

A Defense of Affirmative Action

Thomas Nagel, Professor of Philosophy at New York University, presented the following statement on affirmative action in testimony before the Subcommittee on the Constitution of the Senate Judiciary Committee on June 18, 1981. We thank him for his permission to reprint his testimony here.

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The term "affirmative action" has changed in meaning since it was first introduced. Originally it referred only to special efforts to ensure equal opportunity for members of groups that had been subject to discrimination. These efforts included public advertisement of positions to be filled, active recruitment of qualified applicants from the formerly excluded groups, and special training programs to help them meet the standards for admission or appointment. There was also close attention to procedures of appointment, and sometimes to the results, with a view to detecting continued discrimination, conscious or unconscious.

More recently the term has come to refer also to some degree of definite preference for members of these groups in determining access to positions from which they were formerly excluded. Such preference might be allowed to influence decisions only between candidates who are otherwise equally qualified, but usually it involves the selection of women or minority members over other candidates who are better qualified for the position.

Let me call the first sort of policy "weak affirmative action" and the second "strong affirmative action." It is important to distinguish them, because the distinction is sometimes blurred in practice. It is strong affirmative action—the policy of preference—that arouses controversy. Most people would agree that weak or precautionary affirmative action is a good thing, and worth its cost in time and energy. But this does not imply that strong affirmative action is also justified.

I shall claim that in the present state of things it is justified, most clearly with respect to blacks. But I also believe that a defender of the practice must acknowledge that there are serious arguments against it, and that it is defensible only because the arguments for it have great weight. Moral opinion in this country is sharply divided over the issue because significant values are involved on both sides. My own view is that while strong affirmative action is intrinsically undesirable, it is a legitimate and perhaps indispensable method of pursuing a goal so important to the national welfare that it can be justified as a temporary,

though not short-term, policy for both public and private institutions. In this respect it is like other policies that impose burdens on some for the public good.

Three Objections

I shall begin with the argument against. There are three objections to strong affirmative action: that it is inefficient; that it is unfair; and that it damages self-esteem.

The degree of inefficiency depends on how strong a role racial or sexual preference plays in the process of selection. Among candidates meeting the basic qualifications for a position, those better qualified will on the average perform better, whether they are doctors, policemen, teachers, or electricians. There may be some cases, as in preferential college admissions, where the immediate usefulness of making educational resources available to an individual is thought to be greater because of the use to which the education will be put or because of the internal effects on the institution itself. But by and large, policies of strong affirmative action must reckon with the costs of some lowering in performance level: the stronger the preference, the larger the cost to be justified. Since both the costs and the value of the results will vary from case to case, this suggests that no one policy of affirmative action is likely to be correct in all cases, and that the cost in performance level should be taken into account in the design of a legitimate policy.

The charge of unfairness arouses the deepest disagreements. To be passed over because of membership in a group one was born into, where this has nothing to do with one's individual qualifications for a position, can arouse strong feelings of resentment. It is a departure from the ideal—one of the values finally recognized in our society—that people should be judged so far as possible on the basis of individual characteristics rather than involuntary group membership.

This does not mean that strong affirmative action is morally repugnant in the manner of racial or sexual discrimination. It is nothing like those practices, for though like them it employs race and sex as criteria of selection, it does so for entirely different reasons. Racial and sexual discrimination are based on contempt or even loathing for the excluded group, a feeling that certain contacts with them are degrading to members of the dominant group, that they are fit only for subordinate positions or menial work. Strong affirmative action involves none of this: it is simply a means of increasing the social and economic strength

of formerly victimized groups, and does not stigmatize others.

There is an element of individual unfairness here, but it is more like the unfairness of conscription in wartime, or of property condemnation under the right of eminent domain. Those who benefit or lose out because of their race or sex cannot be said to deserve their good or bad fortune.

It might be said on the other side that the beneficiaries of affirmative action deserve it as compensation for past discrimination, and that compensation is rightly exacted from the group that has benefitted from discrimination in the past. But this is a bad argument, because as the practice usually works, no effort is made to give preference to those who have suffered most from discrimination, or to prefer them especially to those who have benefitted most from it, or been guilty of it. Only candidates who in other qualifications fall on one or other side of the margin of decision will directly benefit or lose from the policy, and these are not necessarily, or even probably, the ones who especially deserve it. Women or blacks who don't have the qualifications even to be considered are likely to have been handicapped more by the effects of discrimination than those who receive preference. And the marginal white male candidate who is turned down can evoke our sympathy if he asks, "Why me?" (A policy of explicitly *compensatory* preference, which took into account each individual's background of poverty and discrimination, would escape some of these objections, and it has its defenders, but it is not the policy I want to defend. Whatever its merits, it will not serve the same purpose as direct affirmative action.)

The third objection concerns self-esteem, and is particularly serious. While strong affirmative action is in effect, and generally known to be so, no one in an affirmative action category who gets a desirable job or is admitted to a selective university can be sure that he or she has not benefitted from the policy. Even those who would have made it anyway fall under suspicion, from themselves and from others: it comes to be widely felt that success does not mean the same thing for women and minorities. This painful damage to esteem cannot be avoided. It should make any defender of strong affirmative action want the practice to end as soon as it has achieved its basic purpose.

Justifying Affirmative Action

I have examined these three objections and tried to assess their weight, in order to decide how strong a countervailing reason is needed to justify such a policy. In my view, taken together they imply that strong affirmative action involving significant preference should be undertaken only if it will substantially further a social goal of the first importance. While this condition is not met by all programs of affirmative action now in effect, it is met by those which address the most deep-seated, stubborn, and radically unhealthy divisions in the society, divisions whose

removal is a condition of basic justice and social cohesion.

The situation of black people in our country is unique in this respect. For almost a century after the abolition of slavery we had a rigid racial caste system of the ugliest kind, and it only began to break up twenty-five years ago. In the South it was enforced by law, and in the North, in a somewhat less severe form, by social convention. Whites were thought to be defiled by social or residential proximity to blacks, intermarriage was taboo, blacks were denied the same level of public goods—education and legal protection—as whites, were restricted to the most menial occupations, and were barred from any positions of authority over whites. The visceral feelings of black inferiority and untouchability that this system expressed were deeply ingrained in the members of both races, and they continue, not surprisingly, to have their effect. Blacks still form, to a considerable extent, a hereditary social and economic community characterized by widespread poverty, unemployment, and social alienation.

When this society finally got around to moving against the caste system, it might have done no more than to enforce straight equality of opportunity, perhaps with the help of weak affirmative action, and then wait a few hundred years while things gradually got better. Fortunately it decided instead to accelerate the process by both public and private institutional action, because there was wide recognition of the intractable character of the problem posed by this insular minority and its place in the nation's history and collective consciousness. This has not been going on very long, but the results are already impressive, especially in speeding the advancement of blacks into the middle class. Affirmative action has not done much to improve the position of poor and unskilled blacks. That is the most serious part of the problem, and it requires a more direct economic attack. But increased access to higher education and upper-level jobs is an essential part of what must be achieved to break the structure of drastic separation that was left largely undisturbed by the legal abolition of the caste system.

Changes of this kind require a generation or two. My guess is that strong affirmative action for blacks will continue to be justified into the early decades of the next century, but that by then it will have accomplished what it can and will no longer be worth the costs. One point deserves special emphasis. The goal to be pursued is the reduction of a great social injustice, not proportional representation of the races in all institutions and professions. Proportional racial representation is of no value in itself. It is not a legitimate social goal, and it should certainly not be the aim of strong affirmative action, whose drawbacks make it worth adopting only against a serious and intractable social evil.

This implies that the justification for strong affirmative action is much weaker in the case of other

racial and ethnic groups, and in the case of women. At least, the practice will be justified in a narrower range of circumstances and for a shorter span of time than it is for blacks. No other group has been treated quite like this, and no other group is in a comparable status. Hispanic-Americans occupy an intermediate position, but it seems to me frankly absurd to include persons of oriental descent as beneficiaries of affirmative action, strong or weak. They are not a severely deprived and excluded minority, and their eligibility serves only to swell the numbers that can be included on affirmative action reports. It also suggests that there is a drift in the policy toward adopting the goal of racial proportional representation for its own sake. This is a foolish mistake, and should be resisted. The only legitimate goal of the policy is to reduce egregious racial stratification.

With respect to women, I believe that except over the short term, and in professions or institutions from

which their absence is particularly marked, strong affirmative action is not warranted and weak affirmative action is enough. This is based simply on the expectation that the social and economic situation of women will improve quite rapidly under conditions of full equality of opportunity. Recent progress provides some evidence for this. Women do not form a separate hereditary community, characteristically poor and uneducated, and their position is not likely to be self-perpetuating in the same way as that of an outcast race. The process requires less artificial acceleration, and any need for strong affirmative action for women can be expected to end sooner than it ends for blacks.

I said at the outset that there was a tendency to blur the distinction between weak and strong affirmative action. This occurs especially in the use of numerical quotas, a topic on which I want to comment briefly.

A quota may be a method of either weak or strong

The Equal Opportunity Myth

Affirmative action programs have subtly begun to change the tenor of American life. In the past, appointments and promotions to governmental service positions, government contracts, admission to universities depended—at least in theory—on individual achievement. Evasions and abuses there were aplenty. . . . But at least the principle of individual merit went unchallenged, and after World War II became increasingly effective in its enforcement.

L. H. Gann and Alvin Rabushka, "Racial Classification: Politics of the Future?" *Policy Review*, No. 17 (Summer 1981): 87.

There is a common argument, which we are likely to hear with even greater frequency in the Reagan administration, that giving employment preference to blacks (or other minorities or women) violates a widely acknowledged principle which, though not always faithfully followed, has never been challenged or repudiated. The principle is the equal opportunity/merit principle, which says that people ought to be selected for jobs on the basis of their job-related qualifications, and that jobs should go to those best qualified for them. The equal opportunity/merit principle is violated when factors other than an applicant's job-related qualifications—factors such as his or her membership in some group—are allowed a role in selecting or rejecting him or her for the job.

Perhaps all jobs, positions, and contracts ought to be given out on the basis of individual merit so defined. But it is a myth that official American policy has adhered even in theory to the equal opportunity/merit principle. For most of this cen-

tury it has been the explicit and continuous policy of federal and state governments to give preferences in government employment to veterans. Such preferences benefit or hinder the employment ambitions of millions of workers. In some states, non-veterans stand virtually no chance of moving upward into the best classified positions to which veterans' preference applies.

Veterans' preference has been continually upheld by the courts as a legitimate exercise of governmental power, the latest decision coming from the Supreme Court in 1979 (*Personnel Administration Mass. v. Feeney*, 47 LW 4650 [1979]). There has never been a significant popular clamor against veterans' preference nor any popular effort to overthrow it.

The preferences given to veterans cannot be justified on the grounds that they enhance the operations of the equal opportunity/merit principle since they operate most often to defeat it. For example, in Massachusetts, veterans who pass the competitive exam for a job are to be ranked, in order of their scores, above all other candidates. In 1974, to take but one common instance of the operation of the Massachusetts system, Carol Anthony tied for the highest score on the examination for the position of Counsel I; yet she was ranked 57th on the list of eligibles for the job, behind 56 veterans, 54 of whom scored lower than she. (*Anthony v. Commonwealth of Massachusetts*, 415 R. Supp. 485 [1976], at 490). It hardly makes sense to see the Massachusetts law as designed to enhance the chances of the very best qualified applicants to get government positions for which they apply. On the contrary, the law quite obviously reflects the willingness of citizens of the state to deviate from

affirmative action, depending on the circumstances. It amounts to weak affirmative action—a safeguard against discrimination—if, and only if, there is independent evidence that average qualifications for the positions being filled are no lower in the group to which a minimum quota is being assigned than in the applicant group as a whole. This can be presumed true of unskilled jobs that most people can do, but it becomes less likely, and harder to establish, the greater the skill and education required for the position. At these levels, a quota proportional to population, or even to representation of the group in the applicant pool, is almost certain to amount to strong affirmative action. Moreover it is strong affirmative action of a particularly crude and indiscriminate kind, because it permits no variation in the degree of preference on the basis of costs in efficiency, depending on the qualification gap. For this reason I should defend quotas only where they serve the purpose of weak

affirmative action. On the whole, strong affirmative action is better implemented by including group preference as one factor in appointment or admission decisions, and letting the results depend on its interaction with other factors.

I have tried to show that the arguments against strong affirmative action are clearly outweighed at present by the need for exceptional measures to remove the stubborn residues of racial caste. But advocates of the policy should acknowledge the reasons against it, which will ensure its termination when it is no longer necessary. Affirmative action is not an end in itself, but a means of dealing with a social situation that should be intolerable to us all.

—Thomas Nagel

strict merit hiring for a moral reason—because of a sense that it is fitting or worthy to reward in this way veterans for their national service, even at the cost of some inefficiency in state government services.



Courtesy National Archives

One could hold, of course, that although veterans' preference is a common American practice, it is nevertheless an unjustified practice precisely because it does violate the equal opportunity/merit principle. One can condemn both veterans' preferences and racial (or sexual) preferences without inconsistency. If, however, there are thought to be compelling moral reasons to continue to give job preferences to veterans—most of whom completed their service prior to 1960—then might there not be equally compelling moral reasons for extending job preferences at least to some blacks (and women) to make up for a history of exclusion and exploitation? We can certainly ask what distinguishes the moral claim of a veteran to special preference from the moral claim of a black (or woman).

There may be every reason in the world to condemn government practices that foster or require racial (or sexual) preferences. However, such preferences should be condemned for their real faults, if they are intolerable, and not because they violate an American tradition of merit hiring. Racial (or sexual) preference may be morally different from veterans' preference; but the difference cannot be that the one does, and the other does not, deviate from the equal opportunity/merit principle.

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