

# Symposium on Diversity and Affirmative Action

## Justice and Affirmative Action

Affirmative action at Grand Valley, particularly at this point in the history of the University, raises a very important and, I think, interesting question. It is unfortunate that most of the debate here and elsewhere misses this important question. Like many midwestern schools, Grand Valley has long lived with the contrast of young graduate students from liberal east coast schools, who now find themselves as teachers amidst a rather conservative midwestern population. Also, students, as they get their first taste of the life of the mind, grab hold of ideas, sometimes too quickly—sometimes not so wisely, which put them at odds with their fellow students or their parents. However, the current situation at Grand Valley is more dynamic and vibrant. In the past, Grand Valley has seen relatively few minority students. Now the university draws more students from farther afield—Detroit, Chicago, and beyond. The new students bring a wider array of experiences, viewpoints, and opinions, raising the level, pitch, and importance of political debate. My aim here is to show that much of the current debate regarding affirmative action suffers from conceptual confusion and allows the important questions regarding affirmative action to escape notice and the proposed answers to escape proper scrutiny.

While affirmative action has not split the public down the usual party lines as neatly as some other issues, it does raise a question of political morality that often divides liberals from conservatives and libertarians—a fundamental question of the meaning of justice in America. Almost all of the contemporary debate on affirmative action enlists some claim of fairness or justice. Often the claim is not spelled out clearly or explicitly but is simply alluded to in metaphorical images of a “color-blind society” or a “level playing field.” These metaphors are meant to excite a sense of fairness, but they do not help us think about what fairness means, or what makes treatment fair or just. However, it is the failure to dig deeper here that results in our confusion, as the strongest arguments for and against affirmative action rely on very different notions of fairness or justice.

### Treating Everyone the Same

Both views of justice begin from the classic idea that justice requires that we treat people in similar circumstances in a similar manner. If you and I are in similar circumstance, we ought to be treated the same. As we

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say, “we should treat like cases alike.” However, in articulating what this doctrine requires, the two competing views of justice focus on different types of circumstances and end up yielding very different results in some cases. While one of these views is more readily recognized, once the other is identified, people find they believe in it no less strongly than the alternative. The first view begins from the common intuition that when we deal with each other, things like race and gender should not change the way we are treated. The second view of justice draws on the belief that we are all created equal and deserve equal chances in life, again, regardless of things like race or gender. It is the pull we feel toward each of these different views that fuels the interesting and difficult questions regarding affirmative action.

### **The Transactional View of Justice**

The more readily recognized view of justice is often enlisted to explain opposition to affirmative action. The easiest way to understand this view of justice is to begin with the general idea of treating like cases alike and looking at these cases rather narrowly. On this view, requirements of justice enter our lives most often when we engage in transactions with others. It is easiest here to speak of transferring property. We have property that is our own, by which we mean we have a right to it. This property could be things like money, food, a house, a car, or a bottle of scotch, but it could also be rights that we have. In transactions, I trade some of my property (money) for some other property, and this must be done fairly. The ideal of the fair trade is when both parties to the trade freely agree to the terms. So I cannot threaten or force the cashier to accept less money for the goods, and I cannot simply run out without paying. We could also trade rights. If I had a right to park in a special spot on campus, I could trade that right to you just like it were some other sort of more tangible property. If I own anything, I am free to keep it or trade it. Justice merely requires that the trades are fair and the fairness simply means we enter into them and accept them freely.

When a transaction is not fair, the way to rectify the injustice is to put the parties back in the positions in which they began. If I steal a car from you, my acquisition is unjust, as you did not freely agree to the exchange. The way to fix this is to take the car from me and give it back to you.

This transactional view of justice can be seen in matters of equal protection of the laws in the form of principles prohibiting discrimination. The most common case is the prohibition of discrimination based on race. Race should not affect how we are treated. Race is not like the age of the 12 year old who wants to buy a bottle of scotch; it is not a relevant difference in circumstance. For example, if a black man is denied the rights or opportunities given to a similarly situated white man, equality and justice require that we restore his rights and opportunities by taking

them back from the people who wrongly acquired them. Suppose a company has routinely denied the benefits of seniority to its black workers but not its white workers. The just remedy would be to take these benefits back from those who do not deserve them (white workers who enjoy the benefits but have less seniority than the black workers) and restore them to the black workers. Many discussions of affirmative action draw on the transactional view of justice and claim to seek this type of remedy. The trouble is that most contemporary affirmative action plans do not seem to fit this model.

As many see it, most contemporary affirmative action plans recognize a harm or loss to person A but then attempt to rectify this wrong by giving a benefit to a different person B. What is worse, the benefit given to B is taken from a person who never took anything from A or B. Consider affirmative action plans in college admissions. The plans begin from the recognition that some black students have suffered from discrimination. The plans then grant the benefit of college admission to some student without regard to whether he actually suffered from discrimination and do so by denying admission to a white student who never benefited from the discrimination against the black student. Thus, a poor, black, inner-city student suffers from discrimination while an affluent black student from an excellent suburban school district is admitted to college at the expense of one of his white classmates. Here it seems that the plan attempts to remedy the theft of one person's rights by stealing from another and giving the stolen property to a third person. It punishes the wrong person, benefits the wrong person, and leaves the one who suffered with nothing. It is no wonder that many find these plans to be a miscarriage of justice or "reverse-discrimination."

It is unfortunate that so many defenders of affirmative action follow this same line of argument, relying on the transactional view of justice. Some attempt to identify a general harm to all blacks, even affluent, well-educated ones, and some general benefit to whites, even poor ones new to this country. They claim that affirmative action merely rectifies this situation. These efforts seem unlikely to persuade. As those in opposition point out, if there is some real harm, we ought to be able to identify it and determine which black students suffer from it and base affirmative action plans on its presence rather than on race. If the harm is not one we can see but must accept that all blacks suffer, then many will not find such a mysterious harm serious enough for action or amenable to this type of solution. Indeed how would one even know if we had remedied or diminished such harm?

### **The Egalitarian View of Justice**

Both those supporting and those opposing affirmative action miss the important question when they limit themselves to the transactional view

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of justice. The strongest arguments for affirmative action are supported by a different, more deeply egalitarian, view of justice. While the transactional view of justice can be said to begin from the intuition that whenever people deal with business, government or each other, their race or gender should not matter in how they are treated, this egalitarian view begins from the intuition that all people should have equal chances for success in their lives, regardless of their race or gender—one's prospects in life should not be limited simply because of race or gender. If this is not an ideal of universal justice, at the very least, it seems like an ideal of American justice. The laws and other institutions of society, particularly those that purport to establish equality, ought to be structured and interpreted in a way to ensure this equal opportunity for all.

In the egalitarian view, if some group persistently suffers from a disadvantage in society, then justice requires that the institutions of society be changed in a way that will remove the disadvantage. Here the rules and institutions of society are not taken as natural. Rather they are created and maintained by a society. The ideal of a just society with just rules and institutions is one in which all members of society have equal opportunity or equal prospects for a good life. If one is born female, she should not suffer from fewer chances for success in life. And if one is born black, he too should not suffer diminished prospects for success. In this view, the metaphors for a "color-blind" society or a "level playing field" apply at a basic level of chances for success in life.

In the United States today, or any other day so far, people born black or born female do not enjoy the same opportunities or chances for success as those who are white or male. Blacks and women of comparable talent to contemporary white males make less money, achieve less political power, and hold lower business and social status. Both constitute identifiable, and more important, disadvantaged groups.

In the egalitarian view of justice, social institutions should be structured to promote equality. If society finds that some of its members do not enjoy equal life prospects, justice compels that it alter its rules and institutions to reduce the inequality. It is here that affirmative action plans come in. Affirmative action plans create or alter the rules of society in an attempt to reduce or eliminate disadvantage. For example, blacks may be favored in college admissions for a number of reasons. Most apparent, the students directly affected would be encouraged and enabled to attend college and thus better situated to achieve greater success in professional and political life. However, the effects do not stop there. In their chosen fields, these people may later serve the black community more than it is currently served by, say, providing better legal, medical, and financial services, raising the prospects of a wider group of blacks. Another effect of these services

might be to reduce the economic disadvantages that keep some blacks out of college. Also, the students will serve as examples both to their peers in their professions and to younger members of the black community. In their profession, their success will break down any residual bias through personal association and by giving them the opportunity to show their talents. In the black community, their success will show others that these professions and these types of success are open and possible for them as well, inspiring them to achieve more than they otherwise would have. Over time, these effects would seem likely to diminish the disadvantage to blacks as a group and improve the prospects of one born black.

### **Consequences of the Mistake**

In failing to identify the egalitarian view of justice, both sides in the debate over affirmative action have focused on the transactional view. This confusion has caused them to debate the wrong questions. For example, when opponents point out that some people who benefit directly from affirmative action have not suffered from discrimination, the egalitarian may readily agree. For the egalitarian, those who benefit directly, say by being admitted to college, are preferred, not because they have suffered from discrimination, but because they are situated in a way to make them useful in alleviating the disadvantage blacks suffer as a group. Also when some suggest that the government has not caused current discrimination (since state sponsored discrimination ended some time ago), it should not be used to remedy it. Here too the egalitarian may be unconcerned. If the disadvantage exists, it does not matter how it was caused. It still must be remedied. Unless knowing the causes of the discrimination will help us determine how to alleviate it, egalitarians may think it is irrelevant.

One particular point calls for special attention here, as it seems to be the source of much discontent with affirmative action plans. Many people oppose affirmative action because they see it as taking something away from a white person who was not responsible for the problem in the first place, punishing the wrong person. It is very important to recognize that affirmative action in the United States does not take anything away from anyone, certainly not anything a person could claim a right to have. Again in the case of college admissions, some say that a white student's spot in college is taken from him and given to a black student. However, there is no reason to say the spot belonged to the white person. Colleges distribute the opportunity to attend the school. They determine how to distribute this benefit. A college can prefer admission of students with any type of characteristic that will help the college fulfill its societal function be it mathematical ability, creativity, life experience, civic involvement, athletic ability, residence in the state, or race. No student could claim to own a spot in college until the college offers admission. Admission to college may be

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given to some and denied to others, but nothing that anyone owns is ever taken from one to provide for another. While almost all advocates of affirmative action in the U.S. recognize a limit and would prevent affirmative action plans from ever taking the legitimate property of another, this is not true in all countries. To see the difference, one could look to Zimbabwe where the government took land owned by white farmers and gave it to black farmers. In the U.S., affirmative action plans do not take property away. They do not take the books or car of a white student and give them to a black student. A white student's only claim of injustice arises from being treated differently. He cannot claim that a spot was taken from him by the black student any more than he can claim that a spot was taken from him by the student with a much higher GPA or SAT score.

Part of the difficulty with the egalitarian view may be more apparent now—it presents a more complicated picture. The transactional view presents a simple and readily understandable picture of restoring something to those who have lost it. However, the egalitarian view relies on speculation about a series of connected societal results. The plan relies on these measures actually reducing the disadvantage of the broader group through the expected chain of reactions. One could agree with the egalitarian principle and even agree with affirmative action yet still think it will not achieve the results we seek. You could disagree about the likely results of the plan. For example, you might think that black students admitted through affirmative action plans will not succeed in college, or that employers will not hire them, thinking them less qualified as a result of having been held to lower standards. If this is true, the plan probably will not alleviate the disadvantage blacks suffer. Such concerns would recognize and accept the justice of affirmative action but question the method of preferential treatment in college admissions. A person might think we would reduce disadvantage better by spending a disproportionate amount of resources on improving primary education of black children. This would still accept the basic idea of affirmative action.

In describing the egalitarian view in support of affirmative action, it may seem that I have been advocating for it. I have emphasized this view primarily because it is less well known and will strike many people as different and confusing. Providing a justification of either view would require much more than sketching the outlines of the view, as I have done here. Indeed this is just the problem. We never get to this debate here at Grand Valley or elsewhere. Both the transactional view of justice and the egalitarian view exert a strong pull on our moral sensibilities. We do think that people should be treated the same in transactions regardless of their race or gender. And we also think that people should have reasonable life prospects regardless of race or gender. However, in their pure forms, both views also lead to conclusions we might find difficult to accept. Which

one is better? Is there an alternative? What can we learn from each view? Without recognizing that these are two quite different views we will never investigate these questions, and we will never have a proper debate. And this will be a disadvantage to all.