

open debate

The case for affirmative action



Simon Clarke defends the controversial policy, then you have your say...

Affirmative action has been a contested issue for several decades, but there are signs the debate is heating up again. The US Supreme Court revisited the issue in 2003 and there is speculation that its future decisions may declare all or much of affirmative action unconstitutional. In New Zealand, policies thought to give special privileges to Maori have become an election issue, with one party making significant gains in the polls by advocating policies based on “need, not race”. Current events like these make an examination of the ethics of affirmative action apposite.

In its widest sense, affirmative action – also sometimes referred to as positive or reverse discrimination – means giving advantages to racial minorities in areas of education, employment, health care, or government funding. These can take the form of counting race as a relevant criterion for student admissions into top universities. These are what provokes most of the debate in the US, but they are not the only type and nor is affirmative action only practiced in America. In India, certain positions in government are reserved for those from the “untouchables” class and in Malaysia some laws provide opportunities for the ethnic Malay population.

Is affirmative action justified? Answering

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this question requires answering some empirical questions such as whether it is effective or necessary. If it would not even succeed in its goal of improving the position of minorities in society, or if that goal is already being achieved without affirmative action, then there seems little point in having it. But these empirical matters do not fully address the issue: even if affirmative action would succeed in its goals and even if it is the only way of achieving those goals, many critics maintain that it is still wrong because it gives preference to certain people on the basis of their race. Affirmative action is discrimination – in the sense of treating people differently – on the basis of race. And racial discrimination, many believe, is always wrong. Hence, so the argument goes, affirmative action is wrong.

But is racial discrimination always wrong? However unpleasant it may seem, perhaps not always. Take this imaginary but topical example: Suppose there is a threat of terrorism by a group of people predominantly made up of those of a certain ethnic origin. The government decides to detain and interrogate people of this race entering the country with more vigour than it does other people. This is discrimination on the basis of race. Yet surely it is not wrong, so long as the threat is real and significant. Some governments are currently implementing similar policies. It is interesting to note that those who protest against these policies do *not* say that such policies are racial discrimination and racial discrimination is always wrong. Instead they argue that the seri-

ousness of the threat does not warrant the racial discrimination. But this line of protest implicitly accepts that if the threat were real and significant, then the discrimination would be justified. If we were 100% sure that a particular threat would be carried out unless we did something, and that the action threatened would kill thousands, perhaps millions of people, and that the only way of stopping it were to interrogate all members of a certain ethnicity (while respecting human rights) coming into the country more than others, then this seems a case where racial discrimination would be justified.

This just shows that racial discrimination is justified if there are very compelling arguments. Of course there very seldom are. Are there such arguments when it comes to affirmative action? Here are three possible but unconvincing ones:

1. *Racial minorities are usually economically disadvantaged, which gives them less opportunities than others, and affirmative action helps to improve or equalise their opportunities.* The problem, however, is that affirmative action often does not benefit the economically disadvantaged members of racial minorities. Places reserved at top universities for example usually go to people from wealthy middle classes. What is needed, and what many countries now do, is to have policies to help not racial minorities, but the economically disadvantaged regardless of their race.

2. *Racial minorities have been subjected to unjust racial discrimination in the recent past.* Without this discrimination, they would have done better than they have. Affirmative action helps to restore outcomes to what they would have been had there been no injustice. However, there is no guarantee that affirmative action will target the right people. Say a black man is denied employment by racist employers. He might still fail to get a job even when there is affirmative action. Instead the job might go to a man who had not been the victim of any injustice. Again, the attempted rationale seems to support a policy other than affirmative action: that of having and enforcing anti-discrimination legislation.

3. *Racial minorities have been subjected to centuries of unjust racial discrimination and people today are still affected by injustices that occurred long before they were born.* Affirmative action helps to restore outcomes to what they would have been had there been no injustice.

The problem with this third reason is more complicated. We should accept that past injus-

tices can affect people today (even though there may be empirical difficulties in working out what really happened). If I was swindled out of my legitimate inheritance before I was even born, I'm still harmed. The problem, which has been pointed out by several philosophers, runs deeper. In most cases of compensating for past injustice, the underlying assumption is that if the injustice had not occurred the victim would be better off. We compare the situation with the most likely counterfactual: If A harms B, then B deserves compensation because B, in the absence of being harmed by A, would have been better off. But can such counterfactuals be made regarding injustice in the distant past, say more than 100 years ago? If the people discriminated against in the distant past had not been discriminated against, their lives would have gone differently (probably better, but at least differently). With their lives going differently, many would have met different procreation partners. Or, if they had met the same procreation partners, their different life circumstances might well have meant that they would have procreated at other times than they actually did. This means that the people who would have been born if there had been no racial discrimination in the distant past would be a different set of people from those who actually were born, when there *was* racial discrimination. Hence it cannot be claimed that if the racial discrimination had not occurred in the past then the descendants would be better off, because if the racial discrimination had not occurred they would never have existed!

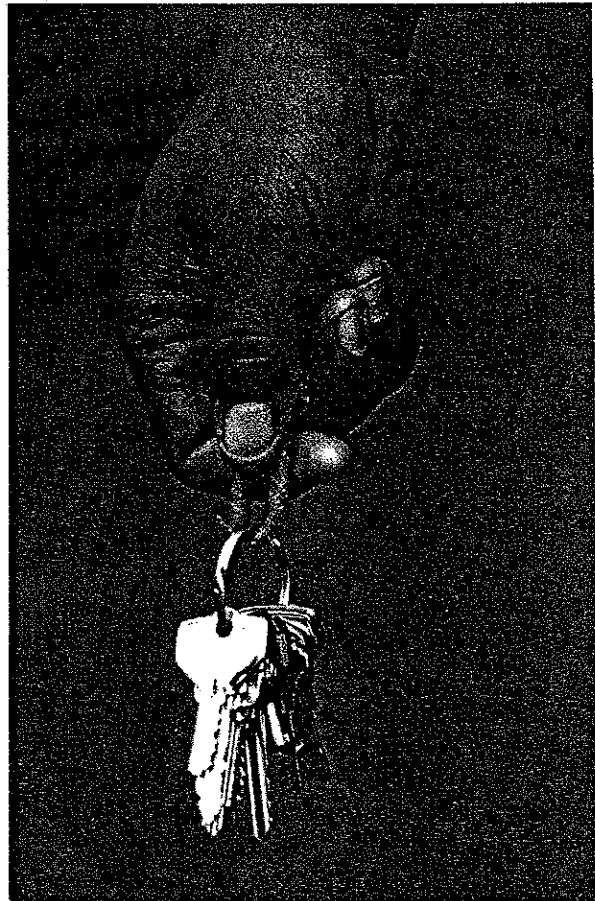
Is there any more convincing argument for affirmative action? I think so, and to make the argument, it is necessary first to distinguish *real* equality of opportunity from *formal* equality of opportunity. In order to have equal opportunities, it is not enough that people merely have opportunities. They need those of course, but they must also have the *knowledge* that those opportunities are available. To give a man locked inside a room for ten years the opportunity to leave that room, it is not enough to simply unlock the door without giving him any indication that his circumstances have changed. That would only be formal opportunity. If he has no reason for thinking the door has been unlocked, he is not going to try it, and our quietly unlocking the door without his knowledge cannot plausibly be thought of as giving him the opportunity to leave the room. He does not have *real* opportunity. To

fully have opportunities, one must know that one has them, not just have them.

This provides a powerful case for affirmative action. If no members of a certain race ever occupy top positions in society, young members of that race cannot plausibly be expected to think that they have the opportunity of achieving such positions. One might say that they simply have to be told so. But things are never as simple as that. No matter how often you tell children that they can, if they wish, achieve high goals, if they see that no people similar to themselves achieve those goals, they are highly unlikely to think that they really could. We must not underestimate how much people's beliefs are influenced by what they see around them, not just what they are told. If none of their elders are corporate lawyers, it is not going to occur to them that that is an option they could pursue, even though the institutional arrangements may already be in place for them to do so.

This is partly the same as role model arguments that are sometimes made in favour of affirmative action. But role model arguments on their own are not convincing because while role models are good things for society to have, there are lots of good things society could have without there being a duty on anyone to provide them. The argument above makes role models more than merely one good thing that could be present in society. It makes them a *requirement for social justice*, on the assumption – which I take to be plausible – that social justice requires real equality of opportunity. It does so via the connection between real equality of opportunity, which requires that people know of their opportunities as well as have them, and the fact that role models help supply this knowledge.

Racial minorities should be given some advantages, even if the beneficiaries of those policies come from the wealthy middle class and even if they are not the ones who can specifically be said to have suffered racial discrimination in the past. They should receive such advantages in order to achieve the conditions for real equality of opportunity. People need to know that they can achieve goals in society. Sending that message helps encourage the belief that opportunities really are open to them, that the rooms that may have once held them captive have been unlocked. It helps bring about real equality of opportunity.



How to join the debate

In the next issue, we'll be publishing some of your objections to Simon Clarke's argument, along with his replies. To be in with a chance of being selected, you need to send your reply to us by October 30.

Your contribution should be no longer than 600 words, and preferably shorter. It will have a better chance of being selected if it addresses one particular point carefully, rather than several more briefly.

Send your reply to: Open Debate, The Philosophers' Magazine, 98 Mulgrave Road, Sutton, Surrey SM2 6LZ. Or email editor@philosophers.co.uk.

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