A Minority's Argument for the Anti-Discrimination Principle and against Affirmative Action

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The price of reaching out to minorities and students of socioeconomic disadvantage is well worth the cost, for the long-term ramifications will lead to a just society.

Unlike affirmative action, race-neutral programs increase the educational ability of minorities and ensure that all students receive a high-quality education that will prepare them to compete in the business world or in secondary education. With an equal educational foundation, students from every ethnic and economic group will contribute to society based upon their abilities and interests. Equal opportunity provides an environment for success that is free from any of the negative consequences of affirmative action. As the United States reaches out to every economic background, the highest quality of education can be provided for the members of each race. Education will lead to successful high school and subsequently successful college graduates. Upon the foundation of education the lives of all Americans will be enhanced, especially the lives of minorities abandoned by affirmative action. Race-neutral socioeconomic standards are not a temporary fix, rather a long-term investment that will yield the dividend of a just society.

14 U.S. Department of Education Office for Civil Rights, 12.

A Minority's Argument for the Anti-Discrimination Principle and against Affirmative Action

Joseph Lambson*

Affirmative action not only fails in its endeavor to solve for racial inequality, but it undermines the very concept of what a just society is.

Since the time slave ships brought their African captives into Boston Harbor to the time of the civil rights marches in the 1960s, the United States has traditionally had, at best, a mixed record on race. However, if a moral position exists which commands near-universal assent, it is that discrimination is morally reprehensible. Ironically, it is how best to end discrimination that has been, and remains, one the most divisive issues to our policy makers. Dr. John Hasnas elaborates on the dilemma:

Whether society should be structured so as to guarantee strict equality of opportunity, i.e. whether we should have a “color-blind” society, or whether Affirmative Action or benign racial, ethnic or sexual classifications should be permitted (or perhaps required) is a perennial source of political strife.

One recent attempt to correct the problem comes in the form of a federal program called affirmative action. In this paper I will argue that affirmative action not only fails in its endeavor to solve for racial inequality, but it undermines the very concept of what a just society is. In order to establish my thesis, I will examine three points of conflict: first, what constitutes a just society; second, the role the anti-discrimination principle plays in establishing a just society; and finally, whether affirmative action helps augment the

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spirit of the anti-discrimination principle in furthering the cause of creating a just society.

What is a just society? First, it is a society that follows and enforces moral laws it has set for itself. But the definition of justice begs the question, What then is moral law? Moral laws are not absolute, immutable truths; they are limits designed to impede our ability to pursue our ends with unfettered discretionary laws designed to protect those things that society values most. Simply put, moral laws are the bounds within which we must pursue our ends. When we leave the traditional bounds of morality as defined by law, we suffer consequences, e.g., jail, fines, etc. While not abiding by moral law might help us more readily achieve our ends, what moral law dictates is that even efficiency itself is subject to a higher principle. Examples of this might include my inability to bury toxic waste, even in my own backyard. While this might be the most efficient way for me to rid myself of this by-product, it can damage other people and the environment, both of which are valued highly by society—valued more highly, in fact, than my want to effectively rid myself of this hazardous by-product. Moral law is designed to establish the bounds within which individuals may pursue their own ends while simultaneously protecting those things which society deems to be most valuable.

Second, a just society is one whose moral laws are based on a sense of fairness and equity, fair and equitable being that each person receives his due from the system, specifically, in terms of rights and processes. It is important to note that the “fairness” and “equity” of justice are implied in terms of access to the same rights and opportunities, not in terms of life’s outcomes. To use Las Vegas lingo, everybody gets a “chip and a chair” but not everybody will win the jackpot.

Having examined the components of a just society, we can direct our attention towards the anti-discrimination principle. The anti-discrimination principle is the moral law “... disfavoring classifications and other decisions and practices that depend on the race (or ethnic origin) of the parties affected.” In layman’s terms, the anti-discrimination principle is the theory whereby we, as a society, decide not to categorize, classify, or show preferential treatment towards people based on race. Such a system postulates that unequal treatment on the basis of these characteristics (on immaterial grounds) is unjust.

At the inception of the early Civil Rights Movement, such a society—one that was governed by the anti-discrimination principle—was the very goal behind anti-discrimination law and became the basis for a “color blind” society. In fact, even the founders of the Civil Rights Movement itself were motivated by the anti-discrimination principle. Terry Eastland, biographer of Thurgood Marshall, writes of him that

[he] argued in the 1948 case of Sipuel vs. Board of Regents, a forerunner to Brown vs. Board of Education, that “Classifications and distinctions based on race or color have no moral or legal validity in our society.” Embedded in this statement was the moral truth that the mere race of a person tells us nothing morally important about him or her that should compel either a negative or positive treatment.

Perhaps the most poignant argument for the anti-discrimination principle coming from the Civil Rights Movement was made on an August day on the steps of the Lincoln Memorial. Martin Luther King said, “I have a dream that my four children will one day live in a nation where they will not be judged by the color of their skin but by the content of their character.”

Dr. Morris B. Abram, an early participant of the Civil Rights Movement, describes the goals of that movement in this way:

The overarching political goal of this movement was equality—an equality to be reached by the elimination of barriers that denied the individual the opportunity to exercise his franchise effectively, to compete for housing and employment, and to use public accommodations.5

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5 Martin Luther King Jr., The Peaceful Warrior, Pocket Books, (New York 1968).
Clearly we can see that these statements, made by many of the founders of the Civil Rights Movement, support the idea of the anti-discrimination principle; it is unjust to use race or ethnicity to bar people from participating equally in the system.

What role, then, does the anti-discrimination principle have in establishing a just society? In response, we can begin by examining the fruits of the Civil Rights Movement, a movement motivated largely by the anti-discrimination principle. Many Americans clearly recognized that past discrimination had been wrong and did not afford minorities access to the same rights and opportunities. In hopes of establishing an equitable and just society Americans ratified a host of laws protecting the rights of minorities.

The 1964 Civil Rights Act, for example, made racial discrimination illegal in public places such as theaters, restaurants, and hotels. It also forced employers to provide equal employment opportunities. Projects involving federal funds could now be cut off if federal authorities discovered that there was evidence of discrimination based on color, race, or national origin.

The Civil Rights Act also attempted to deal with the problem of African Americans being denied the vote in the Deep South. The legislation stated that uniform standards must prevail for establishing the right to vote. Schooling to sixth grade constituted legal proof of literacy and the attorney general was given power to initiate legal action in any area where he found a pattern of resistance to the law.

The Fair Housing Act of 1968, which prohibited the use of race or ethnicity in the sale or rent of people's homes was another law adopted to aid in furthering the goals of the anti-discrimination principle. The language of the law was later amended to include one's gender, familial status, and status as disabled.

At the heart of these laws was the anti-discrimination principle. It plays a key role in ensuring that people's opportunities remain in tact and thus promotes a just society.

After having established what constitutes a just society and having explored the history and designs of the Civil Rights Movement, we are now ready to examine whether affirmative action also meets our standard of justice. Does affirmative action help promote a just society?

When the anti-discrimination principle is society's guideline for preventing discrimination, affirmative action does not promote a just society. Affirmative action is the preferential treatment given to members of a minority group, not on the grounds of personal merit, but merely because of their status as minorities. By prohibiting classifications that depend on race or ethnic origin, it seems clear that affirmative action is not permissible in a society motivated by the anti-discrimination principle. Ironically, such preferential treatment on the basis of these characteristics was exactly the problem the founders of the Civil Rights Movement, and society at large, were trying to avoid by passing anti-discrimination legislation!

There are several arguments that proponents of affirmative action use in order to try to justify the modern use of affirmative action. The first argument is that it is an effective means of counteracting the effects of past discrimination. A good way to explain the argument is to allude to an earlier example: what if certain people are given more chips and a nicer chair? Do we really have equal opportunity? If not, it seems reasonable and an equalizing force that will allow them to compete fairly with other more advantaged individuals. There is certainly an argument to be made, for example, that if a student did not receive a similar quality education in the public school system, that this would warrant changes in public policy and perhaps even some consideration of this factor in admissions or job processes.

The problem with affirmative action, however, is that proponents of affirmative action mistake socio-economic disadvantages with racial or gender disadvantages. While it is true that ethnic or minority students, for example, are more likely to come from poorer backgrounds, and are less likely to have received a good education, it is paramount to recognize that this is true, oftentimes not because of race, ethnicity, or gender, but because of economic status. It is "a bridge too far" to claim that minority students receive a poorer education, nationally, because they are minorities. Examples include comparing the education spending of my own state, Utah—not known for its racial diversity—to one of the most heavily minority areas in the country, Washington, D.C. A recent U.S. census shows that while more than $8,000 per student per year was spent in the D.C. area, Utah spent less than half of that per student at $3,800."
Clearly we can see that these statements, made by many of the founders of the Civil Rights Movement, support the idea of the anti-discrimination principle; it is unjust to use race or ethnicity to bar people from participating equally in the system.

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7 http://www.census.gov/prod/ges/gc974-1.pdf
By applying the supposed “equalizing force” of affirmative action to certain races or among people with a certain status, it implies one of two things: that all of these people have been disadvantaged by others because of their status, or that they are disadvantaged because of their minority status.

Millions of minorities, women, immigrants, etc., come home each day to a perfectly nice home, in a perfectly nice neighborhood from perfectly adequate schools; and millions do not. If some in our society do not have equal opportunity, such as those caught in poverty cycles, why then nor address the adequate schools; and millions do not. If some in our society do not have equal opportunity, such as those caught in poverty cycles, why then nor address the problem on the basis of opportunity itself rather than from the vantage point of irrelevant characteristics such as race, gender, or ethnic background? As a minority student, I can personally attest to the having never been discriminated against with regards to my opportunities and am certainly not impaired by being “Hispanic.” In my case, no one is “righting past wrongs.” Rather, I will be on the receiving end of gross immorality—receiving preferential treatment over my white peers because of the color of my skin. Further, I am not an isolated case.

Affirmative action produces the opposite of its desired end—a more unjust society. In 1997, Jennifer Gratz applied for law school at the prestigious University of Michigan. Like most applicants, she was turned down. It is interesting to note, however, why Jennifer was not admitted into this particular law school. Gratz had better grades and a better LSAT score than many of the other students who where were admitted into the University. The reason Jennifer was not admitted was because she was Caucasian. The University of Michigan, in its use of an affirmative action-based admissions process, had determined that not enough minority students had been admitted into the law school and chose to admit a less qualified minority student rather than Gratz. This occurrence is not limited to college admissions; it extends into considerations of employment, the awarding of government contracts, and more. The argument that affirmative action merely rights past wrongs begs the question, Wronged by whom? Jennifer Gratz? How did Jennifer Gratz wrong the individual who gained preference in the University of Michigan’s admissions process? Perhaps many minority students do come from backgrounds where educational opportunities are limited because of past discrimination. But who is to be held responsible—the great-great-grandchildren of the perpetrators?

Ken Feagins explains,

As a result of affirmative action programs, marginally qualified white males are rapidly replacing black females as the group most frequently discriminated against in American society. Whether the group be whites or blacks, men or women, racism and sexism remain racism and sexism. Our society will never reach its dream of equality until, as a matter of public policy, it becomes completely blind to both race and sex. The anti-discrimination principle is undermined by affirmative action and when practiced, affirmative action breeds a new form of discrimination—the discrimination against the majority by the minority. How does excluding Jennifer Gratz from the University of Michigan on the basis of race help promote a more just society? If justice is based on rights and opportunity, if justice is centered on “character” and not “color” as the early members of the Civil Rights Movement desired, then affirmative action does not promote a more just society.

Another common argument for affirmative action comes in the guise of countering present prejudice. I will respond, not from the vantage point of analyzing someone else’s thoughts on the matter, but again, as a minority student who stands to benefit from affirmative action. Not only does this argument fail to accomplish its desired end, but by violating the anti-discrimination principle, affirmative action will actually create a more unjust society.

Next fall I will be applying to law schools. Facing me is the moral dilemma of whether or not I should disclose my race on the admissions forms I will be sending to various law schools. Why? Because as I sit down in the “Welcome to Law School” meeting at the university I choose to attend, I want to feel that I’m there because I worked hard and earned my way, not just because I’m Hispanic. Furthermore, when others see me in law school, or even afterwards, I want them to recognize my achievements for what they are—the product of hard work, and not the result of a quota. I fear, however, that this is exactly how I will be seen—as an under-qualified minority who was accepted to school “X” or got the job at firm “Y” because

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Gratz and Hamacher, Grutter v. The Regents of the University of Michigan.

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Furthermore, the message that affirmative action sends to minority students and society at large demeans our status rather than enhancing it. What message does it send to minorities and society when less-qualified minority applicants are accepted over more-qualified peers? It sends the deprecating message that minority students are not capable of achieving the same quality of work as their counterparts; otherwise, the same quality work would have been expected of them. When the anti-discrimination principle is applied, upon meeting those who graduated from a prestigious school, it does not matter their gender, or what color of skin they might have. The anti-discrimination principle ensures that the people you are meeting worked hard to achieve the standing they have and eliminates all thought of race as a factor in their personal success. Other minority students with whom I’ve spoken often feel the same way.

Affirmative action does not fulfill the aim of providing a just society, because not only does it not promote fairness and equity, it promotes its antithesis—a society in which people are aided or discriminated against because of the color of their skin. This treatment is not something that anyone is “due” under our law, as is evidenced by the statements of the founders of the Civil Rights Movement themselves. Each person is due equal access to rights and opportunities, and affirmative action does not provide this fair and equitable treatment.

The principal argument for the anti-discrimination principle is that only through this moral law can we ever hope to achieve a color-blind, and thereby just, society. A color-blind society is a just society because it provides best for the definition of justice. It ensures that bounds are set up within which we are able to pursue our ends and that each person within those bounds is treated equally. The anti-discrimination principle is the means by which we can best achieve the noble and valued goal of ending discrimination. When we make certain to ignore those irrelevant characteristics which have traditionally divided us and begin judging people as individuals, not as members of a group, we will begin to cultivate what the founders of the Civil Rights Movement had in mind—a just society. With the anti-discrimination principle as our moral law for ending discrimination, affirmative action plays no role in creating a just society.
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