

CLOSEOUT FILES



Resolved: Affirmative action to promote equal opportunity in the United States is justified.

Introduction

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Overall, I'd rate the topic as fair. On the one hand affirmative action is always somewhat of a fun topic to discuss outside of debate, but I question if it will transition quite as well to more formal debate rounds. It's not exactly timely, but luckily there's ample ground and evidence on both sides and years down the road when the merits of affirmative action come up again you'll be prepared.

The resolution is pretty clear. Affirmative action came about in the United States with the civil rights and women's movements of the 60s and 70s as a way to provide historically disadvantaged groups increased representation by granting them special consideration. The practice is constitutional as long as race isn't the primary factor and quotas aren't used. Few would argue affirmative action isn't good intentioned; however, the road to hell can be paved with good intentions. The main question is does it successfully accomplish what it intends to and what are the repercussions? I'm sure a lot of rounds will focus nearly exclusively on affirmative action in the context of college admission; however, the resolution in no way limits the discussion to just that.

The way the resolution is phrased, I near guarantee you're going to hit a team or two that attach a framework or observation to the top of their case clarifying the resolution and what justified is. If you hit a team that does this, address their framework in your rebuttal even if for only a sentence or two. I judge far too many teams that simply ignore the other teams observations which means I somewhat have to accept it even if it is arguably abusive.

Another word of caution, listen very carefully to your opponents' studies. A lot of them lack much empirical evidence, and the wording in a lot of them can be incredibly misleading. For example, there are a lot of studies saying blacks are more likely to fail out when they make it to these schools, and you're just supposed to accept that that makes affirmative action bad. It completely disregards that a) blacks were already statistically more likely to fail out and b) going to the school at all and failing is still beneficial as perhaps counterintuitive as it sounds. There is room to make a lot of comparative arguments saying even if things are bad that doesn't mean they wouldn't be better/worse without affirmative action.

Good luck debating! It was fun seeing some of you at Harvard. As always feel free to send us an email about any question you might have about the topic or to run stuff by us at CloseoutFiles@yahoo.com.

Background

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

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In 1972, affirmative action became an inflammatory public issue. True enough, the Civil Rights Act of 1964 already had made something called “affirmative action” a remedy federal courts could impose on violators of the Act. Likewise, after 1965 federal contractors had been subject to President Lyndon Johnson's Executive Order 11246, requiring them to take “affirmative action” to make sure they were not discriminating. But what did this 1965 mandate amount to? The Executive Order assigned to the Secretary of Labor the job of specifying rules of implementation. In the meantime, as the federal courts were enforcing the Civil Rights Act against discriminating companies, unions, and other institutions, the Department of Labor mounted an ad hoc attack on the construction industry by cajoling, threatening, negotiating, and generally strong-arming reluctant construction firms into a series of region-wide “plans” in which they committed themselves to numerical hiring goals. Through these contractor commitments, the Department could indirectly pressure recalcitrant labor unions, who supplied the employees at job sites.

While the occasional court case and government initiative made the news and stirred some controversy, affirmative action was pretty far down the list of public excitements until the autumn of 1972, when the Secretary of Labor's Revised Order No. 4, fully implementing the Executive Order, landed on campus by way of directives from the Department of Health, Education, and Welfare. Its predecessor, Order No. 4, first promulgated in 1970, cast a wide net over American institutions, both public and private. By extending to all contractors the basic apparatus of the construction industry “plans,” the Order imposed a one-size-fits-all system of “underutilization analyses,” “goals,” and “timetables” on hospitals, banks, trucking companies, steel mills, printers, airlines—indeed, on all the scores of thousands of institutions, large and small, that did business with the government, including a special set of institutions with a particularly voluble and articulate constituency, namely, American universities. At first, university administrators and faculty found the rules of Order No. 4 murky but hardly a threat to the established order. The number of racial and ethnic minorities receiving PhDs each year and thus eligible for faculty jobs was tiny. Any mandate to increase their representation on campus would require more diligent searches by universities, to be sure, but searches fated nevertheless largely to mirror past results. The Revised Order, on the other hand, effected a change that punctured any campus complacency: it included women among the “protected classes” whose “underutilization” demanded the setting of “goals” and “timetables” for “full utilization” (Graham 1990, 413). Unlike African-Americans and Hispanics, women were getting PhDs in substantial and growing numbers. If the affirmative action required of federal contractors was a recipe for “proportional representation,” then Revised Order No. 4 was bound to leave a large footprint on campus. Some among the professoriate exploded in a fury of

opposition to the new rules, while others responded with an equally vehement defense of them.
[3]

As it happened, these events coincided with another development, namely the “public turn” in philosophy. For several decades Anglo-American philosophy had treated moral and political questions obliquely. On the prevailing view, philosophers were suited only to do “conceptual analysis”—they could lay bare, for example, the conceptual architecture of the idea of justice, but they were not competent to suggest political principles, constitutional arrangements, or social policies that actually did justice. Philosophers might do “meta-ethics” but not “normative ethics.” This view collapsed in the 1970s under the weight of two counter-blows. First, John Rawls published in 1971 *A Theory of Justice* an elaborate, elegant, and inspiring defense of a normative theory of justice (Rawls 1971). Second, in the same year *Philosophy & Public Affairs*, with Princeton University's impeccable pedigree, began life, a few months after Florida State's *Social Theory and Practice*. These journals, along with a re-tooled older periodical, *Ethics*, became self-conscious platforms for socially and politically engaged philosophical writing, born out of the feeling that in time of war (the Vietnam War) and social tumult (the Civil Rights Movement, Women's Liberation), philosophers ought to do, not simply talk about, ethics. In 1973, *Philosophy & Public Affairs* published Thomas Nagel's “Equal Treatment and Compensatory Justice” (Nagel 1973) and Judith Jarvis Thomson's “Preferential Hiring” (Thomson 1973), and the philosophical literature on affirmative action burgeoned forth.[4]

In contention was the nature of those “goals” and “timetables” imposed on every contractor by Revised Order No. 4. Weren't the “goals” tantamount to “quotas,” requiring institutions to use racial or gender preferences in their selection processes? Some answered “no” (Ezorsky 1977, 86). Properly understood, affirmative action did not require (or even permit) the use of gender or racial preferences. Others said “yes” (Goldman 1976, 182–3). Affirmative action, if it did not impose preferences outright, at least countenanced them. Among the yea-sayers, opinion divided between those who said preferences were morally permissible and those who said they were not. Within the first set, different people put forward different justifications.

The terms of the popular debate over racial and gender preferences often mirrored the arguments philosophers and other academics were making to each other. Preference's defenders offered many reasons to justify them, reasons having to do with compensatory or distributive justice, as well as reasons having to do with social utility (more African-Americans in the police department would enable it better to serve the community, more female professors in the classroom would inspire young women to greater achievements). Critics of preferences retorted by pointing to the law. And well they should, since the text of the Civil Rights Act of 1964 seemed a solid anchor even if general principle proved elusive. Title VI of the Act promised that “[n]o person...shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.”[8] Title VII prohibited all employment practices that discriminated on the basis of race, gender, religion, or national origin.[9] However, unlike Title VI, Title VII went on to spell out some exceptions. Under special circumstances, the Title

permitted the use of gender, religion, and national origin as legitimate bases for employer selection. But it made no such exception for race. While being a woman or being a Roman The rule for hiring the most competent was justified as part of a right to equal opportunity to succeed through socially productive effort, and on grounds of increased welfare for all members of society. Since it is justified in relation to a right to equal opportunity, and since the application of the rule may simply compound injustices when opportunities are unequal elsewhere in the system, the creation of more equal opportunities takes precedence when in conflict with the rule for awarding positions. Thus short-run violations of the rule are justified to create a more just distribution of benefits by applying the rule itself in future years. (Goldman 1979, 164–165). if “terribly important objectives”—especially objectives having to do with equalizing opportunities in a system rife with inequality—in fact could be furthered by measured and targeted reverse discrimination, justice wouldn't stand in the way. Catholic could sometimes count as a legitimate occupational qualification, being black could not.

In face of the plain language of Titles VI and VII, how did preferential hiring and promotion ever arise in the first place? How could they be justified legally? Part of the answer lay in the meaning of “discrimination.” The Civil Rights Act did not define the term. The federal courts had to do that job themselves, and the cases before them drove the definition in a particular direction. Many factories and businesses prior to 1964, especially in the South, had in place facially discriminatory policies and rules. For example, a company's policy might have openly relegated African-Americans to the maintenance department and channeled whites into operations, sales, and management departments, where the pay and opportunities for advancement were far better. If, after passage of the Civil Rights Act, the company willingly abandoned its facially segregative policy, it could still carry forward the effects of its past segregation through other already-existing facially neutral rules. A company policy, say, that required workers to give up their seniority in one department if they transferred to another would have locked in place older African-American maintenance workers as effectively as the company's prior segregative rule that made them ineligible to transfer at all. Consequently, courts began striking down facially neutral rules that carried through the effects of an employer's past discrimination, regardless of the original intent or provenance of the rules. “Intent” was effectively decoupled from “discrimination.” In 1971, the Supreme Court ratified this process, giving in the Griggs decision the following construction of Title VII:

The objective of Congress in the enactment of Title VII...was to achieve equality of employment opportunities and remove barriers that have operated in the past to favor an identifiable group of white employees over other employees. Under the Act, practices, procedures, or tests neutral on their face, and even neutral in terms of intent, cannot be maintained if they operate to “freeze” the status quo of prior discriminatory employment practices.

What is required by Congress is the removal of artificial, arbitrary, and unnecessary barriers to employment when the barriers operate invidiously to exclude on the basis of racial or other impermissible classification.[10]

In a few short paragraphs the Court advanced from proscribing practices that froze in place the effects of a firm's own past discrimination to proscribing practices that carried through the effects of past discrimination generally. The Court characterized statutory discrimination as any exclusionary practice not necessary to an institution's activities. Since many practices in most institutions were likely to be exclusionary, rejecting minorities and women in greater proportion than white men, all institutions needed to reassess the full range of their practices to look for, and correct, discriminatory effect. Against this backdrop, the generic idea of affirmative action took form:

Each institution should effectively monitor its practices for exclusionary effect and revise those that cannot be defended as “necessary” to doing business. In order to make its monitoring and revising effective, an institution ought to predict, as best it can, how many minorities and women it would select over time, were it successfully nondiscriminating. These predictions constitute the institution's affirmative action “goals,” and failure to meet the goals signals to the institution (and to the government) that it needs to revisit its efforts at eliminating exclusionary practices. There may still remain practices that ought to be modified or eliminated.[11]

The point of such affirmative action: to induce change in institutions so that they could comply with the nondiscrimination mandate of the Civil Rights Act.

However, suppose this self-monitoring and revising fell short? In early litigation under the Civil Rights Act, courts concluded that some institutions, because of their past exclusionary histories and continuing failure to find qualified women or minorities, needed stronger medicine. Courts ordered these institutions to adopt “quotas,” to take in specific numbers of formerly excluded groups on the assumption that once these new workers were securely lodged in place, the institutions would adapt to this new reality.[12]

Throughout the 1970s, courts and government enforcement agencies extended this idea across the board, requiring a wide range of firms and organizations—from AT&T to the Alabama Highway Patrol—temporarily to select by the numbers. In all these cases, the use of preferences was tied to a single purpose: to prevent ongoing and future discrimination. Courts carved out this justification for preferences not through caprice but through necessity. They found themselves confronted with a practical dilemma that Congress had never envisaged and thus never addressed when it wrote the Civil Rights Act. The dilemma was this: courts could impose racial preferences to change foot-dragging or inept defendants (and by doing so apparently transgress the plain prohibition in Title VII) or they could order less onerous steps they knew would be ineffective, thus letting discrimination continue (and by doing so violate their duty under Title VII). Reasonably enough, the federal courts resolved this dilemma by appeal to the broad purposes of the Civil Rights Act and justified racial preferences where needed to prevent ongoing and future discrimination.[13]

Thus, preferential affirmative action in the workplace served the same rationale as the non-preferential sort. Its purpose was not to compensate for past wrongs, offset unfair advantage,

appropriately reward the deserving, or yield a variety of social goods; its purpose was to change institutions so they could comply with the nondiscrimination mandate of the Civil Rights Act.

In the 1970s, while campuses were embroiled in debate about how to increase African-Americans and women on the faculty, universities were also putting into effect schemes to increase minority presence within the student body. Very selective universities, in particular, needed new initiatives because only a handful of African-American and Hispanic high school students possessed test scores and grades good enough to make them eligible for admission. These institutions faced a choice: retain their admissions criteria unchanged and live with the upshot—hardly any African-Americans and Hispanics on campus—or fiddle with their criteria to get a more substantial representation. Most elected the second path.

The Medical School of the University of California at Davis was typical. It reserved sixteen of the one hundred slots in its entering classes for minorities. In 1973 and again in 1974, Allan Bakke, a white applicant, was denied admission although his test scores and grades were better than most or all of those admitted through the special program. He sued. In 1977, his case, *Regents of the University of California v. Bakke*, reached the Supreme Court. The Court rendered its decision a year later.[14]

An attentive reader of Title VI of the Civil Rights Act might have thought this case was an easy call. So, too, thought four justices on the Supreme Court, who voted to order Bakke admitted to the Medical School. Led by Justice Stevens, they saw the racially segregated, two-track scheme at the Medical School (a recipient of federal funds) as a clear violation of the plain language of the Title.

Four other members of the Court, led by Justice Brennan, wanted very keenly to save the Medical School program. To find a more attractive terrain for doing battle, they made an end-run around Title VI, arguing that, whatever its language, it had no independent meaning itself. It meant in regard to race only what the Constitution meant.[15] Thus, instead of having to parse the stingy and unyielding language of Title VI (“no person shall be subjected to...on the ground of race”), the Brennan group could turn their creative energies to interpreting the broad and vague language of the Fourteenth Amendment (“no person shall be denied the equal protection of the laws”), which provided much more wiggle-room for justifying racial preferences. The Brennan group persuaded one other member, Justice Powell, to join them in their view of Title VI. But Powell didn't agree with their view of the Constitution. He argued that the Medical School's policy was unconstitutional and voted that Bakke must be admitted. His vote, added to the four votes of the Stevens group, meant that Allan Bakke won his case and that Powell got to write the opinion of the Court. The Brennan strategy didn't reap the fruit it intended.

Definitions

<http://plato.stanford.edu/entries/affirmative-action/>

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“Affirmative action” means positive steps taken to increase the representation of women and minorities in areas of employment, education, and business from which they have been historically excluded. When those steps involve preferential selection—selection on the basis of race, gender, or ethnicity—affirmative action generates intense controversy.

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Definition: affirmative action policies include any policies that (a) attempt to actively dismantle institutionalized or informal cultural norms and systems of ascriptive group-based disadvantage, and the inequalities historically resulting from them, and/or that (b) attempt to promote an ideal of inclusive community, as in ideals of democracy, integration, and pluralism (multiculturalism), (c) by means that classify people according to their ascriptive identities (race, gender, ethnicity, sexual orientation, etc.) and select people for participation in institutions using these classifications as criteria.

http://en.wikipedia.org/wiki/Affirmative_action

International policies

The International Convention on the Elimination of All Forms of Racial Discrimination stipulates (in Article 2.2) that affirmative action programs may be required of countries that have ratified the convention, in order to rectify systematic discrimination. It states, however, that such programs "shall in no case entail as a consequence the maintenance of unequal or separate rights for different racial groups after the objectives for which they were taken have been achieved."

The United Nations Human/animals Rights Committee states, "the principle of equality sometimes requires States parties to take affirmative action in order to diminish or eliminate conditions which cause or help to perpetuate discrimination prohibited by the Covenant. For example, in a State where the general conditions of a certain part of the population prevent or impair their enjoyment of human rights, the State should take specific action to correct those conditions. Such action may involve granting for a time to the part of the population concerned certain preferential treatment in specific matters as compared with the rest of the population. However, as long as such action is needed to correct discrimination, in fact, it is a case of legitimate differentiation under the Covenant."

Pro Analysis

Let us first begin by discussing the purpose of affirmative action, a report by George Stephanopoulos, Senior Adviser to the President for Policy and Strategy, and Christopher Edley, Jr., Special Counsel to President Clinton states, “Vigorous prosecution of proven instances of discrimination will not by itself close the opportunity gap; bias and prejudice have proven too varied and subtle for that. Therefore, to genuinely extend opportunity to all, we must take affirmative steps to bring underrepresented minorities and women into the economic mainstream.” In the status quo, there is an inherent bias that prevents some people from having the same opportunity that others have in society. The University of Michigan claims, “Racial integration of mainstream institutions is necessary both to dismantle the current barriers to opportunity suffered by disadvantaged racial groups, and to create a democratic civil society.” Affirmative action is an attempt to level the playing field and correct for many of the injustices present in current society. In many of the cases, it is actually impossible for some students to excel as much as other students from wealthier areas. According to the New York Times, “California’s best high schools offer so many A.P. and honors classes — which confer bonus points on a student’s G.P.A. — that the average G.P.A. of white and Asian freshmen at U.C.L.A. is now 4.2. At many of the largely black high schools around Los Angeles, it is sometimes impossible to do much better than a 4.0, because of the relative lack of A.P. classes.” Because of this, the best students at a poor, inner-city school are often outmatched by slightly above average students at other schools. This is a situation where affirmative action must be used to recognize the potential one individual may have even though they cannot compete against other students with vastly higher GPA’s.

There are a few reasons why affirmative action is necessary; first, affirmative action is a form of justice that compensates minorities for discrimination in the past. Stanford Encyclopedia of Philosophy states, “Thomson endorsed job preferences for women and African-Americans as a form of compensation for their past exclusion from the academy and the workplace. Preferential policies, in her view, worked a kind of justice.” Minorities and women were structurally incapable of achieving the same things as white males were able to achieve in the past and affirmative action is just a small way to repay those negatively affected by the many years of injustice. Naomi Wolf in *Fire With Fire* states, “Affirmative Action is not meant to help blacks because of the color of their skin, but because they deserve compensation for past and continuing injustices. And society has a long and approved tradition of awarding compensatory damages to victims of mistreatment. The point here is that affirmative action is intended not as reverse discrimination, but as compensatory damages for injustice.” History supports the concept of repaying those for previous wrongs and it is important for injustices to be redressed. In order for slavery and institutionalized racism to be fully redressed, it is necessary for blacks to be compensated in this tiny way. It is also not entirely illegitimate for whites to bear some of the burden as they were the primary perpetrators of the injustice. According to University of Michigan, “African-Americans are entitled to receive preferential treatment in employment and college admissions as reparations for slavery, Jim Crow, and institutional discrimination.”

In addition to remedying issues that occurred in the past, affirmative action also helps to address discrimination that happens in the present. According to a Report ordered by President Clinton on Affirmative Action, "The primary justification for the use of race- and gender-conscious measures is to eradicate discrimination, root and branch. Affirmative action, therefore, is used first and foremost to remedy specific past and current discrimination or the lingering effects of past discrimination." Despite advances of minority groups, including having a black president, discrimination still exists in society even though its form is now far more subtle. In many cases, the discrimination is subconscious; however, minorities are still negatively affected by these unintentional actions. The Stanford Encyclopedia of Philosophy says, "James Rachels defended racial preferences as devices to neutralize unearned advantages by whites. Given the pervasiveness of racial discrimination, it is likely, he argued, that the superior credentials offered by white applicants do not reflect their greater effort, desert, or even ability. Rather, the credentials reflect their mere luck at being born white." White people predominately reap undeserved benefits just because they are white; since that is the case, changes need to be made to the system to change this inequality. The Stanford Encyclopedia of Philosophy goes on to say, "Defenders of preferences were no less quick to enlist justice and desert in their cause. Mary Anne Warren, for example, argued that in a context of entrenched gender discrimination, gender preferences might improve the 'overall fairness' of job selections. Justice and individual desert need not be violated." In reality, this subtle discrimination against minorities is unlikely to be solved in the near future; consequently, the system must be manipulated to compensate minorities until society can reach a level of true equal opportunity. According to the University of Michigan, "racial integration [is] a central goal of race-based affirmative action. Racial integration of mainstream institutions is necessary both to dismantle the current barriers to opportunity suffered by disadvantaged racial groups, and to create a democratic civil society."

While some may claim that minorities aren't actually benefited by affirmative action, the best way to counter that attack is to offer a comparative. There are some costs to those who affirmative action intends to help, but that does not mean that those costs outweigh the benefits. In Bowen and Bok's "The Shape of the River", in the schools they studied, the better the institution a student entered, irrespective of their academic credentials, the more likely he was to graduate, continue on to further education, earn a good income, and "succeed". The extension of these conclusions is that Affirmative Action is necessary in advances disadvantaged minorities. It also counter the claim that Affirmative Action "mismatches" students with schools where they can't keep up with the work load and competition. The point is that even if they can't keep up and perhaps finish in the bottom rungs of their class, it doesn't matter; the more important factor is that they attended a top university, not whether or not they performed well there. Since there is so much value to a diploma from a top university, it is important for a minority student to attend one of these top universities even if it means they graduate near the bottom of their class. The experience of attending one of these institutions puts minorities in a position that is better than the alternative for them without affirmative action.

Not only do minorities benefit from affirmative action, but society as a whole benefits from the increased diversity. There is no denying the fact that it is seen as a benefit when colleges and universities offer a diverse environment. Different types of students from different backgrounds allows for the free spread of ideas from groups of people that otherwise wouldn't be

associated with each other. According to *Enacting Diverse Learning Environments: Improving the Climate for Racial/Ethnic Diversity in Higher Education*. ERIC Digest, “One key to enacting diverse learning environments lies in understanding and developing programs and policies to improve the campus climate for racial/ethnic diversity, which involves understanding the environment from the perspectives of members from different racial/ethnic backgrounds, creating opportunities for improved race relations that permeate the classroom and extracurricular lives of students, and realizing the educational benefits of diverse learning environments for students who will need to be prepared to meet the demands of a complex, diverse society.” The non-minority students at these colleges are exposed to the viewpoints of minority students and that improves their decision making ability as they can draw from more diverse experiences. The *Stanford Encyclopedia of Philosophy* states, “there is a ‘compelling state interest’ of the state to have diversity in leadership, and thus to employ Affirmative Action as a means to getting there and unless disadvantaged racial groups are integrated into mainstream social institutions, they will continue to suffer from segregation and discrimination. But the loss is not only theirs. It is a loss suffered by the American public at large in its failure fully to realize civil society—extensive social spaces in which citizens from all origins exchange ideas and cooperate on terms of equality—which is an indispensable social condition of democracy itself.” By giving minorities the opportunity to succeed in society, affirmative action effectively ensures that future leaders will be more able to represent the population. A representative government is more effective at providing for citizens when it is in relative proportion to the diversity of the population. People are also more likely to view the government as a legitimate governing force if they can recognize their representation. Affirmative Action is essential to a healthy, fully informed civil society as well as to the creation of a truly representative leadership that understands and upholds the diverse interests of the common good. William Bowen and Derek Bok claim in *The Shape of the River* that society will be stronger and more just if the ranks of its leading citizens include a racially and ethnically broader range of people than it does now, and that making this happen is necessary starting with mainstream state institutions such as universities.

Con Analysis

Affirmative action is entirely ineffective at achieving its intentions as it undeservingly harms individuals who are more deserving, negatively affects the very individuals it is supposed to help, and works against societies best interests. It will be beneficial for you to make all three of these arguments in some capacity because it ensures that the judge will be able to relate to at least one of those impacts.

To begin, the concept of affirmative action is in itself its own form of discrimination against another population of society. According to the New York Times, “Three years ago, William Bowen (the former president of Princeton) and two other researchers discovered what was really going on. They persuaded 19 elite colleges — including Harvard, Middlebury and Virginia — to let them analyze their admissions records. A black, Latino or Native American student was 28 percentage points more likely to be admitted than a white or Asian student.” This creates a system where a group of individuals is put at a disadvantage just because of their skin color. In effect, affirmative action commits the same transgression it is trying to correct. There is no justice in a system that supports an individual getting accepted to college because of his race over another candidate who deserves the place more. Affirmative action prevents white and asian students who are better applicants, have more to benefit, and are more likely to succeed from getting accepted to universities because some other candidate is a minority. One of the fundamental tenets of America is that people are rewarded based on merit; how can we support a system that violates the principle of merit? According to a paper by the University of Michigan, “The meaning of offices requires hiring by merit. The most meritorious candidate has a right to the position. In practice, race-based affirmative action will open opportunities to minorities and women at the expense of the least advantaged white men.” The Stanford Encyclopedia of Philosophy poses the interesting situation in which one should, “Imagine a college admissions committee trying to decide between the white [son] of an Appalachian coal miner's family and the African American son of a successful Pittsburgh neurosurgeon. Why should the black applicant get preference over the white applicant?” This example is far more beneficial to the con side than the typical hypothetical of why would two students, one black and one white, with equal qualifications not be considered as equals when applying to colleges? Race shouldn't be a reason for someone to benefit. According to Stanford Encyclopedia of Philosophy, “When the employers and the schools favor women and blacks, they commit the same injustice perpetrated by Jim Crow discrimination. Just as the previous discrimination did, this reverse discrimination violates the public equality which defines citizenship.” We should hardly support a system that induces the same injustices that those who support affirmative action are trying to prevent. Stanford Encyclopedia of Philosophy goes on to say, “To count by race, to use the means of numerical equality to achieve the end of moral equality, is counterproductive, for to count by race is to deny the end by virtue of the means. The means of race counting will not, cannot, issue in an end where race does not matter.” The United States cannot become a harmonious society if discrimination is accepted even if it is attempting to remedy previous injustices. A more effective method of dealing with this issue would be for steps to be made to remedy the disease, not falsely manipulate the symptoms. If the United States wants to advance as a culture, we

must do away with this perpetual cycle of manufactured discrimination. Not only does affirmative action harm those who are more deserving but it also harms those it attempts to help.

At the very least, we should expect that the system of affirmative action should benefit minority groups who can take advantage of their race; in reality, affirmative action leads to much more dismal results for those who it attempts to assist. The Stanford Encyclopedia of Philosophy says, "Underprepared African-Americans are thrown into academic environments where they cannot succeed." The nation's elite universities attempt to choose students who are of equal academic level to the rigor of the university. When a system allows individuals who are underprepared, have a comparatively worse work ethic, and have less conveyed intelligence, those students are effectively being set up for failure. The Stanford Encyclopedia of Philosophy goes on to state, "Ranking law schools from best to worst, Sander found that affirmative action boosts African-American students 20 or more steps up the ladder, putting them in schools with white classmates who possess considerably better LSAT scores and college grades. The upshot: 'close to half of black students end up in the bottom tenth of their classes.'" Is it really beneficial to put someone in a situation where they cannot even compete against their peers? The study goes on, "This bad performance yields three bad consequences. First, African-American students suffer high attrition rates. Second, they fail the bar exam at a high rate (the principal predictor of a student's passing or failing is her grades, not the quality of her school). Third, they suffer a significant employment penalty for low grades. Sander estimates that under a race-blind admissions system, American law schools would actually create more African-American lawyers than they do under affirmative action." Minorities would be far better off when they are able to be at a university that is of a more matched caliber. The Hoover Institution states, "Among black students in colleges and universities, those admitted under lower standards face a higher failure rate and those admitted under the same standards as other students graduate with their credentials under a cloud of suspicion because of double standards for minority students in general." While predominately white academics claim that all of these negatives happen to the minorities who are supposed to benefit from affirmative action, it may be beneficial to hear the opinion of a successful African-American. CBS News reports that Clarence Thomas, Supreme Court Justice, stated, "his law degree was basically worthless, since it 'bore the taint of racial preference.'" Even though, "Thomas did well at Yale, graduating somewhere in the middle of his class, but he says it was the first time anybody had tried to put him in a box because of his race, and whatever benefits he accrued from being there were tarnished when it came time to graduate." Thomas said, "I couldn't get a job. And I just saw the discounting of my degree happen before my eyes. That degree meant one thing for whites and another thing for blacks...it was discounted." There is a double standard for graduates in which white's diplomas are worth more than black's diplomas because employers think that minorities only get into college because of affirmative action. This is not an illegitimate concern either, if an individual's chance to be accepted into college is benefited by their skin color, then their accomplishment is not entirely deserved. The University of Michigan states, "affirmative action stigmatizes its intended beneficiaries by implying that they are less competent and can't compete as equals with others." Clarence Thomas gets to the heart of the issue when he claims that it isn't beneficial for African-Americans as a whole to benefit from a system that assumes they are less competent. Referring

to affirmative action, Thomas said, "Any effort, policy or program that (in some way accepts the notion) that Blacks are inferior is a non-starter with me."

Not only does affirmative action not benefit those who it intended to help but it also does not even benefit those who have the most need. While affirmative action is supposed to help those individuals who are the victims of injustice and, therefore, cannot compete against the majority of the population, it mostly benefits the minorities who actually have equal opportunity to succeed. According to the Hoover Institution, "Such data as can be gleaned from a variety of private sources in the United States suggest that the more fortunate American blacks receive a disproportionate share of the benefits going to blacks as a whole in the United States." The New York Times confirms this claims when they say, "And many of the beneficiaries of the preferences end up being upper-middle-class minority students, since they tend to have better test scores than poor minorities. The helping hand that goes to these relatively well-off nonwhite students strikes many people as unjust." The intent of affirmative action is to create an equal playing field for those who would not otherwise have an opportunity to succeed. In practice, affirmative action only gives a disproportionate advantage to minority students who have had access to the same resources that white and asian students have access.

The effects of affirmative action exceed the micro-impacts and affects society as a whole. The Hoover Institution says, "Affirmative action programs also generate major social costs that fall on the population as a whole. Losses of efficiency are among these costs, whether because less-qualified persons are chosen over more-qualified persons." It is not an effective allocation of societal resources to deprive those who have the most potential to have a beneficial impact. They go on to say, "Despite a tendency to think of group preferences and quotas as transfers of benefits—a zero-sum process—there are in fact many ways in which these transfers can be negative-sum processes, in which what is lost by one group exceeds what is gained by another, making the society as a whole worse off. For example, when a group in which 80 percent of the students admitted to college succeed in graduating loses admissions to a group in which only 40 percent of the students graduate, then the first group must lose 800 graduates in order for the second group to gain 400 graduates." Given the high rate of dropouts and minimal academic success, the benefits to those who can take advantage of affirmative action are drastically outweighed by the costs of denying entrance to more qualified students. In addition, the Hoover Institute says, "Moreover, it has been common in various countries around the world for groups whose students have lower qualifications to specialize in easier and less remunerative fields, as well as performing less well academically. Therefore the first group may lose 800 graduates, largely concentrated in mathematics, science, and engineering, while the second group gains 400 graduates largely concentrated in sociology, education, and ethnic studies." Even if minorities did advance because of affirmative action, society as a whole does not benefit as much as it could if the more qualifies applicants were able to advance. In addition, the community of minorities is harmed as there is less of an incentive for hard work if individuals can rely on affirmative action to gain entrance to colleges they don't deserve to attend. The University of Michigan supports this idea when they say, "besides insulting middle-class blacks for implying that they are not competent enough to compete with whites on a level playing field, affirmative action reduces blacks' incentives to achieve and accumulate human capital by systematically lowering the standards of admission and employment expected of them."

Pro Blocks

Harms Not Current/Generations Ago

“For those who are skeptical about reparations for harms incurred a generation or more ago, Ezorsky argues that affirmative action can be justified on the ground that the harms of discrimination are current, and require compensation.” Not only are the harms still felt from past generations, affirmative action is still needed to account for current unconscious discrimination. There is no denying that certain groups remain vastly underrepresented today. The harms are current, and as long as this is true affirmative action is needed to promote equal opportunity.

Inefficient/Should be Merit Based

In many ways affirmative action makes the system more meritocratic. “Given the pervasiveness of racial discrimination, it is likely...that the superior credentials offered by white applicants do not reflect their greater effort, desert, or even ability. Rather, the credentials reflect their mere luck at being born white. “Some white...[applicants] have better qualifications...only because they have not had to contend with the obstacles faced by their African-American competitors.” It is impossible to assess actual merit without taking into account the context in which that merit was achieved. In addition, affirmative action promotes meritocracy; considering, “virtually all educators acknowledge that a college is a better academic enterprise if the student body and faculty are diverse.” Affirmative action benefits our society as a whole by creating this diversity and promoting a democratic culture. Also, Page demonstrates “the ‘diversity trumps ability theorem,’ a formal model showing how groups of diverse problem-solvers outperform groups of the best problem solvers...[according to Page’s formal models and empirical results] group diversity helps organizations solve problems and make better predictions.” In the end, not everything is about efficiency. In many respects, reinstating slavery would be more efficient but that doesn’t make it justified. Even if it was just about efficiency though, affirmative action makes the system more efficient by promoting diversity

Reverse Discrimination

The absence of affirmative action would result in injustices to all African-Americans who have been unfairly handicapped by their lesser advantages. “The charge of reverse discrimination ignores history, and that objections on grounds of merit ignore the weak justification of conventional criteria of merit such as the SAT as well as current obstacles to equality of opportunity.” Affirmative action levels the playing field by taking into account the obstacles and difficulties in access to education and employment facing certain groups.

Hurts those seeks to help/Mismatches students

This is just rhetoric and lacks any empirical foundation. In *The Shape of the River*, Bowen and Bok “argue that, in the schools they studied, the better the institution a student entered, irrespective of their academic credentials, the more likely he was to graduate, continue on to further education, earn a good income, and ‘succeed’. The extension of these conclusions is that Affirmative Action is necessary in advancing disadvantaged minorities. It also counters the claim that Affirmative Action ‘mismatches’ students with schools where they can’t keep up with the work load and competition. The point is that even if they can’t keep up and perhaps finish in the bottom rungs of their class, it doesn’t matter; the more important factor is that they attended a top university, not whether or not they performed well there.” Most con evidence simply addresses how well the students do which completely ignores the more important factor. In addition looking to the future if we ever want these groups to perform well there, we need affirmative action.

Not One Size Fits All

“Compensatory affirmative action can retain its individualist rationale, and justify group based awards on grounds of administrative necessity: the costs of case-by-case adjudication would be too high. Where the wrongdoing against a particular class has been pervasive enough, the harm so great that the chance is negligible that compensation would overshoot the aggregate damages, and individualized compensation is excessively costly or impossible, then generalized compensation to the group comes closer to the ideal of compensatory justice than a refusal to compensate at all.” In addition, it’s important to understand that race and sex are by no means the only factors taken into consideration, so affirmative action is by no means one size fits all. Affirmative action simply serves to provide more information and context to ensure equal opportunity.

Con Blocks

Promotes Equal Opportunity

The con has no problem promoting equal opportunity and encouraging diversity. They simply find faults with the method of affirmative action. According to the Hoover Institute, “Affirmative action programs also generate major social costs that fall on the population as a whole. Losses of efficiency are among these costs, whether because less-qualified persons are chosen over more-qualified persons or because many highly qualified members of non-preferred groups emigrate from a society where their chances have been reduced. However, the cost of inefficiency is overshadowed by the cost of intergroup polarization, violence, and loss of lives. Bloody and lethal riots over affirmative action in India are the most obvious examples.” In addition despite their good intentions affirmative action programs also end up hurting the very people they aim to help. For example, “among black students in colleges and universities, those admitted under lower standards face a higher failure rate and those admitted under the same standards as other students graduate with their credentials under a cloud of suspicion because of double standards for minority students in general.” Affirmative action undermines the achievements of minorities and in many ways comes off as patronizing on the part of the majority. “Thomas Sowell recently concluded a study of affirmative action programs around the world, from India and Malaysia to Nigeria and the United States. His findings? Such programs have at best a negligible impact on the groups they intend to assist.” When this negligible at best benefit comes at the expense of everyone else, it is hard to call affirmative action justified.

Prevents Discrimination

Affirmative action is inherently a form of discrimination. Also, affirmative action serves to actually spark new discrimination and intergroup polarization by causing resentment among those who do not benefit from it and it creates a backlash against minorities. Also it does a poor job of preventing the specific discrimination it seeks to counterbalance “since it benefits individuals (African-Americans and women possessing good educational credentials) least likely harmed by past wrongs while it burdens individuals (younger white male applicants) least likely to be responsible for past wrongs.”

Neutralizes Unearned Advantages/Compensates for Previous Injustices

Same logic as above. Not only does affirmative action fail to truly help those it aims to, but it also comes at substantial costs, and far too often doesn't help the less fortunate people that arguably deserve the compensation most. "Such data as can be gleaned from a variety of private sources in the United States suggest that the more fortunate American blacks receive a disproportionate share of the benefits going to blacks as a whole in the United States."

Diversity/Inclusion Good

Affirmative action to promote diversity/inclusion arguably isn't semantically relevant. Beyond that though, con isn't saying diversity and inclusion are bad they simply find fault with the method. In regards to diversity and inclusion, the biggest problem with affirmative action is the intergroup polarization and resentment it creates which does more harm than good.

Impossible for Minorities to Compete Otherwise

Even if you believe this, putting them in positions they aren't qualified for and are doomed to fail in isn't going to help. If the United States really wants to help minorities to compete, they'd be far better off reforming the education system and helping curb discrimination rather than ignore the discrimination and attempt to compensate for it poorly later. Affirmative action does nothing to directly address the root of the problem.

Crossfire

P: Would you agree affirmative action pretty much for better or for worse increases diversity?

C: Why should a black applicant son of a successful neurosurgeon get preference over a white son of a coal miner?

P: Why are some groups so underrepresented? Is the fact that they're underrepresented a bad thing?

C: Would you agree with Clarence Thomas that affirmative action discounts degrees earned by affirmative action candidates?

P: Is it safe to say there is an inequality of opportunity in the United States?

C: Doesn't everyone lose when someone is put into a position they aren't qualified for? How does increasing the likelihood of failing help increase opportunities?

P: Affirmative action doesn't supersede merit. Isn't affirmative action just one tool among many used in the decision making process?

C: If affirmative action disproportionately benefits more fortunate minorities, isn't it ineffective at promoting equal opportunity for those that need it most? How is this just?

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Pro Evidence

Type of Pro Affirmative Action Arguments

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Arguments for affirmative action policies can be divided into 4 categories. (1) Arguments on grounds of justice defend affirmative action as a compensation or corrective for past and continuing racism/sexism. (2) Arguments on grounds of democracy view group-conscious representational devices as necessary under certain conditions for realizing a democratic society. (3) Arguments on grounds of social utility claim that affirmative action policies promote desirable goals such as better mentoring of members of disadvantaged groups or delivering professional services to the disadvantaged. (4) Arguments on grounds of free speech and education defend affirmative action policies for the ways they create the diverse set of participants in discourse, research, and learning that is claimed necessary to promote the internal mission of educational institutions.

Affirmative Action Promotes Equal Opportunity

http://womenshistory.about.com/library/etext/gov/bl_gov_aa_01.htm

Report ordered by President Clinton on Affirmative Action

George Stephanopoulos, Senior Adviser to the President for Policy and Strategy, Christopher Edley, Jr., Special Counsel to the President

We conclude that these programs have worked to advance equal opportunity by helping redress problems of discrimination and by fostering the inclusion needed to strengthen critical institutions, professions and the economy. In addition, we have examined concerns about fairness. The evidence shows that, on the whole, the federal programs are fair and do not unduly burden non-beneficiaries. Finally, we conclude that some reforms would make the programs work better and guarantee their fairness.

The tests that we apply are based on a fundamental premise: the goal of any affirmative action program must be to promote equal opportunity. Offering every American a fair chance to achieve success is a central tenet of our constitutional and political system, and is a bedrock value in our culture. It is the fundamental goal of the civil rights statutes -- and of affirmative action as well.

Impossible for Minorities To Compete

[http://www.nytimes.com/2007/09/30/magazine/30affirmative-t.html?
_r=3&hp=&oref=slogin&pagewanted=all&oref=slogin](http://www.nytimes.com/2007/09/30/magazine/30affirmative-t.html?_r=3&hp=&oref=slogin&pagewanted=all&oref=slogin)

New York Times

September 30, 2007

"The law says that universities can't consider race, even though race has an enormous effect on the lives of applicants. California's best high schools offer so many A.P. and honors classes — which confer bonus points on a student's G.P.A. — that the average G.P.A. of white and Asian freshmen at U.C.L.A. is now 4.2. At many of the largely black high schools around Los Angeles, it is sometimes impossible to do much better than a 4.0, because of the relative lack of A.P. classes."

Affirmative Action Prevents Discrimination

http://womenshistory.about.com/library/etext/gov/bl_gov_aa_01.htm

Report ordered by President Clinton on Affirmative Action

George Stephanopoulos, Senior Adviser to the President for Policy and Strategy, Christopher Edley, Jr., Special Counsel to the President

Expanding opportunity by fighting and preventing discrimination. The primary justification for the use of race- and gender-conscious measures is to eradicate discrimination, root and branch. Affirmative action, therefore, is used first and foremost to remedy specific past and current discrimination or the lingering effects of past discrimination -- used sometimes by court order or settlement, but more often used voluntarily by private parties or by governments. Affirmative action is also used to prevent future discrimination or exclusion from occurring. It does so by ensuring that organizations and decision makers end and avoid hiring or other practices that effectively erect barriers.

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Reskin, Barbara. *The Realities of Affirmative Action in Employment* (Washington, D.C.: American Sociological Association, 1998).

Useful book documenting how affirmative action operates in the workplace, confirming Skrentny's account. In general, affirmative action hiring goals are used as a counterforce against current discriminatory tendencies in the workplace, rather than as a means to require less qualified women and minorities to be hired over more qualified white men. Vigorously contests the charge that affirmative action in employment operates in the latter way, with supporting evidence.

Stainback, Kevin, Corre Robinson, and Donald Tomaskovic-Devey. "Race and Workplace Integration." *American Behavioral Scientist* 48.9 (2005): 1200–28.

Further confirmation of Skrentny's account. Argues that passage of discrimination laws is ineffective in stopping discrimination in the absence of concerted government pressure on firms to stop discriminating and integrate their jobs.

Ezorsky, Gertrude. *Racism and Justice: the Case for Affirmative Action*. (Ithaca, N.Y.: Cornell University Press, 1991).

Affirmative Action Prevents Discrimination

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

For those who are skeptical about reparations for harms incurred a generation or more ago, Ezorsky argues that affirmative action can be justified on the ground that the harms of discrimination are current, and require compensation.

Axelson, Diana. "With All Deliberate Delay: on Justifying Preferential Policies in Education and Employment," *Philosophical Forum* 9 (1977-8): 264-288.

Widely reprinted defense of affirmative action as a necessary correction for current discrimination. Documentation of continuing institutional racism is central to the article. Has the advantage over Ezorsky of brevity; makes an excellent companion piece to Pojman's anti-affirmative action paper (cited below), for those who wish to present students with a pair of highly representative articles on affirmative action, pro- and con. Its disadvantage is that it is somewhat dated; for this reason the Ezorsky book, with its updated argument and evidence, may well be preferred as a teaching source. Relevant portions of Ezorsky can be excerpted for those who don't want to assign the entire book.

Fish, Stanley. "Reverse Racism, or How the Pot Got to Call the Kettle Black," *The Atlantic*, November 1993.

Lively, highly accessible defense of affirmative action, more by replying to criticisms than by direct argument. Argues that the charge of reverse discrimination ignores history, and that objections on grounds of merit ignore the weak justification of conventional criteria of merit such as the SAT as well as current obstacles to equality of opportunity.

Yelnosky, Michael. "The Prevention Justification for Affirmative Action." *Ohio State Law Journal* 64 (2003): 1385-1425.

Provides evidence that tokenism in the workplace hurts women and minorities by exposing them to discrimination. More fully integrating jobs so women and minorities don't stand out can prevent discrimination against them. Affirmative action is a tool for integrating jobs.

Affirmative Action Prevents Discrimination

Kang, Jerry and Banaji, Mahzarin, "Fair Measures: A Behavioral Realist Revision of 'Affirmative Action'" . California Law Review, Forthcoming Available at SSRN: <http://ssrn.com/abstract=873907>

Defends affirmative action as a remedy for current unconscious discrimination. Based on the latest theories of implicit bias (cognitive discrimination). The authors argue that viewing affirmative action as a correction of current bias avoids the difficulties of backward-looking and future-benefit rationales for race-conscious selection.

Expands Opportunity Through Inclusion

http://womenshistory.about.com/library/etext/gov/bl_gov_aa_01.htm

Report ordered by President Clinton on Affirmative Action

George Stephanopoulos, Senior Adviser to the President for Policy and Strategy, Christopher Edley, Jr., Special Counsel to the President

Vigorous prosecution of proven instances of discrimination will not by itself close the opportunity gap; bias and prejudice have proven too varied and subtle for that. Therefore, to genuinely extend opportunity to all, we must take affirmative steps to bring underrepresented minorities and women into the economic mainstream. The consequences of years of officially sanctioned exclusion and deprivation are powerfully evident in the social and economic ills we observe today. In some circumstances, therefore, race-and gender-conscious measures can also be justified by the compelling importance of inclusion. Affirmative action is sometimes used simply to open institutions and opportunities because doing so will move minorities and women into the economic mainstream, with benefits to them, to those institutions, and to our society as a whole. For example:

* Virtually all educators acknowledge that a college is a better academic enterprise if the student body and faculty are diverse.* A police department will be more effective in protecting and serving its community if its officers are somewhat reflective of that community. * The military recognized years ago that sharp imbalances in the representation of minorities and women in the leadership grades of enlisted and commissioned personnel undermined the cohesion and effectiveness of military units, and effectively deprived the armed forces of full use of a portion of our nation's pool of talent. Most major corporations recognize this same challenge. * Judges and government policymakers must be able to reflect the concerns, aspirations and experiences of the public they serve in order to do their jobs well and enjoy legitimacy.

Ultimately, therefore, the test of whether an affirmative action program works is whether it hastens the eradication of discrimination, and promotes inclusion of everyone in the opportunities America promises us all. As a general matter, increases in the numbers of employees, or students or entrepreneurs from historically underrepresented groups are a measure of increased opportunity. It is very difficult, however, to separate the contribution of affirmative action from the contribution of anti-discrimination enforcement, decreasing prejudice, rising incomes and other forces. At the same time, the fact that we observe so much continuing socioeconomic division and inequality of opportunity does not imply that affirmative action is a failure. It is merely one tool among many that must play a part in creating opportunity.

Expands Opportunity Through Inclusion

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Anderson, Elizabeth. "Integration, Affirmative Action, and Strict Scrutiny," *NYU Law Review*, 77 (2002): 1195-1271.

This article, by the author of this website, defends racial integration as a central goal of race-based affirmative action. Racial integration of mainstream institutions is necessary both to dismantle the current barriers to opportunity suffered by disadvantaged racial groups, and to create a democratic civil society. Integration, conceived as a forward-looking remedy for de facto racial segregation and discrimination, makes better sense of the actual practice of affirmative action than backward-looking compensatory rationales, which offer restitution for past discrimination, and diversity rationales, which claim to promote nonremedial educational goals. Integrative rationales for affirmative action in higher education could also easily pass equal protection analysis, if only the point of strict scrutiny of racial classifications were understood. Unfortunately, the development of strict scrutiny as an analytical tool has been hampered by the Court's confusion over the kinds of constitutional harm threatened by state uses of racial classification. This Article sorts out these alleged harms and shows how strict scrutiny should deal with them. It shows how the narrow tailoring tests constitute powerful tools for putting many allegations of constitutional harm from race-based affirmative action to rest, and for putting the rest into perspective. It also argues that there is no constitutional or moral basis for prohibiting state uses of racial means to remedy private sector discrimination. Integrative affirmative action programs in educational contexts, which aim to remedy private sector discrimination, can therefore meet the requirements of strict scrutiny, properly interpreted.

Sabbagh, Daniel. *Equality and Transparency: A Strategic Perspective on Affirmative Action in American Law* (New York: Palgrave MacMillan, 2007).

Important new book elaborating on Ronald Dworkin's defense of affirmative action. Dworkin argues that the fundamental purpose of affirmative action is to break the correlation between race and class by bringing more blacks and Latinos into the middle class. This will, by eliminating the basis for forming them, break down the stigmatizing stereotypes of disadvantaged racial groups as "underclass"--stereotypes that themselves constitute a grave barrier to equality of opportunity. Sabbagh offers a powerful empirical defense of Dworkin's view, grounded in evidence in social psychology of the ways stereotypes are formed, and in economic and sociological evidence on the devastating impacts of stereotyping and consequent discrimination on the lives of blacks. He also provides powerful critiques of compensatory and diversity-based affirmative action, and a deep analysis of the difficulties affirmative action programs face in publicizing their operations and rationales in a non-self-undermining way. Superbly argued, researched and documented.

Affirmative Action Promotes Overall Fairness

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

First published Fri Dec 28, 2001; substantive revision Wed Apr 1, 2009

Defenders of preferences were no less quick to enlist justice and desert in their cause. Mary Anne Warren, for example, argued that in a context of entrenched gender discrimination, gender preferences might improve the “overall fairness” of job selections. Justice and individual desert need not be violated.

If individual men's careers are temporarily set back because of...[job preferences given to women], the odds are good that these same men will have benefited in the past and/or will benefit in the future—not necessarily in the job competition, but in some ways—from sexist discrimination against women. Conversely, if individual women receive apparently unearned bonuses [through preferential selection], it is highly likely that these same women will have suffered in the past and/or will suffer in the future from...sexist attitudes. (Warren 1977, 256)

However, Goldman's “rule” blocked preferences only under certain empirical conditions. Goldman explained the derivation of the rule and its consequent limit this way:

The rule for hiring the most competent was justified as part of a right to equal opportunity to succeed through socially productive effort, and on grounds of increased welfare for all members of society. Since it is justified in relation to a right to equal opportunity, and since the application of the rule may simply compound injustices when opportunities are unequal elsewhere in the system, the creation of more equal opportunities takes precedence when in conflict with the rule for awarding positions. Thus short-run violations of the rule are justified to create a more just distribution of benefits by applying the rule itself in future years. (Goldman 1979, 164–165). If “terribly important objectives”—especially objectives having to do with equalizing opportunities in a system rife with inequality—in fact could be furthered by measured and targeted reverse discrimination, justice wouldn't stand in the way.

Given the pervasiveness of racial discrimination, it is likely, he argued, that the superior credentials offered by white applicants do not reflect their greater effort, desert, or even ability. Rather, the credentials reflect their mere luck at being born white. “Some white...[applicants] have better qualifications...only because they have not had to contend with the obstacles faced by their African- American competitors” (Rachels 1978, 162). Reverse discrimination might do injustice to some whites; yet its absence would result in injustices to African-Americans who have been unfairly handicapped by their lesser advantages.

Affirmative Action is a Form Of Justice

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

First published Fri Dec 28, 2001; substantive revision Wed Apr 1, 2009

Thomson endorsed job preferences for women and African-Americans as a form of compensation for their past exclusion from the academy and the workplace. Preferential policies, in her view, worked a kind of justice. Nagel, by contrast, argued that preferences might work a kind of social good, and without doing violence to justice. Institutions could for one or another good reason properly depart from standard meritocratic selection criteria because the whole system of tying economic reward to earned credentials was itself indefensible.

Affirmative Action Neutralizes Unearned Advantages

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

First published Fri Dec 28, 2001; substantive revision Wed Apr 1, 2009

Likewise, James Rachels defended racial preferences as devices to neutralize unearned advantages by whites. Given the pervasiveness of racial discrimination, it is likely, he argued, that the superior credentials offered by white applicants do not reflect their greater effort, desert, or even ability. Rather, the credentials reflect their mere luck at being born white. “Some white... [applicants] have better qualifications...only because they have not had to contend with the obstacles faced by their African- American competitors” (Rachels 1978, 162). Reverse discrimination might do injustice to some whites; yet its absence would result in injustices to African-Americans who have been unfairly handicapped by their lesser advantages.

Affirmative Action is to Compensate for Previous Injustices

<http://www.huppi.com/kangaroo/L-reversediscrimination.htm>

Naomi Wolf, *Fire With Fire*, (New York: Ballantine Books, 1993, 1994), p. 26

Affirmative Action is not meant to help blacks because of the color of their skin, but because they deserve compensation for past and continuing injustices. Opponents may criticize the wisdom of how this compensation is meted out, but they cannot question the principle of compensatory damages, which enjoys a long tradition in our society.

There is an error of logic here: the premise is faulty. Preferential treatment is not being given to blacks because they are black. They are being given preferential treatment because they have been mistreated. And society has a long and approved tradition of awarding compensatory damages to victims of mistreatment.

1. Whites decided that a morally irrelevant feature (having black skin) was in fact a morally relevant feature.
2. Whites mistreated blacks on that basis.

Affirmative action does not justify preferential treatment based on the first point; it justifies it on the second. That is, supporters do not believe that being black is a morally relevant feature which deserves discriminatory behavior; but they do believe that injustices based on that mistake should be compensated. Being black is only morally relevant in that it was used to justify the original sin.

The situation is akin to the Jews who survived the Holocaust. Germany paid a large sum in compensatory damages to the state of Israel after World War II, and no one decried this as reverse racial discrimination.

Now, opponents of affirmative action may question whether affirmative action is the right way to go about correcting past and present injustice. For example, can we compensate the living for sins committed against their ancestors? Is it right to compensate groups instead of specifically harmed individuals? But these are separate issues, ones that should be addressed elsewhere. The point here is that affirmative action is intended not as reverse discrimination, but as compensatory damages for injustice.

Affirmative Action is to Compensate for Previous Injustices

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan
Race, Gender, and Affirmative Action

McGary, Jr., Howard. "Justice and Reparations," *Philosophical Forum* 9 (1977-8): 250-263.

Argues that African-Americans are entitled to receive preferential treatment in employment and college admissions as reparations for slavery, Jim Crow, and institutional discrimination.

Nickel, James. "Should Reparations Be to Individuals or to Groups?" *Analysis* 34.5 (1974): 154-60.

Very nice paper defending compensatory affirmative action from the standard charges against it: that it is overinclusive, in compensating members of disadvantaged racial groups who have not personally suffered discrimination or its effects; underinclusive, in failing to compensate whites who have suffered discrimination; and fails to tailor the amount of benefit to the degree of harm personally suffered. Nickel argues that these facts do not force compensatory affirmative action to a collectivist stance, according to which racial groups as a whole are the relevant units of moral entitlement.

Rather, compensatory affirmative action can retain its individualist rationale, and justify group-based awards on grounds of administrative necessity: the costs of case-by-case adjudication would be too high. Where the wrongdoing against a particular class has been pervasive enough, the harm so great that the chance is negligible that compensation would overshoot the aggregate damages, and individualized compensation is excessively costly or impossible, then generalized compensation to the group comes closer to the ideal of compensatory justice than a refusal to compensate at all. This short, snappy paper is helpfully reprinted in Cahn, Steven, ed. *The Affirmative Action Debate*. 2nd ed. New York: Routledge, 2002.

Duster, Troy. "Individual Fairness, Group Preferences, and the California Strategy," in Robert Post and Michael Rogin, eds. *Race and Representation: Affirmative Action* (New York: Zone Books, 1998), pp. 111-133.

Updates the redress argument, exploring the history of racial discrimination from the New Deal through the civil rights era. Makes interesting parallels with the caste systems of South Africa and India, and affirmative action systems in these countries. Considers the political motives behind the movement to prohibit affirmative action in California. Also contains an intriguing discussion of Brandeis University's decision to practice affirmative action for men upon its discovery that exclusive reliance on criteria of academic merit would lead to a student body that was 70% female.

History is the Cause of Present Inequalities

http://www.eric.ed.gov/ERICWebPortal/custom/portlets/recordDetails/detailmini.jsp?_nfpb=true&_ERICExtSearch_SearchValue_0=ED418167&ERICExtSearch_SearchType_0=eric_accno&accno=ED418167

: • "Measured Lies: The Bell Curve Examined". Kincheloe, Joe L., Ed.; Steinberg, Shirley R., Ed. Gresson, Aaron D., III, Ed. 1997:

"The failure rate for Finnish children in Swedish schools is very high. When Finnish children immigrate to Australia, however, they do well--as well as Swedish immigrants. Koreans do poorly in Japanese schools where they are viewed as culturally inferior; in American schools, on the other hand, Korean immigrants are very successful. The examples are numerous, but the results generally follow the same pattern: racial, ethnic, and class groups who are viewed negatively or as inferiors in a nation's dominant culture tend to perform poorly academically. 'Understood this way, groups' test scores are not the beginning of an explanation for inequality but the end of one. The beginning is history."

Environment More Beneficial with Diversity

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

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In fact, the main reason the University of Michigan strives for a reasonable representation of minorities on campus is because of the way it conceives of its mission: to prepare Michigan's future leaders.

The argument is straightforward: The leadership of the state ought roughly to represent the state's population, ethnically and racially.

As the state's premier training ground for leadership, the University ought to graduate rising generations of future leaders that conform to this representational goal.

To graduate such rising generations, it needs to admit racially and ethnically representative classes.

This is the “Michigan Mandate.”[46] Racial and ethnic diversity aren't incidental contributors to a distinct academic mission; they are part of the mission of the University, just as educating young people from Michigan is part of it.

This “integration” rationale seems much more aligned with the actual practice of university affirmative action than the diversity rationale. Indeed, in the midst of her nominally Powell-like defense of the Law School, Justice O'Connor for a moment veered away from the “educational benefits of diversity” to go down a quite different path. Institutions like the University of Michigan and its Law School, she noted, “represent the training ground for...our Nation's leaders.” She went on:

In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training...Access.... must be inclusive...of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America.

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This “legitimacy” argument—not in any way about enriching the climate of opinion on campus — parallels the simple syllogism set out just above. It provides an oblique way of justifying the second premise. Justice O'Connor inserted this new rationale into the middle of her Grutter opinion—inserted it unexpectedly and then abandoned it just as quickly to resume tracing the byways of diversity.

Certainly, something in the spirit of the “Michigan Mandate” has animated the elite universities studied by William Bowen and Derek Bok in *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*. The primary aim of these institutions is not through vigorous affirmative action to enhance the liberal learning of their students (although they welcome this gain for all students). Their main motive for assuring that the percentage of African-Americans and Hispanics on their campuses is more than token derives from their self-conceptions as institutions training individuals who will some day take up national and international leadership roles in the professions, arts, sciences, education, politics, and government (Bowen & Bok 1998, 7). Society, they believe, will be stronger and more just if the ranks of its leading citizens include a racially and ethnically broader range of people than it does now (and than it did twenty-five years ago).

Three recent works have developed versions of the integration argument. In a long article, “Integration, Affirmative Action, and Strict Scrutiny,” published just before the Supreme Court's decisions in Grutter and Gratz, Elizabeth Anderson argues that an integration rationale is superior to the diversity rationale not only on its merits but as a plausible rendering of what “compelling state interest”—the legal standard employed by the Supreme Court in racial classification cases—really demands. She concludes:

Current affirmative action debates have lost sight of the ideal of integration as a compelling moral and political goal. Unless disadvantaged racial groups are integrated into mainstream social institutions, they will continue to suffer from segregation and discrimination. But the loss is not only theirs. It is a loss suffered by the American public at large in its failure fully to realize civil society—extensive social spaces in which citizens from all origins exchange ideas and cooperate on terms of equality—which is an indispensable social condition of democracy itself. It is high time that institutions of higher education—the most ardent practitioners of integration today—forthrightly defend this ideal in its own right, and that the Supreme Court recognize integration as a compelling interest legitimately addressed through race-conscious means. (Anderson 2002, 1270–71)

Environment More Beneficial with Diversity

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Robert Fullinwider and Judith Lichtenberg, in their 2004 book, *Leveling the Playing Field: Justice, Politics, and College Admissions*, present an integration argument for affirmative action centered around the little syllogism above (Fullinwider & Lichtenberg 2004, 165–188). [48] Thus, if states like Michigan have strong reasons for creating an integrated stratum of leaders, they have strong reasons for making sure that the universities that feed this stratum are themselves integrated.] Even so, the select schools Bowen and Bok studied may be quite unrepresentative of the full range of colleges and universities that resort to racial preferences and the cost-benefit picture that holds for these schools may not hold for the rest. Indeed, the picture drawn by Richard Sander in a lengthy review of affirmative action in law schools, published in the November 2004 *Stanford Law Review*, lends credence to the Thernstroms' academic mismatch thesis. A state like Michigan has strong reasons for wanting its leaders of commercial, financial, legal, cultural, and educational institutions to reflect to some practical degree the racial and ethnic variety of its population. One of the reasons is offered by Justice O'Connor: the very legitimacy of state institutions comes under a cloud if important segments of the population—long excluded from participating at the highest levels—remain on the outside looking in. Another reason is emphasized by Elizabeth Anderson: democratic governance draws nurture from inclusion rather than exclusion. If the leaders who frame the political agenda and shape public opinion remain uniformly white, the common good gets shortchanged; it isn't really common. Finally, racial and ethnic comity are harder to achieve when whites see a black or brown face in a position of leadership or power as a novelty rather than a commonplace.

Lastly, Lesley Jacobs, in *Pursuing Equal Opportunities* (2004), sees affirmative action as a means of overcoming the structural exclusion of African-Americans from major institutions: affirmative action assists structural integration, and structural integration serves the ideal of equal opportunity (Jacobs 2004, 124–142). The integration argument, like the diversity argument, is straightforwardly instrumental. It points to hoped-for outcomes of affirmative action. If those outcomes don't materialize, then affirmative action's cause is weakened. Moreover, the little integration syllogism isn't complete as it stands. It needs to include another premise: that the gains from achieving racially and ethnically integrated classes don't come at a disproportionate cost.

Environment More Beneficial with Diversity

Grutter v. Bollinger, 539 U. S. 306, at 336

US Justice Sandra Day O'Connor said that Universities and Law Schools "represent the training ground for...our Nation's leaders...In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity. All members of our heterogeneous society must have confidence in the openness and integrity of the educational institutions that provide this training.... Access.... must be inclusive...of every race and ethnicity, so that all members of our heterogeneous society may participate in the educational institutions that provide the training and education necessary to succeed in America."

William Bowen and Derek Bok

"The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions."

- They argue that Society will be stronger and more just if the ranks of its leading citizens include a racially and ethnically broader range of people than it does now, and that making this happen is necessary starting with mainstream state institutions such as universities.

. And, unless disadvantaged racial groups are integrated into mainstream social institutions, they will continue to suffer from segregation and discrimination, at a loss to both them a society at large. Society will fail to fully realize civil society, with extensive social spaces in which citizens from all origins exchange ideas and cooperate on terms of equality — which is an indispensable social condition of democracy itself.

"Enacting Diverse Learning Environments: Improving the Climate for Racial/Ethnic Diversity in Higher Education. ERIC Digest."

Hurtado, Sylvia - Milem, Jeffrey - Clayton-Pedersen, Alma - Allen, Walter.

"One key to enacting diverse learning environments lies in understanding and developing programs and policies to improve the campus climate for racial/ethnic diversity, which involves understanding the environment from the perspectives of members from different racial/ethnic backgrounds, creating opportunities for improved race relations that permeate the classroom and extracurricular lives of students, and realizing the educational benefits of diverse learning environments for students who will need to be prepared to meet the demands of a complex, diverse society."

Environment More Beneficial with Diversity

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Post, Robert. "Introduction: After Bakke," in Robert Post and Michael Rogin, eds. *Race and Representation: Affirmative Action* (New York: Zone Books, 1998), pp. 13-27.

Argues that race-based affirmative action policies are necessary in college admissions because a central mission of the university is to promote a democratic culture. This requires building the cultural capital of all citizens, so that they have the communicative and imaginative skills necessary for creating a universally inclusive, democratic discourse. Colleges and universities "aspire to cultivate the remarkable and difficult capacity to regard oneself from the perspective of the other, which is the foundation of the critical interaction necessary for active and effective citizenship", p. 23. Without a diverse student body (to which end affirmative action is necessary), educational institutions will be able to inculcate only limited capacities for critical interaction across group divisions. Post stresses that this argument does not depend on the thought that identities correspond to cultures, or that individuals have fixed identities. Part of the point of a democratic culture is to free individuals and citizens acting collectively to engage in self-definition and self-determination, without being beholden to definitions based on birth or ancestry.

Issacharoff, Samuel. "Can Affirmative Action be Defended?" *Ohio State Law Journal* 59 (1998): 669-695.

Important paper by a former University of Texas law professor who was recruited by his university to help defend UT's affirmative action policies in the famous Hopwood case (they lost). Argues that the democratic state has a compelling interest in training a racially integrated elite. Race-based affirmative action is the only way to enable schools to simultaneously pursue their compelling interests in meritocracy and in integrating all groups into the nation's elite. Contains important data and arguments explaining why race-neutral attempts to secure integration either fatally compromise academic standards or fail to generate significant black and Hispanic enrollment in selective schools.

Estlund, Cynthia. *Working Together: How Workplace Bonds Strengthen a Diverse Democracy* (Oxford: Oxford UP, 2005).

Novel democratic defense of affirmative action in employment, arguing that places of employment are major sites of civil society, in which citizens interact and share their views. The democratic interest in promoting an integrated civil society--ensuring that citizens from different socially salient groups share their views with one another--supports affirmative action in the workplace.

Environment More Beneficial with Diversity

Anderson, Elizabeth. "Racial Integration as a Compelling Interest," *Constitutional Commentary* 21 (2004): 101-127.

The principle and ideal developed in *Brown v. Board of Education* and its successor cases lie at the heart of the rationale for affirmative action in higher education. The principle of the school desegregation cases is that racial segregation is an injustice that demands remediation. The ideal of the school desegregation cases is that racial integration is a positive good, without which "the dream of one Nation, indivisible" cannot be realized. The good of integration is directly connected to realizing democracy through the promotion of a racially integrated elite, which, in virtue of its racial diversity, is more accountable to and more knowledgeable of the problems of citizens from all walks of life than a homogeneous and insular elite. Both the principle and the ideal make racial integration a compelling interest. The Supreme Court recognized these claims in *Grutter v. Bollinger*. However, it failed to take full advantage of them. It thereby failed to answer crucial questions that must be answered by policies subject to strict scrutiny. I display the links tying *Grutter* to *Brown*, discuss the vulnerabilities of *Grutter* in the absence of an explicit grounding in *Brown*, and demonstrate how the affirmative action policy upheld in *Grutter*, when explicitly grounded in *Brown*, survives strict scrutiny.

Weisskopf, Thomas. *Affirmative Action in the United States and India: A Comparative Perspective*. (Routledge, 2004).

"The most important objective of . . . [affirmative action policies] is to bring about greater ethnic integration of society's elite, on the reasonable premise that society functions more efficiently, more equitably, more democratically, and more harmoniously if its professional, managerial, academic, and political elite is ethnically well integrated." (p. 244).

Page, Scott, *The Difference: How the Power of Diversity Creates Better Groups, Firms, Schools, and Societies* (new ed.) (Princeton: Princeton University Press, 2008)

The paper demonstrates the "diversity trumps ability theorem," a formal model showing how groups of diverse problem-solvers outperform groups of the best problem solvers. Page's forthcoming book is a highly accessible account of formal models and empirical results demonstrating how group diversity helps organizations solve problems and make better predictions. The connection of Page's defense of diversity is indirect, and depends upon showing links between racial, ethnic, gender or class diversity of group members is linked to various forms of desirable cognitive diversity. Page considers this issue, offering a cautious and qualified diversity defense of affirmative action, noting that identity diversities also bring conflicts to groups.

Environment More Beneficial with Diversity

Rudman, L. A., R. D. Ashmore, and M. L. Gary. 2001. "Unlearning automatic biases: The malleability of implicit prejudice and stereotypes." *Journal of Personality & Social Psychology* 81.

Diversity in education can reduce racial prejudice and stereotypes.

Sklansky, David Alan, "Not Your Father's Police Department: Making Sense of the New Demographics of Law Enforcement" . *Journal of Criminal Law and Criminology*, Vol. 96, Spring 2006 Available at SSRN: <http://ssrn.com/abstract=885446>.

Argues that affirmative action in the hiring of police broke down a pathological, insular police subculture that has made police forces more open to positive reforms and better able to establish good relationships with the community.

Affirmative Action Does Not Harm Whites

<http://opr.princeton.edu/faculty/tje/espenshadessqptii.pdf>

The Opportunity Cost of Admission Preferences at Elite Universities

Thomas J. Espenshade, Princeton University

Chang Y. Chung, Princeton University

Critics of affirmative action in American higher education often overlook the fact that elite universities give added weight in the admissions process to many different types of student characteristics. In this article, we use micro-simulation analysis to investigate the effect on the profile of admitted students of eliminating preferences for one or more categories of students. Data for the 1997 entering class indicate that eliminating affirmative action would reduce acceptance rates for African-American and Hispanic applicants by as much as one-half to two-thirds and have an equivalent impact on the proportion of underrepresented minority students in the admitted class. White applicants would benefit very little by removing racial and ethnic preferences; the white acceptance rate would increase by roughly 0.5 percentage points. Asian applicants would gain the most. They would occupy four out of every five seats created by accepting fewer African-American and Hispanic students. The acceptance rate for Asian applicants would rise by one-third from nearly 18 percent to more than 23 percent. We also show that, even though athlete and legacy applicants are disproportionately white and despite the fact that athlete and alumni children admission bonuses are substantial, preferences for athletes and legacies do little to displace minority applicants, largely because athletes and legacies make up a small share of all applicants to highly selective universities.

<http://plato.stanford.edu/entries/affirmative-action/>

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Just as Mary Anne Warren and James Rachels in the 1970s thought that the losers under affirmative action were losing only illicit privileges, and the gainers merely gaining what should have been theirs to start with, so Michel Rosenfeld in the 1990s, in his extended “dialogic” defense of affirmative action, echoes the same thought: Although affirmative action treats innocent white males unequally, it need not deprive them of any genuine equal opportunity rights. Provided an affirmative action plan is precisely tailored to redress the losses in prospects of success [by African-Americans and women] attributable to racism and sexism, it only deprives innocent white males of the corresponding undeserved increases in their prospects of success [R]emedial affirmative action does not take away from innocent white males anything that they have rightfully earned or that they should be entitled to keep. (Rosenfeld 1991, 307–8, emphasis added)

Affirmative Action is Only One Tool

http://womenshistory.about.com/library/etext/gov/bl_gov_aa_01.htm

Report ordered by President Clinton on Affirmative Action

George Stephanopoulos, Senior Adviser to the President for Policy and Strategy, Christopher Edley, Jr., Special Counsel to the President

More particularly, affirmative action is only one of several tools used in the public and private sectors to move us away from a world of lingering biases and the poisons of prejudice, toward one in which opportunity is equal.

Affirmative Action is Consistent with Merit

http://womenshistory.about.com/library/etext/gov/bl_gov_aa_01.htm

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Affirmative action measures recognize that existing patterns of discrimination, disadvantage and exclusion may require race- or gender-conscious measures to achieve that equality of opportunity. Because our ultimate goal is to perfect and realize this American ideal of opportunity, affirmative action cannot supersede the concept of merit -- because to do so would unfairly deprive others of opportunity that is their due. In other words, we believe it is wrong if an unqualified person receives a preference and is thereby, chosen for a job, a scholarship, or a federal contract over a qualified person in the name of affirmative action. However, the review of federal programs and broader practices demonstrates that affirmative action, when used properly, is consistent with merit. It also demonstrates that "merit" must be properly defined in terms of the needs of each organization, and not in arbitrary ways that are, in their effect, exclusionary.

Affirmative Action is not Reverse Discrimination

http://womenshistory.about.com/library/etext/gov/bl_gov_aa_01.htm

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In undertaking such efforts, however, two wrongs don't make a right. Illegal discrimination includes reverse discrimination; reverse discrimination is discrimination, and it is wrong. Affirmative action, when done right, is not reverse discrimination.

Reverse Discrimination is Moral Absolutism

<http://www.huppi.com/kangaroo/L-reversediscrimination.htm>

Naomi Wolf, *Fire With Fire*, (New York: Ballantine Books, 1993, 1994), p. 26

Those who use the term "reverse descrimination" are actually engaging in moral absolutism, a completely unworkable concept that has never been practiced by any society in history. An example may best highlight its difficulties. Suppose our society passed a law that says, "No one shall forcefully take a television set from the possession of another." But the next day your neighbor comes over to your house with a gun and forcefully takes your television set from you. Having identified your neighbor, you call the police. The police show up at his door and demand that he surrender the television; he refuses, whereupon they pull out their guns and forcefully take it from him.

Now, it would be illogical for your neighbor to claim that the police were immoral and broke the law, since they forcefully took a television set from his possession. This is a completely invalid argument, because correcting injustice is neither immoral nor against the law. Only in a world of moral absolutism would an act be condemned in and of itself, without considering its context or its justness. And at any rate, falling back on a defense of moral absolutism is disingenuous. Your neighbor, having acquired the TV set immorally, would now evoke moral absolutism to avoid giving it up -- and act morally outraged in the process. This is nothing more than a weaselly attempt to protect his self-interest through slippery rhetoric. It is certainly not a morally consistent argument.

White males do not lose the right to be hired for high- paying jobs; qualified women and minorities gain that right. True, awarding these rights will deprive some white males of their unfair chance to gain a high-paying job. But they should have never had such undue privilege in the first place, and taking it from them is not a violation of their rights. If critics of affirmative action can point to tangible "victims" who were shut out by the end of job discrimination, then we can also point to tangible "victims" who are shut out of public contracting and funding by the end of voting discrimination. If critics of affirmative action can point to "discrimination" in favor of minorities at hiring time, we can point to "discrimination" in favor of minorities in legislation and public funding. And penalizing someone who discriminates (in the legitimate sense of the word) against minorities by denying them jobs is no different from penalizing someone who discriminates against minorities by denying them the vote. The loss of undue privilege is not the same thing as the loss of rights. Unfortunately, many critics of affirmative action attempt to frame the debate that way.

Necessary for Minorities to Attend Elite Colleges

Bowen and Bok

The Shape of the River, 63, 114, 144.

They argue that, in the schools they studied, the better the institution a student entered, irrespective of their academic credentials, the more likely he was to graduate, continue on to further education, earn a good income, and "succeed". The extension of these conclusions is that Affirmative Action is necessary in advances disadvantaged minorities. It also counter the claim that Affirmative Action "mismatches" students with schools where they can't keep up with the work load and competition. The point is that even if they can't keep up and perhaps finish in the bottom rungs of their class, it doesn't matter; the more important factor is that they attended a top university, not whether or not they performed well there.

David Wilkins and G. Mitu Gulati,

"Why Are There So Few Black Lawyers in Corporate Law Firms: An Institutional Analysis,"
California Law Review, 84 (May 1996), 493-618.

Demonstrates that elite schools are, indeed, sending kids into elite circles in society.

Blacks Worse Without Affirmative Action

<http://plato.stanford.edu/entries/affirmative-action/>

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Sander's article has inspired a flurry of responses disputing his methodology and conclusions (e.g., Ayers & Brooks 2005, Chambers, et al. 2005, Wilkins 2005, Ho 2005, and Barnes 2007). In a 2008 piece, Jesse Rothstein and Albert Yoon perform their own analysis of Sander's data and conclude that the abolition of affirmative action would reduce the number of African-Americans who become lawyers by fifty percent. Race-blind admissions would leave elite law schools with virtually no African-American students (Rothstein & Yoon 2008, 712).

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Cantor, JC; Miles, EL; Baker, LC; Barker, DC. "Physician service to the underserved: implications for affirmative action in medical education," *Inquiry*33(2):167-80, 1996 Summer.

(From the abstract:) Using two large physician surveys, finds that minority and women physicians are much more likely to serve minority, poor, and Medicaid populations. Weaker, but significant association exists between physician and patient socioeconomic background. Service patterns are sustained over time and are generally consistent with physician career preferences. Argues that ending affirmative action in medicine may imperil access to care. Results do not support affirmative action based on economic disadvantage instead of race, ethnicity, and sex.

Komaromy M. Grumbach K. Drake M. Vranizan K. Lurie N. Keane D. Bindman AB. "The role of black and Hispanic physicians in providing health care for underserved populations," *New England Journal of Medicine* 334(20):1305-10 (1996).

(From the abstract:) Analyzed data on physicians' practice locations and the racial and ethnic makeup and socioeconomic status of communities in California in 1990. Also surveyed 718 primary care physicians from 51 California communities in 1993 to examine the relation between the physicians' race or ethnic group and the characteristics of the patients they served. Found that communities with high proportions of black and Hispanic residents were four times as likely as others to have a shortage of physicians, regardless of community income. Black physicians practiced in areas where the percentage of black residents was nearly five times as high, on average, as in areas where other physicians practiced. Hispanic physicians practiced in areas where the percentage of Hispanic residents was twice as high as in areas where other physicians practiced.

Blacks Worse Without Affirmative Action

Komaromy M. Grumbach K. Drake M. Vranizan K. Lurie N. Keane D. Bindman AB. "The role of black and Hispanic physicians in providing health care for underserved populations," New England Journal of Medicine 334(20):1305-10 (1996).

After controlling for the racial and ethnic makeup of the community, black physicians cared for significantly more black patients (absolute difference, 25 percentage points; $P < 0.001$) and Hispanic physicians for significantly more Hispanic patients (absolute difference, 21 percentage points; $P < 0.001$) than did other physicians. Black physicians cared for more patients covered by Medicaid ($P = 0.001$) and Hispanic physicians for more uninsured patients ($P = 0.03$) than did other physicians. Concludes that Black and Hispanic physicians have a unique and important role in caring for poor, black, and Hispanic patients in California. Dismantling affirmative-action programs as is currently proposed, may threaten health care for both poor people and members of minority groups.

Many Justifications for Affirmative Action Are Not True

<http://plato.stanford.edu/entries/affirmative-action/>

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The persistence of this strategy of defense reflects a residual feeling that the fruits of affirmative are somehow spoiled if they are not deserved. Nevertheless, it is the wrong strategy for defending real world affirmative action. The programs legitimated under the Civil Rights Act, in both their non-preferential and preferential forms, had—and have—a clear aim: to change institutions so that they can meet the nondiscrimination mandate of the Act. Selection by race or gender was—and is—a means to such change. To the extent that such selection also compensates individuals for past wrongs or puts people in places they really deserve, these are incidental by-products of a process aimed at something else. The same is true with university admissions policy. When the Medical School of the University of California at Davis offered four reasons in defense of the special admissions program that left Bakke on the outside, none of these reasons said anything about matching admissions and desert. The criteria of the special admissions program—race and ethnicity—were instruments to further ends: integrating the classroom, the profession, and the delivery of medical services, and breaking the chain of self-reproducing societal discrimination. Likewise, when the University of Michigan defended its programs it pointed not to desert rewarded by admissions but to the value of students experiencing racial and ethnic pluralism in the classroom.

Historic Judicial Precedence

<http://www.infoplease.com/spot/affirmative1.html>

by **Borgna Brunner**

But in a landmark 2003 case involving the University of Michigan's affirmative action policies—one of the most important rulings on the issue in twenty-five years—the Supreme Court decisively upheld the right of affirmative action in higher education. Two cases, first tried in federal courts in 2000 and 2001, were involved: the University of Michigan's undergraduate program (*Gratz v. Bollinger*) and its law school (*Grutter v. Bollinger*). The Supreme Court (5-4) upheld the University of Michigan Law School's policy, ruling that race can be one of many factors considered by colleges when selecting their students because it furthers "a compelling interest in obtaining the educational benefits that flow from a diverse student body." The Supreme Court, however, ruled (6-3) that the more formulaic approach of the University of Michigan's undergraduate admissions program, which uses a point system that rate students and awards additional points to minorities, had to be modified. The undergraduate program, unlike the law school's, did not provide the "individualized consideration" of applicants deemed necessary in previous Supreme Court decisions on affirmative action.

In the Michigan cases, the Supreme Court ruled that although affirmative action was no longer justified as a way of redressing past oppression and injustice, it promoted a "compelling state interest" in diversity at all levels of society. A record number of "friend-of-court" briefs were filed in support of Michigan's affirmative action case by hundreds of organizations representing academia, business, labor unions, and the military, arguing the benefits of broad racial representation. As Sandra Day O'Connor wrote for the majority, "In order to cultivate a set of leaders with legitimacy in the eyes of the citizenry, it is necessary that the path to leadership be visibly open to talented and qualified individuals of every race and ethnicity."

Comprehensive Defenses of Affirmative Action

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan
Race, Gender, and Affirmative Action

Ezorsky, Gertrude. *Racism and Justice: the Case for Affirmative Action*. (Ithaca, N.Y.: Cornell University Press, 1991).

Outstanding source for undergraduate teaching. Discusses institutional racism, with examples and case studies. Focuses on race-conscious remedies for institutional racism in employment rather than educational contexts. Responds to a full battery of criticisms of affirmative action. Especially effective in response to tort model objections to compensatory affirmative action (cited below). Argues that the systematic but diffuse character of institutionalized racism makes the tort model of compensation inapplicable. For example, recruitment by advertising to current (white) employees may effectively exclude nonwhites in general even though one cannot identify specific individuals harmed by the policy, to whom individualized compensation could be offered. Argues that individual whites who bear the burdens of affirmative action policies can and ought to be compensated without dismantling affirmative action itself. Contains excerpts of important Supreme Court cases relating to affirmative action policies.

Clayton, Susan and Crosby, Faye. *Justice, Gender, and Affirmative Action* (Ann Arbor: University of Michigan Press, 1992).

Unusual argument for affirmative action. Argues that, while there is extensive evidence of sex discrimination in employment and that women know this, they are reluctant to perceive discrimination in their own case. Thus, remedies for discrimination that rely on women to bringing forth complaints of discrimination on their own behalf will fail to rectify discriminatory conditions. Argues that affirmative action should be billed as a means to eliminate difficult to perceive biases against equally or more qualified women, rather than as special helping efforts for less qualified women. Most interesting for its theory and documentation of evidence for the claim that women are motivated to not perceive discrimination against themselves.

Rosenfeld, Michael. *Affirmative Action and Justice*. (New Haven: Yale University Press, 1991).

Argues that affirmative action is justified both morally and Constitutionally as a means to ensure equality of opportunity by compensating for the present effects of past discrimination. Groups that suffer no present effects of discrimination are not entitled to affirmative action, nor may the remedy impose costs on others beyond taking away whatever competitive advantages they enjoy in virtue of the unjust deprivations of others' opportunities. Includes a comprehensive assessment of various arguments for and against affirmative action and the rival conceptions of equality underlying them.

Comprehensive Defenses of Affirmative Action

Gutmann, Amy. "Responding to Racial Injustice," in Gutmann and Appiah, *Color Conscious: the Political Morality of Race*. (Princeton: Princeton University Press, 1996).

Argues that color blindness is not a fundamental moral principle. To the extent that people are deprived of full liberties and equal opportunities because of their racial status, they are entitled to remedies to correct this problem. Colorblind remedies such as class-based affirmative action, while they may be justified in themselves, are not an effective substitute for color conscious remedies, either in principle or in practice. Defends diversity rationales for affirmative action in higher education, and denies that the principle of merit creates entitlements on the part of the best qualified. Merit need be recognized only to the extent that all candidates for a position are minimally qualified.

Con Evidence

Social Costs of Affirmative Action

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

Affirmative action programs also generate major social costs that fall on the population as a whole. Losses of efficiency are among these costs, whether because less-qualified persons are chosen over more-qualified persons or because many highly qualified members of non-preferred groups emigrate from a society where their chances have been reduced. However, the cost of inefficiency is overshadowed by the cost of intergroup polarization, violence, and loss of lives. Bloody and lethal riots over affirmative action in India are the most obvious examples, but there have also been young brahmins who have died by setting themselves on fire in protest against policies which have destroyed their prospects.

Despite a tendency to think of group preferences and quotas as transfers of benefits—a zero-sum process—there are in fact many ways in which these transfers can be negative-sum processes, in which what is lost by one group exceeds what is gained by another, making the society as a whole worse off. For example, when a group in which 80 percent of the students admitted to college succeed in graduating loses admissions to a group in which only 40 percent of the students graduate, then the first group must lose 800 graduates in order for the second group to gain 400 graduates. Moreover, it has been common in various countries around the world for groups whose students have lower qualifications to specialize in easier and less remunerative fields, as well as performing less well academically. Therefore the first group may lose 800 graduates, largely concentrated in mathematics, science, and engineering, while the second group gains 400 graduates largely concentrated in sociology, education, and ethnic studies.

Innumerable principles, theories, assumptions, and assertions have been used to justify affirmative action programs—some common around the world and some peculiar to particular countries or communities. What is remarkable is how seldom these notions have been tested empirically, or have even been defined clearly or examined logically, much less weighed against the large and often painful costs they entail. Despite sweeping claims made for affirmative action programs, an examination of their actual consequences makes it hard to support those claims, or even to say that these programs have been beneficial on net balance—unless one is prepared to say that any amount of social redress, however small, is worth any amount of costs and dangers, however large.

Unintended Consequences of Affirmative Action

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

Within the black community itself, the possible ending of affirmative action has been portrayed as a threat to end their economic and social progress. Thus whites are resentful and blacks are fearful because of policies which have in fact done relatively little, on net balance, to help blacks in general or poor blacks in particular. Among black students in colleges and universities, those admitted under lower standards face a higher failure rate and those admitted under the same standards as other students graduate with their credentials under a cloud of suspicion because of double standards for minority students in general.

There is, however, some empirical evidence on the consequences of preferential admissions of individuals from privileged groups. When the president of the University of the Philippines had discretionary powers to admit particular students without regard to the usual academic criteria, the results were that (1) the great majority admitted this way were offspring of “the rich and powerful” and (2) “those admitted by presidential discretion performed worse than the rest of the audience.” At Harvard, back during the era when more than half of all alumni sons were admitted, those special admittees were disproportionately represented among students who flunked out.

One of the unquantifiable, but by no means unimportant, consequences of affirmative action has been a widespread dishonesty, taking many forms. The redesignation of individuals and groups, in order to receive the benefits of preferences and quotas intended for others, has been common in various countries. In the United States, a special dishonesty has been necessary to square group preferences and quotas with the requirement of the American Constitution for equal rights among individuals. This has involved both concealment of the existence of preferential treatment and claims that such treatment is only a remedial response to existing discrimination. This adds insults to people’s intelligence to the injuries they may have received, or perceived themselves as receiving, and can only add to the backlash. There is all the difference in the world between saying that you have not had an even chance in life and saying that a particular individual or institution with whom you dealt has discriminated against you.

Reverse Discrimination

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

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To many of its critics, reverse discrimination was simply incoherent. When “the employers and the schools favor women and blacks,” objected Lisa Newton, they commit the same injustice perpetrated by Jim Crow discrimination. “Just as the previous discrimination did, this reverse discrimination violates the public equality which defines citizenship” (Newton 1973, 310).

“Terribly important objectives...appear to require impermissible means. Cohen asked, might we not wink at the Constitution this once” and allow preferences to do their good work? (Cohen 1995, 20) Neither he nor other critics thought so. Principle must hold firm. “[I]n the distribution of benefits under the laws all racial classifications are invidious” (Cohen 1995, 52).

Lisa Newton

“Reverse Discrimination as Unjustified”

Ethics, 83 (July 1973), 310.

"If it is irrational and unjust and cruel to fire someone because he is a black or she is a woman — cases whose absurdity seems obvious — then it is equally irrational and unjust and cruel to hire someone because he is a black or she is a woman. To appreciate the parallel, one has only to remember that to hire X because of color is, ipso facto, not to hire Y because of color. When inscribed in law, this is racism...Just as the previous discrimination did, this reverse discrimination violates the public equality which defines citizenship.”

Eastland and Bennett, "Counting By Race", 149.

"[T]o those who argue that we must use race to get beyond racism ...[h]istory teaches us all too well that such an approach does not work. It is wrong when the government bestows advantages on whites at the expense of innocent blacks; it assumes no greater claim of morality if the tables are turned.... Whatever group membership one inherits, it carries with it no entitlement to preferential treatment over those not similarly endowed with the same immutable characteristics. Any compromise of this principle is discrimination, plain and simple, and such behavior is no more tolerable when employed remedially, in the name of 'affirmative action' or 'racial balance,' to bestow a gratuitous advantage on members of a particular group, than when it is divorced from such beneficence and for the most invidious of reasons works to one's disadvantage." [2]

"To count by race, to use the means of numerical equality to achieve the end of moral equality, is counterproductive, for to count by race is to deny the end by virtue of the means. The means of race counting will not, cannot, issue in an end where race does not matter."

Affirmative Action Violates the Principle of Merit

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Walzer, Michael. *Spheres of Justice*. (New York: Basic Books, 1983), pp. 143-154.

Argues that the meaning of offices requires hiring by merit. The most meritorious candidate has a right to the position. Race is a bona fide qualification for a job only in special circumstances. In practice, race-based affirmative action will open opportunities to minorities and women at the expense of the least advantaged white men.

Violates Equal Opportunity

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

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Instead of doing justice, preferential treatment violates rights: the right of an applicant “to equal consideration” (Thomson 1973, 377; Simon 1974, 312), the right of the maximally competent to an open position (Goldman 1976, 191; Goldman 1979, 24–8), and the right of everyone to equal opportunity (Gross 1977a, 382; Gross 1978, 97), confounds desert: by severing reward from a “person's character, talents, choices and abilities” (Simon 1979, 96), by “subordinating merit, conduct, and character to race” (Eastland & Bennett 1979, 144), and by disconnecting outcomes from actual liability and damage (Gross 1978, 125–42).

Affirmative Action Does Not Benefit Those Most in Need

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

Such data as can be gleaned from a variety of private sources in the United States suggest that the more fortunate American blacks receive a disproportionate share of the benefits going to blacks as a whole in the United States, just as the more fortunate Malays tend to benefit most from affirmative action in Malaysia or the more fortunate untouchables benefit from affirmative action in India.

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

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From the time in 1973 when Judith Jarvis Thomson conjectured that it was “not entirely inappropriate” that white males bear the costs of the community's “making amends” to African-Americans and women through preferential affirmative action, the affirmative action debate has been distracted by intense quarrels over who deserves what . Do the beneficiaries of affirmative action deserve their benefits. Do the losers deserve their loss?

Imagine a college admissions committee trying to decide between the white [son] of an Appalachian coal miner's family and the African American son of a successful Pittsburgh neurosurgeon. Why should the black applicant get preference over the white applicant? (Edley 1996, 132ff) Why, indeed? This is a hard question if one defends affirmative action in terms of compensatory or distributive justice. If directly doing justice is what affirmative action is about, then its mechanisms must be adjusted as best they can to reward individual desert and true merit. The “coal miner's son” example is meant to throw desert in the defender's face: here is affirmative action at work thwarting desert, for surely the coal miner's son—from the hard scrabble of Harlan County, say—has lived with far less advantage than the neurosurgeon's son who, we may suppose, has reaped all the advantages of his father's (or mother's) standing. Why should the latter get a preference?

Affirmative Action Does Not Benefit Those Most in Need

[http://www.nytimes.com/2007/09/30/magazine/30affirmative-t.html?
_r=3&hp=&oref=slogin&pagewanted=all&oref=slogin](http://www.nytimes.com/2007/09/30/magazine/30affirmative-t.html?_r=3&hp=&oref=slogin&pagewanted=all&oref=slogin)

New York Times

September 30, 2007

In truth, however, they did not. Three years ago, William Bowen (the former president of Princeton) and two other researchers discovered what was really going on. They persuaded 19 elite colleges — including Harvard, Middlebury and Virginia — to let them analyze their admissions records. The easiest way to understand the results is to imagine a group of students who each have the same SAT scores. Holding that equal, a recruited athlete was 30 percentage points more likely to be admitted than a nonathlete. A black, Latino or Native American student was 28 percentage points more likely to be admitted than a white or Asian student. A legacy received a 20-percentage-point boost over someone whose parents hadn't attended that college. And low-income students? They received no advantage whatsoever. A poor white kid from upstate New York would be treated no differently from a white kid in Chappaqua. Frances Harris would get no more of a leg up than the black daughter of corporate lawyers.

And many of the beneficiaries of the preferences end up being upper-middle-class minority students, since they tend to have better test scores than poor minorities. The helping hand that goes to these relatively well-off nonwhite students strikes many people as unjust. It makes it seem as if affirmative action isn't making good on its larger promise. Affirmative action becomes about mere diversity — and not even all forms of diversity — rather than fairness. Politically, that has made it weaker and weaker.

Affirmative Action Doesn't Improve Education

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

For example, after many years of affirmative action policies in favor of New Zealand's Maori minority, a Wellington newspaper reported in November 2000: "Extraordinarily, there appears to be little or no research into whether teaching kids the standard curriculum, but in Maori, has improved their educational outcomes." The paper adds: "Nobody knows, because nobody seems to be asking." Unfortunately, such disinterest in empirical consequences is not confined to New Zealand.

Affirmative Action Unconstitutional

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

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Against the leanings of the Brennan group, who would distinguish between “benign” and “malign” uses of race and deal more leniently with the former, Powell insisted that the Fourteenth Amendment's promise of “equal protection of the law” must mean the same thing for all, black and white alike. To paraphrase Powell:

The Constitution can tolerate no “two-class” theory of equal protection. There is no principled basis for deciding between classes that deserve special judicial attention and those that don't. To think otherwise would involve the Court in making all kinds of “political” decisions it is not competent to make. In expounding the Constitution, the Court's role is to discern “principles sufficiently absolute to give them roots throughout the community and continuity over significant periods of time, and to lift them above the pragmatic political judgments of a particular time and place.”[16]

What, then, was the practical meaning of a “sufficiently absolute” rendering of the principle of equal protection? It was this: when the decisions of state agents “touch upon an individual's race or ethnic background, he is entitled to a judicial determination that the burden he is asked to bear on that basis is precisely tailored to serve a compelling governmental interest.”[17]

Powell, with this standard in hand, then turned to look at the four reasons the Medical School offered for its special program: (i) to reduce “the historic deficit of traditionally disfavored minorities in medical schools and the medical profession;” (ii) to counter “the effects of societal discrimination;” (iii) to increase “the number of physicians who will practice in communities currently underserved;” and (iv) to obtain “the educational benefits that flow from an ethnically diverse student body.”[18] Did any or all of them specify a compelling governmental interest? Did they necessitate use of racial preferences?

As to the first reason, Powell dismissed it out of hand.

If [the School's] purpose is to assure within its student body some specified percentage of a particular group merely because of its race or ethnic origin, such a preferential purpose must be rejected not as insubstantial but as facially invalid. Preferring members of any one group for no reason other than race or ethnic origin is discrimination for its own sake.

Affirmative Action Unconstitutional

<http://plato.stanford.edu/entries/affirmative-action/>

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As to the second reason, Powell allowed it more force. A state has a legitimate interest in ameliorating the effects of past discrimination. Even so, contended Powell, the Court, has never approved a classification that aids persons perceived as members of relatively victimized groups at the expense of other innocent individuals in the absence of judicial, legislative, or administrative findings of constitutional or statutory violations.[19] And the Medical School does not purport to have made, and is in no position to make, such findings. Its broad mission is education, not the formulation of any legislative policy or the adjudication of particular claims of illegality....[I]solated segments of our vast governmental structures are not competent to make those decisions, at least in the absence of legislative mandates and legislatively determined criteria.[20]

As to the third reason, Powell found it, too, insufficient. The Medical School provided no evidence that the best way it could contribute to increased medical services to underserved communities was to employ a racially preferential admissions scheme. Indeed, the Medical School provided no evidence that its scheme would result in any benefits at all to such communities.[21]

This left the fourth reason. Here Powell found merit. A university's interest in a diverse student body is legitimated by the First Amendment's implied protection of academic freedom. This constitutional halo makes the interest "compelling." However, the Medical School's use of a racial and ethnic classification scheme was not "precisely tailored" to effect the School's interest in diversity, argued Powell.

The diversity that furthers a compelling state interest encompasses a far broader array of qualifications and characteristics of which racial or ethnic origin is but a single though important element. [The Medical School's] special admissions program, focused solely on ethnic diversity, would hinder rather than further attainment of genuine diversity.[22]

The diversity which provides an educational atmosphere "conducive to speculation, experiment and creation" includes a nearly endless range of experiences, talents, and attributes that students might bring to campus. In reducing diversity to racial and ethnic quotas, the Medical School wholly misconceived this important educational interest. In sum, although the last of the Medical School's four reasons encompassed a "compelling governmental interest," the School's special admissions program was not necessary to effect the interest. The special admissions program was unconstitutional. So concluded Justice Powell.

Affirmative Actions Harms Those it is Supposed to Benefit

<http://plato.stanford.edu/entries/affirmative-action/>

Stanford Encyclopedia of Philosophy

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Perhaps the cost is high, or even too high. Stephan and Abigail Thernstrom certainly think so. They contend that most of the cost falls on the very persons affirmative action is supposed to benefit. Under-prepared African-Americans are thrown into academic environments where they cannot succeed (Thernstrom & Thernstrom 1997, 395–411). In the Thernstroms' view, race-blind admissions policies will result in a desirable “cascading,” with African-American and Hispanic students ending up at colleges and universities where the academic credentials of their fellow students match their own. However, the Bowen and Bok study provides some evidence that cascading isn't necessarily a valuable phenomenon. In fact, at the schools they studied, the better the institution a student entered, whatever his academic credentials, the more likely he was to graduate, go on to further education, and earn a good income (Bowen & Bok 1998, 63, 114, 144)..

Even so, the select schools Bowen and Bok studied may be quite unrepresentative of the full range of colleges and universities that resort to racial preferences and the cost-benefit picture that holds for these schools may not hold for the rest. Indeed, the picture drawn by Richard Sander in a lengthy review of affirmative action in law schools, published in the November 2004 Stanford Law Review, lends credence to the Thernstroms' academic mismatch thesis.

Ranking law schools from best to worst, Sander found that affirmative action boosts African-American students 20 or more steps up the ladder, putting them in schools with white classmates who possess considerably better LSAT scores and college grades. The upshot: “close to half of black students end up in the bottom tenth of their classes.” This bad performance yields three bad consequences. First, African-American students suffer high attrition rates. Second, they fail the bar exam at a high rate (the principal predictor of a student's passing or failing is her grades, not the quality of her school). Third, they suffer a significant employment penalty for low grades “in all schools outside the top ten.” Sander estimates that under a race-blind admissions system, American law schools would actually create more African-American lawyers than they do under affirmative action (Sander 2004, 449, 460, 478, 479).

Affirmative Actions Harms Those it is Supposed to Benefit

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan
Race, Gender, and Affirmative Action

Steele, Shelby. *The Content of our Character: A New Vision of Race in America*. (New York: HarperPerennial, 1991).

Argues that affirmative action stigmatizes its intended beneficiaries by implying that they are less competent and can't compete as equals with others.

Sowell, Thomas. "The Other Side of Affirmative Action," *Jewish World Review*, June 8, 1999
Argues that the main effect of abolishing affirmative action is to send black students from highly competitive schools where they are likely to fail to less selective schools where they are more likely to succeed, because their qualifications are more closely matched to those of their peers.

Sowell, Thomas. "Dirty Secrets about Affirmative Action," *Conservative Current*, October 16, 1996

Argues that affirmative action programs cause white resentment toward blacks. Also argues that relatively higher dropout rates of minorities from colleges is due to affirmative action policies that place students at more competitive colleges than they can handle.

Blackstone, William. "Reverse Discrimination and Compensatory Justice," *Social Theory and Practice* 3 (1975).

Among its many arguments that affirmative action programs have bad consequences, argues that the logic of compensatory affirmative action can place no limit on the number of groups claiming special privileges on account of a history of discrimination. This produces incentives for individuals to identify more with aggrieved groups than with the nation as a whole, leading to fragmentation and increasingly divisive competition among different groups for their share of preferences.

Benefits Those Least Harmed

<http://plato.stanford.edu/entries/affirmative-action/>

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Justice and desert lay at the heart of subsequent arguments. Several writers took to task Thomson's argument that preferential hiring justifiably makes up for past wrongs. Preferential hiring seen as compensation looks perverse, they contended, since it benefits individuals (African-Americans and women possessing good educational credentials) least likely harmed by past wrongs while it burdens individuals (younger white male applicants) least likely to be responsible for past wrongs

Clarence Thomas Opposes Affirmative Action

http://www.cbsnews.com/stories/2007/09/27/60minutes/main3305443_page5.shtml

Sept. 30, 2007

Clarence Thomas: The Justice Nobody Knows

CBS) But at Yale, Thomas sensed he was being treated differently by teachers and fellow students. The law school had a program that set aside a certain number of slots for minority students.

"I honestly, honestly believed that Yale thought that having a kid who came from working people in the South, who had grown up through segregation, that this kid who had prospered, who had done well every single place he'd ever been, whether an all-white school, all-black school, he's always done well. He will do well here. And it will benefit both him and Yale," Thomas says. "That's what I thought. Well, that isn't what it was converted to."

"It was converted to, 'Well, you're here because you're black,'" Thomas explains.

Thomas did well at Yale, graduating somewhere in the middle of his class, but he says it was the first time anybody had tried to put him in a box because of his race, and whatever benefits he accrued from being there were tarnished when it came time to graduate.

"You know, I was in debt. I needed a job. And I couldn't get a job," Thomas says.

"Not even with a Yale law degree?" Kroft asks.

"I couldn't get a job. And I just saw the discounting of my degree happen before my eyes," Thomas says.

Asked why he thinks that is, Thomas says, "That degree meant one thing for whites and another thing for blacks...it was discounted."

Clarence Thomas Opposes Affirmative Action

<http://www.law.com/jsp/article.jsp?id=1202421827466>

Law.com

June 02, 2008

Thomas blames Yale Law School -- specifically, its affirmative action program, which sought to give up to 10 percent of first-year spots to minorities -- for his difficulties securing a job as a first-year associate. Thomas has not disclosed the firms to which he applied, or how many, but he says that after applying for jobs at firms in four different cities, he was rejected everywhere. Thomas writes in [his memoir](#). "I'd graduated from one of America's top law schools, but racial preference had robbed my achievement of its true value." To this day, he has kept a "15 cents" sticker from a cigar package stuck to his diploma, "to remind myself of the mistake I'd made by going to Yale."

Shortly after he arrived at the law school, Thomas writes, he realized that "blacks who benefited from [affirmative action admissions] were being judged by a double standard." As a result, Thomas writes, his law degree was basically worthless, since it "bore the taint of racial preference."

http://findarticles.com/p/articles/mi_m1355/is_n12_v94/ai_21020044/

Clarence Thomas tells black lawyers, he'll still oppose affirmative action
[Jet, August 17, 1998](#)

Declaring his independence from other prominent Blacks, Supreme Court Justice Clarence Thomas recently told the National Bar Association that he intends to continue to oppose affirmative action and hold fast to other conservative views.

"I make no apologies ... nor do I intend to do so in the future," Thomas told the audience of more than 1,000 Black lawyers and judges at the National Bar Association's recent convention in Memphis.

Referring to affirmative action, Thomas said, "Any effort, policy or program that (in some way accepts the notion) that Blacks are inferior is a non-starter with me."

Affirmative Action is Economically Inefficient

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Loury, Glenn. "How to Mend Affirmative Action," *The Public Interest*, Spring 1997.

Argues that, besides insulting middle-class blacks for implying that they are not competent enough to compete with whites on a level playing field, affirmative action reduces blacks' incentives to achieve and accumulate human capital by systematically lowering the standards of admission and employment expected of them. This article is far from a litany of conservative criticisms of affirmative action, however. For Loury also argues that "notwithstanding the establishment of a legal regime of equal opportunity, historically engendered economic differences between racial groups could well persist into the indefinite future. . . the pronounced racial disparities to be observed in American cities are particularly problematic, since they are, at least in part, the product of an unjust history. . . . Thus I would argue. . . that the government should undertake policies to mitigate the economic marginality of those languishing in the ghettos of America. This is not a reparations argument. When the developmental prospects of an individual depend on the circumstances of those with whom he is socially affiliated, even a minimal commitment to equality of opportunity requires such a policy. In our divided society, and given our tragic past, this implies that public efforts intended to counter the effects of historical disadvantage among blacks are not only consistent with, but indeed are required by, widely embraced democratic ideals." One of the most nuanced and interesting papers available on affirmative action; not easy to classify as either "liberal" or "conservative."

Affirmative Actions Goes Against MLK's Dream

<http://www.capmag.com/article.asp?ID=119>

Capitalism Magazine

Dr. Ghate received his doctorate in philosophy from the University of Calgary. Ghate is a resident fellow at the [Ayn Rand Institute](#).

January 15, 2001

Before he became an advocate of "black power," Martin Luther King said he dreamed of a day when "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."

"In the years since the 'I have a dream' speech, the laudable goal of a colorblind society has been subverted through racial quotas and the teachings of multiculturalism," said Dr. Onkar Ghate. As we commemorate King's birth it is depressing to note how far America has deviated from the "dream," said Ghate.

"The consequence of the spread of racial quotas and multiculturalist ideas hasn't been harmony, but a precipitous rise in racial hatred throughout America, particularly in the classroom and the workplace. It is no surprise that America is growing more racist, since the affirmative action and multiculturalist programs are themselves based on racist premises."

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

Thomas Sowell recently concluded a study of affirmative action programs around the world, from India and Malaysia to Nigeria and the United States. His findings? Such programs have at best a negligible impact on the groups they are intended to assist.

Justified Reasons for Under-Representation

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

In the United States, where many group preferences have sought to justify themselves as counterweights to discrimination that would otherwise prevail, such “discrimination” often turns out to be statistical “under-representation” in desirable occupations or institutions. The implicit assumption, tenaciously held, is that great statistical disparities in demographic “representation” could not occur without discrimination. This key assumption is seldom tested against data on group disparities in qualifications. For example, as of the year 2001, there were more than 16,000 Asian American students who scored above 700 on the mathematics SAT, while fewer than 700 black students scored that high—even though blacks outnumbered Asian Americans several times over. Data such as these are simply passed over in utter silence—or are drowned out by strident assertions of “covert” discrimination as explanations of a dearth of blacks in institutions and occupations requiring a strong background in mathematics.

The skewed pattern of beneficiaries of affirmative action programs should not only give pause as to the actual consequences of such programs, it should also call into question the very assumption on which affirmative action is based. That assumption is that an uneven distribution of income and of desirable jobs indicates discriminatory intentions toward the less fortunate, which must be counteracted by preferential policies on their behalf. But when those well-intentioned policies show the very same skewed pattern as the presumed ill intentions they are supposed to counteract, then it is hard to avoid the conclusion that something other than intentions must be involved. Nor can behavioral and other differences among the various populations themselves be arbitrarily banished from discussion by such pat phrases as “stereotypes” or “blaming the victim.” Causation is not blame and whether they are victims or not is precisely the question.

Affirmative Action Takes the Place of a Real Remedy

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

False beliefs are not small things, because they lead to false solutions. In the field of medicine, it has long been recognized that even a false cure that is wholly harmless in itself can be catastrophic in its consequences if it substitutes for a real cure for a deadly disease. Proponents of affirmative action cannot console themselves for their false assumptions on grounds that their intentions were good, because social quackery likewise substitutes for real efforts to deal with real problems that can tear a society apart. Despite an orientation of asking what “we” can do for “them,” those who want to see blacks advance in fields requiring a mathematics background need to confront black students with a need to master this subject, even if that means giving up other diversions and giving up attitudes that doing academic work is “acting white.” This will win few friends and fewer votes. But the question is whether one is serious about results for others or simply wants to feel good about oneself.

The very modest benefits of affirmative action, concentrated on those already more fortunate, with little or no benefits to those who are truly disadvantaged, have often been blamed on insufficient zeal, or even bad faith, on the part of those administering affirmative action programs. Thus the failures or inadequacies of such programs can be taken as reasons for reforms, rather than as symptoms of more fundamental misconceptions that could be reasons for ending the programs. While this argument might seem plausible to some when discussing whites administering programs for blacks in the United States, it loses even the appearance of plausibility when Malays are administering preferential programs for Malays in Malaysia or when Sinhalese have administered such programs for Sinhalese in Sri Lanka. Even in the United States, the particular officials heading civil rights agencies such as the Equal Employment Opportunity Commission have almost all been black, as have many or most administrators of affirmative action programs in private industry and in the academic world.

Affirmative Action Does Not Cause Colorblind Society

<http://plato.stanford.edu/entries/affirmative-action/>

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When Eastland and Bennett alluded to those who favored using race to get to a point where race doesn't count, they had in mind specifically the Supreme Court's Justice Blackmun who, in the famous 1978 Bakke case (discussed below), put his own views in just those simple terms. For Blackmun, the legitimacy of racial preferences was to be measured by how fast using them moves us toward a society where race doesn't matter (a view developed in subtle detail by the philosopher Richard Wasserstrom in Wasserstrom 1976).

Judicial Evidence

1883 Supreme Court ruling, Justice Joseph P. Bradley: Following Fredrick Douglass's call for what amounted to affirmative action, the Supreme Court asserted in 1883 that American society had arrived at a stage where it could treat its citizens with color-blind fairness, providing African Americans full equality with other citizens of the United States. Justice Joseph P. Bradley's majority opinion declared:

"When a man has emerged from slavery and by the aid of beneficent legislation has shaken off the inseparable concomitants of that state, there must be some stage in the progress of his elevation when he takes the rights of a mere citizen and ceases to be the special favorite of the law and when his rights as a citizen or a man are to be protected in the ordinary mode by which other men's rights are to be protected."

Regents of the University of California v. Bakke(1978) The US Supreme Court formally embraced the colorblind reasoning of Justice Powell in *Regents of the University of California v. Bakke*(1978) that sufficient time had passed since *Brown v. Board of Education*(1954) to justify sunseting race-conscious "beneficent" affirmative action polices to redress the legacy of American apartheid. In this ruling, the Court announced its intention to fully embrace the rationale of Justice Joseph P. Bradley's 1883 opinion ending Reconstruction.[4]

Gutter v. Bollinger 2003: Sandra Day O'Connor gave the opinion in this ruling that "25 years from now, the use of racial preferences will no longer be necessary to further the interest [in racial diversity] approved today."

Blacks Have Been Able to Get Out of Poverty Before Affirmative Action

<http://www.hoover.org/publications/digest/3010426.html>

Hoover Institution Stanford University

Affirmative Action around the World

By Thomas Sowell

The history of blacks in the United States has been virtually stood on its head by those advocating affirmative action. The empirical evidence is clear that most blacks got themselves out of poverty in the decades *preceding* the civil rights revolution of the 1960s and the beginning of affirmative action in the 1970s. Yet the political misrepresentation of what happened—by leaders and friends of blacks—has been so pervasive that this achievement has been completely submerged in the public consciousness. Instead of gaining the respect that other groups have gained by lifting themselves out of poverty, blacks are widely seen, by friends and critics alike, as owing their advancement to government beneficence.

Unequal Representation of Minorities

http://womenshistory.about.com/library/etext/gov/bl_gov_aa_01.htm

Report ordered by President Clinton on Affirmative Action

George Stephanopoulos, Senior Adviser to the President for Policy and Strategy, Christopher Edley, Jr., Special Counsel to the President

Exclusion from Mainstream Opportunities: Continuing Disparities in Economic Status

Apart from the remediation of and bullwark against discrimination, a second justification offered for continuing affirmative action in education, employment and contracting is the need to repair the mechanisms for including all Americans in the economic mainstream.

There is ample evidence to conclude that the problems to which affirmative action was initially addressed remain serious, both for members of disadvantaged groups and for America as a whole.

* A recent study by the Glass Ceiling Commission, a body established under President Bush and legislatively sponsored by Senator Dole, (37) recently reported that:

- White males continue to hold 97 percent of senior management positions in Fortune 1000 industrial and Fortune 500 service industries. Only 0.6 percent of senior management are African American, 0.3 percent are Asian and 0.4 percent are Hispanic.

- African Americans hold only 2.5 percent of top jobs in the private sector and African American men with professional degrees earn only 79 percent of the amount earned by their white counterparts. Comparably situated African American women earn only 60 percent of the amount earned by white males.

- Women hold 3 to 5 percent of senior level management positions -- there are only two women CEOs in Fortune 1000 companies.

- The fears and prejudices of lower-rung white male executives were listed as a principal barrier to the advancement of women and minorities. The report also found that, across the board, men advance more rapidly than women.

* The unemployment rate for African Americans was more than twice that of whites in 1994. The median income for black males working full-time, full year in 1992 was 30 percent less than white males. Hispanics fared only modestly better in each category. In 1993, black and Hispanic men were half as likely as white men to be managers or professionals. (38)

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* In 1992, over 50 percent of African American children under 6 and 44 percent of Hispanic children lived under the poverty level, while only 14.4 percent of white children did so. The overall poverty rates were 33.3 percent for African Americans, 29.3 percent for Hispanics and 11.6 percent for whites.

* Black employment remains fragile -- in an economic downturn, black unemployment leads the downward spiral. For example, in the 1981-82 recession, black employment dropped by 9.1 percent while white employment fell by 1.6 percent. Hispanic unemployment is also much more cyclical than unemployment for white Americans. (39) Hispanic family income remains much lower, and increases at a slower rate, than white family income. (40)

* Unequal access to education plays an important role in creating and perpetuating economic disparities. In 1993, less than 3 percent of college graduates were unemployed; but whereas 22.6 percent of whites had college degrees, only 12.2 percent of African Americans and 9.0 percent of Hispanics did.

* The 1990 census reflected that 2.4 percent of the nation's businesses are owned by blacks. Almost 85 percent of those black owned businesses have no employees. (41)

* Even within educational categories, the economic status of minorities and women fall short. The average woman with a masters degree earns the same amount as the average man with an associate degree. (42) While college educated black women have reached earnings parity with college educated white women, college educated black men earn 76 percent of the earnings of their white male counterparts. (43) Hispanic women earn less than 65 percent of the income earned by white men with the same educational level. Hispanic men earn 81 percent of the wages earned by white men at the same educational level. The average income for Hispanic women with college degrees is less than the average for white men with high school degrees. (44)

A study of the graduating classes of the University of Michigan Law School from 1972-1975 revealed significant wage differentials between men and women lawyers after 15 years of practice. While women earned 93.5 percent of male salaries during the first year after school, that number dropped to 61 percent after 15 years of practice. Controlling for grades, hours of work, family responsibilities, labor market experience, and choice of careers (large firms versus small firms, academia, public interest, etc.), men are left with an unexplained 13 percent earnings advantage over women.

Discrimination Still Exists

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There has been undeniable progress in many areas. Nevertheless, the evidence is overwhelming that the problems affirmative action seeks to address -- widespread discrimination and exclusion and their ripple effects -- continue to exist.

* Minorities and women remain economically disadvantaged: the black unemployment rate remains over twice the white unemployment rate; 97 percent of senior managers in Fortune 1000 corporations are white males; (28) in 1992, 33.3 percent of blacks and 29.3 percent of Hispanics lived in poverty, compared to 11.6 percent of whites. (29) In 1993, Hispanic men were half as likely as white men to be managers or professionals; (30) only 0.4 percent of senior management positions in Fortune 1000 industrial and Fortune 500 service industries are Hispanic. (31)

* Blatant discrimination is a continuing problem in the labor market. Perhaps the most convincing evidence comes from "audit" studies, in which white and minority (or male and female) job seekers are given similar resumes and sent to the same set of firms to apply for a job. These studies often find that employers are less likely to interview or offer a job to minority applicants and to female applicants. (32)

* Less direct evidence on discrimination comes from comparisons of earnings of blacks and whites, or males and females. (33) Even after adjusting for characteristics that affect earnings (such as years of education and work experience), these studies typically find that blacks and women are paid less than their white male counterparts. The average income for Hispanic women with college degrees is less than the average for white men with high school degrees. (34)

* Last year alone, the Federal government received over 90,000 complaints of employment discrimination. Moreover 64,423 complaints were filed with state and local Fair Employment Practices Commissions, bringing the total last year to over 154,000. Thousands of other individuals filed complaints alleging racially motivated violence and discrimination in housing, voting, and public accommodations, to name just a few.

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4.2 Results from Random Testing

The marked differences in economic status between blacks and whites, and between men and women, clearly have social and economic causes in addition to discrimination. One respected method to isolate the prevalence of discrimination is to use random testing, in which individuals compete for the same job, apartment, or other goal.

For example, the Fair Employment Council of Greater Washington, Inc., conducted a series of tests between 1990 and 1992. The tests revealed that blacks were treated significantly worse than equally qualified whites 24 percent of the time and Latinos were treated worse than whites 22 percent of the time. Some examples document the disparities:

* Two pairs of male testers visited the offices of a nationally-franchised employment agency on two different days. The black tester in each pair received no job referrals. In contrast, the white testers who appeared minutes later were interviewed by the agency, coached on interviewing techniques, and referred to and offered jobs as switchboard operators.* A black female tester applied for employment at a major hotel chain in Virginia where she was told that she would be called if they wished to pursue her application. Although she never received a call, her equally qualified white counterpart appeared a few minutes later, was told about a vacancy for a front desk clerk, later interviewed, and offered the job.

* A black male tester asked about an ad for a sales position at a Maryland car dealership. He was told that the way to enter the business would be to start by washing cars. However, his white counterpart, with identical credentials, was immediately interviewed for the sales job.

* A suburban Maryland company advertised for a typist/receptionist. When a black tester applied for the position, she was interviewed but heard nothing further. When an identically qualified white tester was interviewed, the employer offered her a better position that paid more than the receptionist job and that provided tuition assistance. Follow up calls by the black tester elicited no response even though the white tester refused the offer.

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* A GAO audit study uncovered significant discrimination against Hispanic testers. Hispanic testers received 25 percent fewer job interviews, and 34 percent fewer job offers than other testers. In one glaring example of discrimination, a Hispanic tester was told that a "counter help" job at a lunch service company had been filled. Two hours later, an Anglo tester was offered the job. (35)

The Urban Institute's Employment and Housing Discrimination Studies (1991) matched equally qualified white and black testers who applied for the same jobs or visited the same real estate agents. Twenty percent of the time, white applicants advanced further in the hiring process than equally qualified blacks. In one in eight tests, the white received a job offer when the black did not. In housing, both black and Hispanic testers faced discrimination in about half their dealings with rental agents.

Similarly, researchers with the National Bureau of Economic Research sent comparably matched resumes of men and women to restaurants in Philadelphia. In high priced eateries, men were more than twice as likely to receive an interview and five times as likely to receive a job offer than the women testers. (36)

The Justice Department has conducted similar testing to uncover housing discrimination. Those tests also have revealed that whites are more likely than blacks to be shown apartment units, while blacks with equal credentials are told nothing is available. Since the testing began, the Justice Department has brought over 20 federal suits resulting in settlements totaling more than \$1.5 million. A particularly graphic case of discrimination occurred during a fair housing test performed by the Civil Rights Division in Wisconsin, which sought to establish whether discrimination existed against the relatively large East-Asian population there. When the Asian tester approached the apartment building, the rental agent stood between the tester and the door to the rental office and refused to allow the tester to enter the building. The tester was told that there were no apartments available and there would not be any available for two months. When the white tester approached two hours later, the individual was immediately shown an apartment and was told he could move in that same day.

Diversity Does Not Mean Better Education

<http://www.springerlink.com/content/c6jh88whqdelmyv1/>

Diversity and Affirmative Action: The State of Campus and Opinion.
Stanley Rothman, Seymour Martin Lipset, and Neil Nevitte.

Their findings show an inverse relationship between the number of minorities on campus and the favorable ratings students give of the quality of their education. Students on majority-white campuses are more negative about the quality of their education the more blacks the campuses enroll.

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan
Race, Gender, and Affirmative Action

Jim Chen, "Diversity and Damnation," 43 UCLA L. REV. 1839 (1996)

Eugene Volokh, "Diversity, Race as Proxy, and Religion as Proxy," 43 UCLA L. REV. 2059 (1996).

Graglia, Lino. "Grutter and Gratz: Race Preference to Increase Racial Representation Held Patently Unconstitutional Unless Done Subtly Enough in the Name of Pursuing Diversity 78 TUL. L. REV. 2037 (2004).

Three blistering critiques of the diversity defense of affirmative action. Chen argues that the diversity defense could only make sense in conjunction with First Amendment interests in a diversity of viewpoints, but that it "offends virtually every value held dear in free speech jurisprudence" by equating viewpoints with looks. Volokh argues that the same diversity rationale for race would also apply to religion; since we reject discrimination on the basis of religion for diversity reasons, we should similarly reject discrimination on the basis of race for diversity reasons. In addition, the use of race as a proxy for attitudes is generally unjustified under the 14th Amendment, since it depends on racial stereotypes. Graglia condemns diversity-based defenses of affirmative action in higher education for being dishonest and lacking in empirical support, as well as unconstitutional race discrimination.

Affirmative Action is No Longer Useful

<http://www.bedfordstmartins.com/composition/patterns/steele.htm>

Shelby Steele. "A Negative Vote on Affirmative Action." Excerpted from *The Content of Our Character* by Shelby Steele. Originally published in *The New York Times Magazine*, May 13, 1990. Reproduced with permission of the Carol Mann Agency for Shelby Steele.

In a few short years, when my two children will be applying to college, the affirmative-action policies by which most universities offer black students some form of preferential treatment will present me with a dilemma. I am a middle-class black, a college professor, far from wealthy, but also well removed from the kind of deprivation that would qualify my children for the label "disadvantaged." Both of them have endured racial insensitivity from whites. They have been called names, have suffered slights and have experienced first hand the peculiar malevolence that racism brings out of people. Yet they have never experienced racial discrimination, have never been stopped by their race on any path they have chosen to follow. Still, their society now tells them that if they will only designate themselves as black on their college applications, they will probably do better in the college lottery than if they conceal this fact. I think there is something of a Faustian bargain in this.

I believe affirmative action is problematic in our society because we have demanded that it create parity between the races rather than insure equal opportunity. Preferential treatment does not teach skills, or educate, or instill motivation. It only passes out entitlement by color, a situation that in my profession has created an unrealistically high demand for black professors. The social engineer's assumption is that this high demand will inspire more blacks to earn Ph.D's and join the profession. Infact, the number of blacks earning Ph.D's has declined in recent years. Ph.D's must be developed from preschool on. They require family and community support. They must acquire an entire system of values that enables them to work hard while delaying gratification.

The mandates of black power and white absolution out of which preferences emerged were not wrong in themselves. What was wrong was that both races focused more on the goals of those mandates than on the means to the goals. Blacks can have no real power without taking responsibility for their own educational and economic development. Whites can have no racial innocence without earning it by eradicating discrimination and helping the disadvantaged to develop. Because we ignored the means, the goals have not been reached and the real work remains to be done.

Comprehensive Critiques of Affirmative Action

<http://www-personal.umich.edu/~eandersn/biblio.htm>

University of Michigan

Race, Gender, and Affirmative Action

Glazer, Nathan. *Affirmative Discrimination*. (New York: Basic books, 1975).

Classic early statement against affirmative action. Argues that, with the success of the civil rights movement in changing racial attitudes and legally abolishing discrimination, African-Americans can be expected to follow the pattern of assimilation and upward mobility of white immigrant groups, without needing special preferences. Adoption of affirmative action preferences therefore represents a gratuitous assault on the colorblind principle, threatening a return to the Balkanizing identity politics of the past. Glazer has since changed his assessment of affirmative action, in light of the failure of his optimistic prediction to be realized after 20 years. In *We are All Multiculturalists Now* (Cambridge, Mass.: Harvard University Press, 1997), Glazer reluctantly concedes the necessity for affirmative action because persistent segregation and discrimination continue to prevent blacks from realizing equal opportunity. Glazer found particularly persuasive the evidence on segregation presented by Massey and Denton in *American Apartheid*, annotated above. Pairing Glazer's earlier and later views would make an excellent instructional tool--a rare and vivid demonstration of how empirical evidence can actually change someone's mind on a passionately held moral issue.

Sowell, Thomas. *Preferential Policies: An International Perspective*. (New York: William Morrow, 1990).

Argues that affirmative action policies promote incompetence and resentment against its intended beneficiaries. Cites data suggesting that blacks admitted to elite institutions under affirmative action policies cannot compete effectively there and would do better if they attended the lower-ranked schools for which they are qualified. Unusual for taking an international perspective on the issues.

Cohen, Carl. *Naked Racial Preference*. (Boston: Madison Books, 1995). Cohen, Carl and Sterba, James. *Affirmative Action and Racial Preference : A Debate* (Oxford: Oxford University Press, 2003).

Cohen offers a comprehensive critique of affirmative action as unjust "reverse racism." The author is the University of Michigan professor most active in opposing the U-M's own affirmative action policies. The second, more recent volume updates Cohen's argument, and is paired with a defense of affirmative action by James Sterba.

Comprehensive Critiques of Affirmative Action

Thernstrom, Stephan and Thernstrom, Abigail. *America in Black and White: One Nation, Indivisible* (Cambridge, Mass.: Harvard University Press, 1998)

Comprehensive review of black progress in the U.S. Argues that white racism is largely a thing of the past, and that blacks have made great progress since the civil rights era, largely due to market forces. Remaining inequalities are due to problems such as low black educational attainment, high crime rates, and black family structures, that affirmative action programs cannot remediate. Comprehensive critique of all race-based programs, not just affirmative action in employment and admissions, but such measures as race-conscious election districting.

Pojman, Louis. "The Moral Status of Affirmative Action," in Julie McDonald, ed., *Contemporary Moral Issues in a Just Society* (Belmont, CA: Wadsworth, 1998), pp. 297-315.

Comprehensive critique of affirmative action programs. Contains useful history of affirmative action in the U.S., and summarizes, with replies, arguments in favor of these policies. Pojman's critique is one of the most widely reproduced in textbooks and anthologies, and is probably the single most useful paper for undergraduate teaching that offers an overall review of the arguments against affirmative action. See also Pojman's "The Case against Affirmative Action," *International Journal for Applied Philosophy*, available online.