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Principles and Consequences in a Virtue Ethics Analysis of Affirmative Action

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Abstract: In this paper, I evaluate affirmative action from the framework of virtue ethics. In doing so, I consider the *principles* behind affirmative action as well as its *consequences* because a perfectly virtuous person will act per just principles but will also be concerned with the consequences of her actions. An attempt to restore justice that utilizes a mechanism *known to be ineffective* is not truly an attempt to restore justice, and so is not virtuous. Therefore, if affirmative action is principally justified, a complete virtue ethical analysis will still ask, “Do we know if it works?” I conclude that affirmative action, as an attempt to rectify past wrongs, follows just principles, and that a consequential analysis indicates it is effective.

Principles and Consequences in a Virtue Ethics Analysis of Affirmative Action

In the movie *Hidden Figures*, a white, male supervisor asks a black, female employee, “If you were a white male, would you wish to be an engineer?” She responds “I wouldn’t have to. . . . I’d already be one.”¹ This exchange expresses the sentiments that motivate affirmative action programs: there are people who, through no fault of their own, have been wrongfully disadvantaged by society. As a result, these people do not achieve the success they merit. They have worked as hard and have as much natural talent as non-disadvantaged individuals. Hypothetically, the only difference between these two sets of individuals, and the only reason one outperforms the other, is that society has unjustly advantaged one group and disadvantaged the other. Society has discriminated (and perhaps is still discriminating) on illegitimate criteria, so society has a responsibility to redress the wrongs it has committed (and perhaps is still committing).

¹ Laurel Raymond, “The movie about NASA’s black female scientists that’s been a long time coming,” ThinkProgress, August 15, 2016, accessed February 16, 2017, <https://thinkprogress.org/hidden-figures-long-time-coming-db9ed029d5bb#.gh0orwh9u>.

In this paper, I conclude that affirmative action, as an attempt to right societal wrongs, follows just principles, and that a consequential analysis indicates it is effective. I consider the *principles* behind affirmative action in the first part of this paper and the *consequences* of affirmative action in the second part because I evaluate affirmative action from the framework of virtue ethics. A perfectly virtuous person will act per just principles but will also be concerned with the consequences of her actions. An attempt to restore justice that utilizes a mechanism *known to be ineffective* is not truly an attempt to restore justice, and so is not virtuous. Therefore, if affirmative action is principally justified, a complete virtue ethical analysis will still ask, “Do we know if it works?”

The term “affirmative action” is applied to a variety of policies, but I will evaluate only the case of a private collegiate educational institution in the United States preferentially admitting black students because they have been disadvantaged by society.² I do not attempt to justify any other forms of affirmative action, and for the rest of this paper the phrase “affirmative action” refers to this special case.³

Affirmative Action is Equitable

In this section I argue for lower admissions standards for black Americans. Throughout this argument, the sense of “justice” I will focus on is “equity”—fairness or equal treatment. Under virtue ethics, persons are meritorious or unmeritorious because of their nature and intentions, not the results of their actions. Hence, the admissions policy that comes closest to evaluating each

² I recognize my use of “society” and “societal” wrongs is vague, but whatever a society is, it influences, and is influenced by, institutions of higher learning. Universities reflect and influence their geographical area, donor interests, government regulation, culture, the arts, and every other aspect of what could be termed “society.” Thus, universities can be viewed as “societal institutions” and as legitimate agents of society even if the notion of what a society is remains vague.

³ I focus on the United States because I am most familiar with the situation there, but my arguments apply to any country with a similar history. I restrict my argument to education and black Americans because I am not sure other cases of affirmative action can be justified.

person according to her natural talents (nature) and efforts (intent) will be the most equitable. For instance, it is equitable that two equally talented and diligent students have the same opportunities to enter college, regardless of their test scores.

American society has a history of race-based educational discrimination. As George Hull writes:

“The United States of America . . . discriminated against those inside [its] borders who were of particular ethnicities in a way which constituted a serious injustice. . . .

Legislation and judicial rulings emanating from various levels of the state, and enforced by the police and the army, intentionally placed special restrictions on the employment and education opportunities, freedom of movement, and voting rights of those who were of particular ethnicities.”⁴

As late as 1969, the Supreme Court acted to reduce discrimination in education.⁵ As is now generally recognized, the criterion behind this discrimination, skin color, is illegitimate.⁶

While these acts are too far in the past to directly affect most current students, they *do* influence current students. The level of education of a student’s parents has a significant impact on her educational success. This is true even after factors such as income and IQ have been controlled for.⁷ Black people born and educated in the 1950s and 1960s are the parents and

⁴ George Hull, “Affirmative Action and the Choice of Amends,” *Philosophia* 43 (October 2014): 116, accessed February 16, 2017, DOI 10.1007/s11406-014-9564-4.

⁵ “Brown V. Board: Timeline of School Integration in the U.S.,” Tolerance.org., 2016, accessed March 16, 2017. <http://www.tolerance.org/magazine/number-25-spring-2004/feature/brown-v-board-timeline-school-integration-us>.

⁶ By arguing from past discrimination, I do not imply that a compelling argument cannot be made from present discrimination; I merely think that the argument from past discrimination will be less controversial, and so more compelling.

⁷ Eric F. Dubow, Paul Boxer, and L. Rowell Huesmann, “Long-Term Effects of Parents’ Education on Children’s Educational and Occupational Success: Mediation by Family Interactions, Child Aggression, and

grandparents of today's black students. Because these grandparents and parents were disadvantaged educationally, it is reasonable to expect today's black students to under achieve educationally. This expectation is borne out by the data:

“Blacks lag behind whites on every measure of educational attainment. Non-Hispanic Whites are almost twice as likely as blacks over twenty-five to have a college degree, and more than twice as likely to have an advanced degree. Black youth are almost twice as likely as white youth to have dropped out of school. Black children enter first grade with lower reading and mathematics skills than their white counterparts and fall further behind in every subsequent grade, even relative to white children who initially scored the same as they did.”⁸

Three things are known: 1) Blacks in the 1950s and 1960s (the parents and grandparents of today's students) suffered systematic educational discrimination. 2) Parental education significantly impacts a student's educational success. 3) Today's black students under-perform academically. It is reasonable to conclude that 3) is caused, at least in part, by 1). Thus, it is equitable that a university evaluates 3) in light of 1), and attempts to repair the wrong done to current black students by granting them educational opportunities they *do not qualify for but probably merit* on the basis of their effort and natural talent.

Objections and Responses

Louis Pojman voices two of the strongest objections to the conclusion above: “What is . . . wrong about *Affirmative Action* is that it fails to treat [white people] with dignity as individuals, judging them by . . . *their race* . . . instead of their merit. *Current Strong Affirmative Action* is . . .

Teenage Aspirations,” Merrill-Palmer Quarterly (Wayne State University Press) 55, 3 (2009): 224–226, accessed March 16, 2017, <http://doi.org/10.1353/mpq.0.0030>.

⁸ Elizabeth Anderson, *The Imperative of Integration* (Princeton: Princeton University Press, 2010) 24.

racist.”⁹ He makes two points here: a) affirmative action does not treat white people as individuals, and b) affirmative action disadvantages white people on the illegitimate criterion of race. I will address these objections in order.

While affirmative action programs must speak of people collectively, this does not indicate that an individual’s dignity is being degraded. Affirmative action can be justified by a probabilistic analysis of individuals.¹⁰ While the details of either how much discrimination reduced a given black student’s educational success, or of how much it increased a given white student’s educational success cannot be known, affirmative action can be based on a probabilistic comparison between a given white student and a given black student. Based on the history and facts given above, most black students’ educational opportunities have been reduced by discrimination, and most white students’ educational opportunities have been increased by it.¹¹ Thus, it is *most likely* that *an individual* black student has not achieved the academic success she merits on her natural talents and effort, as compared to *an individual* white student. While affirmative action policies are formulated in terms of groups, they can be based on a *probabilistic analysis of individuals*.

Of course, this probabilistic analysis will result in some mistakes. The black student whose parents are in the top 1% of income earners and who has every educational advantage but little natural talent may be preferentially admitted before the white student who was disadvantaged because of his poor background. It is impossible to formulate an admissions system that

⁹ Louis Pojman, “The Case Against Affirmative Action,” *International Journal of Applied Philosophy* 12, 1 (1998): 110.

¹⁰ Kwame Appiah, “‘Group Rights’ and Racial Affirmative Action,” *Journal of Ethics* 15 (March 2011): 274, accessed February 16, 2017, DOI 10.1007/s10892-011-9103-5.

¹¹ Albert Mosley, “Affirmative Action: Pro,” in *Taking Sides: Clashing Views on Moral Issues*, ed. Stephen Satris (New York: McGraw-Hill, 2013) 213-14.

guarantees every individual will be treated exactly as he merits. But it is never right to let the great good one cannot do (treating everyone perfectly according to her merits) stop one from doing the small good one can do (coming closer to treating more people according to their merits).

Pojman's second objection is that affirmative action illegitimately disadvantages white people on the basis of their race. This hinges on two misunderstandings of what affirmative action attempts to do. First, affirmative action does not treat skin color as a morally relevant factor (a morally relevant factor is one which justifies acting differently towards a person). If it did, Pojman would be right; affirmative action would be reprehensible. But using skin color or race as an *indicator* is legitimate. For example, it is legitimate to use the *not* morally relevant factor that someone is Japanese as an indicator of the morally relevant factor that he is likely to appreciate it if you remove your shoes before entering his home. Coming to this conclusion and removing one's shoes is not racist. Rather, failing to do so is culturally insensitive. Similarly, it is legitimate to use skin color (not a morally relevant factor) as an indicator of whether a given person is likely to have been benefitted or harmed by educational discrimination (a morally relevant factor). This is what affirmative action does.

Second, Pojman is mistaken in stating that affirmative action disadvantages white people. It does not disadvantage them but restores them to equity. Consider the following scenario: John Doe owns a silver candle stick. One night, Alfred Philips breaks into John Doe's house and steals this silver candle stick. John Doe is unaware that this has happened because he kept the candle stick in a locked storage box that he rarely accessed. After many years pass, Johnson Doe, John Doe's son, inherits the storage box from his father. Upon reading the contents label, he sees that a silver candle stick is supposed to be present but is not. Moreover, he recognizes the lock has

been forced, so he suspects burglary. Johnson Doe happens to be a detective, dusts for finger prints, and traces the prints to Alfred Philips. The problem is, Alfred Philips has died, and his daughter, Alfrieda Philips, who has no knowledge of her father's wrongdoing, has come into possession of the candle stick. The question is, to whom does the candle stick rightfully belong, Johnson Doe or Alfrieda Philips?

Johnson has a stronger claim than Alfrieda. While Alfrieda may be a paragon of virtue, her claim to the candle stick rests upon wrongdoing, whereas Johnson's does not. Moreover, certain other details could be added to the story, but none of these would affect the conclusion about what is equitable. For instance, the price of silver, and so the value of the candle stick, may have significantly increased since Alfred Philips stole it. Perhaps Alfrieda frequently loans her candle stick to one of her neighbors, who will not be able to borrow it from Johnson. Further, Alfrieda may have spent many hours lovingly polishing the candle stick; it may form the centerpiece of her redecorating plans, and she may be highly emotionally attached to it because of its connection to her father. None of these considerations change the conclusion—the candle stick rightfully belongs to Johnson Doe, not Alfrieda Philips.

The reasoning in this illustration applies to affirmative action. In the past, black people were stolen from by being denied their right to an equal education. While the perpetrators and victims of this robbery may no longer be present, this robbery continues to affect their descendants. Albert Mosley points out that, for every educational opportunity (dollar, teacher, building) denied to a black student, a white student received a corresponding benefit.¹² Every dollar in a state's education budget withheld from a black elementary school went to a white elementary school. Every time there is one less qualified black student competing for admission to a

¹² Mosley, 213-14.

university, it is that much easier for a white student to get in. As in the candlestick example, neither the work the beneficiaries of the robbery invested in their educational success, nor the place it has in their plans changes the basic analysis. Stolen goods, whether they be candle sticks or educational opportunities, ought to be returned. Thus, Pojman's charge that affirmative action wrongfully disadvantages white people is unsound because affirmative action *does not disadvantage them; it merely restores them to equity* by removing their illegitimate advantage.

Even if affirmative action does not disadvantage white people, it may disadvantage others.¹³ There are ethnicities in the United States besides white and black, and many persons have recently immigrated to the United States. Many non-white persons in the United States during the 1950s and 1960s, and all recent immigrants of any ethnicity, were not educationally advantaged by educationally disadvantaging black people. An objection similar to Pojman's can be raised regarding these persons: lowering admission standards for black persons illegitimately gives black people an advantage over anyone who did not benefit from black persons' previous educational disadvantage.

Just as affirmative action does not disadvantage white people, so it does not illegitimately advantage black people; it restores them to equity. Restoring the candle stick to Johnson is right even though it adversely affects Alfrieda's neighbor who borrowed the candlestick from her on a regular basis. If the neighbor's access to the candle stick depends on an injustice, that access is illegitimate. If a non-white or immigrant person's admission to a university depends on *not* rectifying an injustice to black people, then that admission is unjust because it is contingent upon wrongdoing. Making restitution to black people does not give them an illegitimate advantage over recent immigrants and other non-white people.

¹³ Zane Richer raised this objection in a discussion with the author.

Affirmative action is an attempt to recognize and treat people *according to their merits apart from societal favorite-picking*. Considered solely on this basis, affirmative action is justified and withstands objections, but a virtue ethics analysis also requires evaluating affirmative action's consequences. This is the subject of the next section.

Do We Know If Affirmative Action Works?

As stated earlier, a virtue ethics analysis of affirmative action must ask the question, "Do we know if it works?" Assuming the conclusion of the first part of this paper, if the answer is, "Yes, it does," then engaging in affirmative action is just. If the answer is, "We are uncertain," an attempt at justice is still virtuous. Something is better than nothing, and a person's desire to do whatever she can to right a wrong, even if she does not know if it will help, is commendable. But if the answer is, "No, it does not," then there is no virtue in affirmative action. If we know affirmative action is ineffective, there is no good reason for engaging in it—a selfish desire to placate conscience is not virtuous. Moreover, if we know it is ineffective, every dollar and hour spent on affirmative action is a distraction from the truly virtuous endeavor of finding an effective means of restoring equity. So, do we know if affirmative action works? In this section, I will consider Thomas Sowell's argument that affirmative action is ineffective and respond to his argument. I conclude that affirmative action does work and is justified in certain cases.

In his acclaimed book *Affirmative Action Around the World: An Empirical Study*, Sowell argues that affirmative action does not restore educational equity. At universities where black students are admitted under similar standards to white students, they perform similarly. But at schools with significantly different admission criteria for black and white students (schools with affirmative action programs that strongly favor black students) there is a corresponding

performance gap between the two.¹⁴ Black students who are preferentially admitted do not catch up to their peers.¹⁵ Their unjust, pre-college educational disadvantage is not rectified by being preferentially admitted. Affirmative action appears ineffective.

Secondarily, Sowell argues that affirmative action not only fails to restore educational equity but also furthers societal discrimination. Because preferentially admitted students underperform relative to other students, the preferentially admitted students become viewed as inferior, and this can serve to worsen, rather than lessen, discrimination.¹⁶ Because discrimination caused the injustice affirmative action seeks to correct, if affirmative action increases discrimination, it may be not only ineffective but also counterproductive.

Sowell provides minimal data linking affirmative action and increased racism and fails to present any argument linking this purported increase in racism to further educational disadvantage for black people. In light of this weakness, I will not consider his second argument, that affirmative action is affirmatively counter-productive, any further.

While initially persuasive, Sowell's first argument misses an important distinction. There is a difference between someone's *level of education* and her *performance relative to her peers*. Sowell demonstrates only that students' performance relative to their peers does not change if they are affirmatively admitted. He *does not* refute the idea that recipients of affirmative action are more likely to complete an advanced degree than comparable students who are not beneficiaries of affirmative action.

¹⁴ Thomas Sowell, *Affirmative Action Around the World: An Empirical Study* (New Haven: Yale University Press, 2004) 155.

¹⁵ Sowell, 141-142.

¹⁶ Sowell, 148-149.

This distinction matters because, while affirmative action may not restore educational success to its immediate beneficiaries, it can prevent their children from being robbed of educational success.¹⁷ Dubow writes that parents influence “their children towards higher levels of educational achievement . . . by modeling achievement-related behaviors and fostering positive expectations for academic performance.”¹⁸ Even if the beneficiaries of affirmative action do not perform as well as their peers, they can still obtain more advanced degrees, and so model achievement and foster expectations of educational success for their children. The lack of positive modeling and expectations is a major mechanism by which educational robbery can be transferred through generations. By fostering positive modeling and expectations, affirmative action will prevent the future generation from being affected by past wrongs, even if it does not restore the present generation.

Application

While I have argued affirmative action is both principally and consequentially justified, certain distinctives of my argument are important. Affirmatively admitting certain types of students is not supported by my argument, and the nature of my argument results in certain types of affirmative action programs.

My argument does not support affirmatively admitting students whose parents are highly educated. If a student’s parents are highly educated, there is no evidence he has been educationally robbed. Highly educated people do not transmit educational theft because they both model and expect educational success. Although a student’s skin color may indicate he has been educationally robbed, his parents’ level of education is closer to the root of the issue and so

¹⁷ Dr. Michael Jones of Liberty University and Trevor Brown brought this objection to my attention.

¹⁸ Dubow, et al., 9.

is a more accurate indicator. However, level parental education alone is insufficient to justify affirmative action because a low level of education (in and of itself) has not been linked to being unjustly educationally disadvantaged. Race and parental education must *both* be considered in affirmative action programs. There may be other ways to justify affirmatively admitting the children of highly educated people, but I have focused on the transmission of past educational theft, and this justification does not apply to the children of highly educated persons.

Further, I have not justified affirmatively admitting anyone, of any ethnicity, whose family has recently immigrated to the United States. This paper contains no evidence that, for instance, a recent Libyan immigrant has been educationally robbed, so it provides no justification for affirmatively admitting her.

Allowing either the children of the highly educated or recent immigrants to benefit from affirmative action may be unjust. If there is not another justification for affirmative action which applies to these persons, preferentially admitting them would be precisely the sort of arbitrary favorite-picking affirmative action hopes to correct. A student who has not been educationally robbed has no right to restitution—preferring him on the basis of morally irrelevant criteria is wrong.

Finally, students whose past performance indicates they will not complete college should not be affirmatively admitted. While Sowell's objections fail to render affirmative action illegitimate, they do raise a couple of important caveats. If affirmatively admitted students' performance relative to their peers does not change, then affirmatively admitting students whose past performance indicates they will not complete college has no benefit. The affirmatively admitted student will not benefit, and his lack of a degree will not model educational success for his descendants. He will transmit the same educational theft from which he suffers to them.

Some form of restitution is needed for students who have been educationally robbed and are unable to complete college, but affirmative action is not this form.

In closing, I will make two notes about the structure of affirmative action programs justified by this paper. First, they will not employ quotas. A quota is not an effective means of making restitution. Rather, an estimate of how much black students have been robbed should be made, and admissions standards for black students should be lowered this amount. However, admissions standards should not be reduced to the point that students who will not graduate will be admitted. Second, models of affirmative action justified by the transmission of past educational theft are self-limiting. Students of highly educated persons will not be affirmatively admitted. If the time comes when black student's parents do not exhibit an unjust educational disadvantage, black students will no longer be affirmatively admitted.

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