establishment of a greater egalitarian society.

Means of Affirmative Action

It could be said, however, that I am trying to have the ends justify the means, means which are themselves unjust. Certainly any talk

of ends will plant one squarely in the consequentialist realm of moral justification but what of the deontologist who claims that a deontological requirement (e.g., along the lines of, "One should not lie.") is being violated? Always using equality in one's dealings with others would be a vague formulation of the requirement in question.¹⁴ But as we do not treat the homeowner equally when he or she is subject to eminent domain in order to construct a direct road from the community to the hospital--thus saving precious moments and lives--sometimes unequal treatment is warranted by a situation.¹⁵ But the deontological thrust of the question remains: If the original actions of discrimination were unjust, shouldn't actions of reverse discrimination be unjust as well? To answer this, since university positions are a resource that should be divided up in a fair way, we must look to distributive justice to aid us in our inquiry.

Distributive justice demands that we observe the principle of equal consideration of interests. This is a principle that says that we must weigh exactly the same any two persons' interests--or desires--regardless of whose interests we are considering.¹⁶ If I come upon the scene of an accident, for example, in which

two people have sustained the same extent of injuries, I cannot give my only shot of morphine to one person simply because that person is white or simply because that person is black. I am obliged to weigh both of their interests equally (and presumably, here, pick arbitrarily).

So in considering two applicants for one university spot, both of their interests must have the same weight. For example, while both of our hypothetical applicants are qualified to graduate from the university in a reasonable period of time, one is a white applicant and one is a slightly less qualified minority applicant. As they both equally want the spot, I must make the decision as to which to accept by using the university's goals as the deciding criteria. Many say that the university's goal here should be to enroll the most qualified applicant possible. But that only raises the question of why being the most qualified is the only relevant characteristic for our criteria. Edwin C. Hettinger presents and examines three main reasons--efficiency, desert, and rights--and offers explanations why each is unsatisfactory in the context of the Affirmative Action debate.¹⁷

Concerning the first, efficiency, it would seem that the university wants to take only the most qualified applicants so as to create greater

efficiency in society. We could rely on more professionals being more qualified since the universities themselves were taking only the most qualified applicants possible.

But while many would take the promise for the most possible efficiency as a self-justifying virtue, in reality it is not at all clear that efficiency is morally relevant here. One may become more efficient if one learns to type correctly rather than peck-type with two fingers, but one is not morally obliged to learn the correct way to type.¹⁸ Also, it is important to remember, the minority applicant, as well as the white applicant, must be deemed qualified to graduate from the university in the first place. So the type of Affirmative Action defended here does not ask society to tolerate any more unqualified professionals in the work place than already surely existed with primarily white professionals. And it also seems that the short-term efficiency costs that Affirmative Action is asking us to make are outweighed by the long-term investment of increasing the talent pool by increasing the proportions of currently under represented minorities:

What sense does it make, particularly with the globalization of markets and services, to waste the potential of nearly

2/3 of the national community? By expanding the pool of candidates who will become tomorrow's teachers, scientists, and management executives, we improve the quality of our products, our services, and our leadership.¹⁹

Concerning the second commonly-held reason for a university to admit only the most qualified--that of desert--many find it a truism that by simply being the most qualified applicant, one deserves the university spot. Again, however, a closer examination reveals otherwise. As Hettinger notes, most of the things that make an applicant qualified are a function of the following factors:

...(a) innate abilities, (b) home environment, (c) socio-economic class of parents, (d) quality of the schools attended, (e) luck, and (f) effort or perseverance. A person is only responsible for the last factor on this list, and hence one only deserves one's qualifications to the extent that they are a function of effort.²⁰

Hettinger goes on to point out that, in fact, many minorities who are slightly less qualified in the normal use of the word would be considered more deservingly qualified due to effort alone,

since statistically they have more hurdles to pass than whites do. But in any case, because so much of one's qualifications depend on circumstances beyond one's control, being more qualified by the application process doesn't make one deserve to be admitted over someone else.

Finally, concerning the third commonly-held reason why a university should admit only the most qualified applicant--that of rights--it would seem that the most qualified applicant has a right to the university spot.²¹ But, once again, careful scrutiny indicates otherwise. To see why, we have to remember the principle of equal consideration of interests.

Can a white rejected by a university claim that the university gave less weight to his or her interests than to the minority applicant selected instead? No, because being slightly more qualified than the minority candidate does not make his or her interests weigh more heavily--we must weigh both interests the same and not say to the minority student, "Since you are slightly less qualified, your interests in this regard are of intrinsically less concern to us." So how does the university pick which student it will admit? As Singer notes, it does so by appealing to its goals: "...on matching the applicants against

standards that the university draws up with certain policies in mind."²² Some of a university's goals may include advancing the various academic disciplines, providing qualified citizens whose industry will benefit the state and the nation at large, and providing for social well-being.

Increasing the representation of minorities as professionals is a specific goal the university can adopt as well, designed for greater social harmony. The interests of the slighted white are not being weighted less than the minority applicant--they are weighted exactly the same.²³ It is the social goals that determine which candidate is picked. Social goals that satisfy the interests of all of us in greater society, seeking to provide more harmony and happiness for all. The different treatment, then, of different applicants is justified by these legitimate goals. This is similar to preferring to give first aid to a doctor injured in an accident even if he or she is less injured than many others present--he or she could then assist in helping those more injured, in this way better facilitating the interests of all involved.

In conclusion, then, since a university might adopt Affirmative Action procedures to bring about a more egalitarian society, and since

they do not resort to unjust means, such as violating someone's rights, to reach that goal, Affirmative Action in university admissions are in accord with the principles of justice.

NOTES

1. In my paper, I agree that Affirmative Action policies are not morally forbidden, and so open up the door to their being morally permissible. The kind of moral permissibility is different though, from being an amoral action like vacuuming your living room. Furthermore, showing that Affirmative Action policies are not forbidden does not demonstrate that they are merely permissible, as they could be obligatory. For arguments showing that they are neither forbidden nor obligatory but are permissible as a self-imposed moral obligation, see Joseph Ellin's "Racial Preference Redressed: Why Race-based Preferential Treatment Isn't Always 'Naked'."

Ellin, Joseph. "Racial Preference Redressed: Why Race-based Preferential Treatment Isn't Always 'Naked'." Prepared for Amintaphil, U of Kentucky, Oct. 31 - Nov. 2, 1996

2. Carter, Deborah J., and Reginald Wilson. Minorities in Higher Education: 1994 -- 13th Annual Status Report. American Council on Education, March 1995. As it appears in: "Rethinking Affirmative Action." CQ Researcher April 28, 1995: 369-392. p. 8.

3. Cornelius, Llewellyn. "Poverty." *The African-American Encyclopedia*. Ed. Williams, Michael W., New York: Marshall Cavendish, 1993. 1271 - 1273. p. 1272.
4. U.S. Bureau of the Census. Statistical Abstract of the United States, 1995. p. 87, table 11b. c3.134:995. As appears in: Horner, Louise L. Black Americans: A Statistical Sourcebook. Palo Alto, CA: Information Publications, 1996. p.51, table 2.10.
5. U.S. Department of Health and Human Services. Health United States, 1993. p.82, table 20. HE 20.6223:993. As appears in: Horner, p. 53, table 2.11.
6. Ibid. p. 127, table 49. HE 20.6223:993. As appears in: Horner, p. 58, table 2.14.
7. Ibid. p. 152, table 68 (data from National Cancer Institute, National Institutes of Health Cancer Statistics Branch). HE 20.6223:993. As appears in: Horner, p. 76, table 2.23.
8. U.S. Bureau of the Census. Statistical Abstract of the United States, 1991. p. 465, table 751 (data from the Current Population Survey). C3.134:991. As appears in: Horner, p. 257, table 7.14.
9. Smith, T. W. Personal communication to David G. Myers. Data from General Social Survey, National Opinion Research Center, University of Chicago. 409, 449, 683. As appears in: Myers, David G. Psychology. 4th ed. New York: Worth, 1995. p. 683, table.

10. To avoid (perhaps unavoidable) ambiguity, I take the following three terms to mean roughly the following: (a) racial discrimination--treating others differently because of their race, whether from good intentions or ill, and whether the facts support the reasons for the discrimination or not (e.g., this paper outlines a program of Affirmative Action that seeks to promote social harmony by considerations of race, which has good intentions and, I hope, correct facts); (b) racial inequality--the state of affairs that occurs when resources and/or erroneous facts (e.g., forcing blacks to sit at the back of the bus in an attempt to demean them and /or based on the egregiously erroneous belief that their presence sullies whites). Note that to call the Affirmative Action policies defended here 'racist', based on these definitions, is incorrect.

11. Singer, Peter. Practical Ethics. 2nd ed. Cambridge: Cambridge U P, 1993

12. Ibid, p. 50.

13. "Rethinking Affirmative Action," p. 375

14. Nagel, Thomas. The View From Nowhere. New York: Oxford U P, 1986. As appears in: Davis, Nancy (Ann). "Contemporary Deontology." A Companion to Ethics. Ed. Peter Singer. Oxford: Blackwell, 1991. 205-218. p. 211.

15. Thomas Nagel uses the eminent domain analogy, but I have added the hospital, which brings out the justifiability of the action all the more. Nagel, Thomas. "A Defense of Affirmative

Action.” Ethical Theory and Business 2nd. Ed. Ed. Tom Beauchamp and Norman Bowie. Englewood Cliffs, NJ: Prentice-Hall, 1983. 484. As appears in: Hettinger, Edwin C. “What is Wrong With Reverse Discrimination?” Business & Professional Ethics Journal fall 1987: 39-51. Rpt. in Social Ethics: Morality and Social Policy. 5th. ed. Eds. Thomas A. Mappes and Jane S. Zembaty. New York: McGraw-Hill, 1997. 304-314. p.313.

16. Singer, p. 21.

17. Hettinger, Edwin C., p. 308-10.

18. Ibid, p. 308. Hettinger uses a different example--that of carrying two grocery bags instead of one, but the point is not the same.

19. Lopez, Gerald P. et al. “An Affirmative Action Manual.” World-Wide Web. Available at: <<http://www.law.ucla.edu/classes/archive/civaa/>>. Section 2.34

20. Hettinger, p.309.

21. Hettinger gives his own account of why it does not make sense to talk of an applicant’s rights in this regard, but I have followed a different tack here, mostly after Singer’s own consequentialist line of reasoning.

22. Singer, p. 47.

23. Ibid, p. 47