

Philos 117AC, Fall 2017

Setting the stage:

Regents of the University of California v. Bakke; Proposition 209;
Parents Involved in Community Schools v. Seattle School District No. 1

Main text:

Louis Pojman “The Case Against Affirmative Action”

Strong Affirmative Action:

- Discriminating in favor of underrepresented groups, treated unjustly in the past.
- Aims at equal *results*.

Weak Affirmative Action:

- Improve opportunities of disadvantaged people to acquire, and be selected on the basis of, their qualifications.
- Aims at equal *opportunity to compete*, not equal results.
- Might include “using diversity or underrepresentation of groups or history of past discrimination as a tie breaker” at most.

Arguments against SAA:

Competence (merit, excellence, qualifications) should be the dominant criterion. Why?

1. Respect for persons requires treating them as ends in themselves, rather than as means to be used for social purposes. And treating people as ends in themselves requires judging them on their merit.—Why does treating people as ends in themselves require judging them on their merit? Do paramedics treat people as ends in themselves only if they check resumes before administering CPR?
2. Giving positions to the most competent makes institutions more productive, effective, reliable, etc., and so benefits society.—OK, but... isn't this treating people as means to be used for social purposes?
3. SAA is both racist and sexist, wrong for the same reasons as wrongful discrimination. “What is wrong about discrimination against women is that it fails to treat them as individuals, judging them by their gender, not their merit. What is equally wrong about Affirmative Action is that it fails to treat White males with dignity as individuals, judging them by both their race and gender, instead of their merit.”—Might racist and sexist discrimination be wrong for reasons other than not judging people by their merit? Lazy hiring committees may not judge people by their merit, when they carelessly select from the pool of all-white-male applicants. But how could that be race or sex discrimination?
4. Society has led people to expect that if they develop competence, they will be rewarded with positions. SAA disappoints those expectations.—Isn't this incoherent? Unless SAA has been kept a secret from people, haven't people been led to expect that whether they will be “rewarded” with positions depends, in part, on whatever criteria SAA uses?

Arguments for SAA:

1. Need for role models
 - a. Why must your role models be from your group?
 - b. How can they be role models if they aren't as competent?
 - c. If white males were the best role models, would that be OK?—But maybe “role models” is misleading? If you see very few or no people from your group in a certain career, especially if you don't yet know much about that career, isn't it normal to have second thoughts (or simply not to have any first thoughts) about whether you will be happy and successful in that career? Your second thoughts needn't be “low self-esteem”: doubts about your own abilities. They may be worries, pretty reasonable given what you know, about obstacles that others may put in your way. If you rule out such a career, then

that's bad for you, since you might have excelled in that career. And it's bad for society, since you might have excelled in that career. So isn't there an additional advantage, over and above "excelling in the career" in the conventional sense, when someone from an underrepresented group advances in that career? The additional advantage is allaying the second thoughts of other people choosing careers in similar circumstances, which means a wider range of possibilities for them and a deeper pool of talent for society.

2. Promotes diversity
 - a. Treating persons with respect outweighs diversity.
 - b. Competence outweighs diversity.
 - c. However, if black police officer, with no better "formal skills" than a non-black officer, would do better in the black community, this might "constitute a case of merit."—OK, but then "X's meriting position P" seems to mean "X's having traits such that it benefits society if X holds position P." One line of argument for affirmative action is that it benefits society if members of underrepresented groups hold more positions of certain kinds. When this is so, doesn't affirmative action, by this definition, award positions to the people who merit them?
3. Inequality of results is evidence of inequality of opportunity.
 - a. Why can't it be due to genetic differences instead?—Maybe because there are a million other commonsense and scientifically supported explanations? Maybe because the most prominent arguments that differences in "results" are due to differences in genes are seriously flawed? Maybe because racial and ethnic classifications at any given time don't seem to track any significant differences in genes, let alone in the sort of genes that might affect "results"?
 - b. Wouldn't the proper response be to work to achieve equality of opportunity?
4. Compensation for treating others unjustly or innocently benefitting from it
 - a. Why is SAA proper compensation? After all, if I injure a promising athlete, the response is not to draft him, but to pay him.
5. No one deserves their talents:
 - I. No one deserves their talents (or other unchosen factors that affect qualifications).
 - II. If one does not deserve talents, etc., one does not deserve what flows from them.
 - III. Therefore, qualified people do not deserve qualifications that flow from talents.
 - IV. Therefore, no one can object if positions are not awarded on the basis of qualifications.

Pojman observes that this has absurd implications:

- a. "Since no one deserves anything, we do not deserve pay for our labors or praise for a job well done or first prize in the race we win."
- b. "Since I do not deserve my two good eyes or two good kidneys, the social engineers may take one of each from me to give to those needing an eye or a kidney—even if they have damaged their organs by their own voluntary actions."

—Even if we accept I-III, IV does not follow. What follows is not that no one can object, but instead that no one can object *on the grounds of desert*. But there are *other* objections to not paying people for their labor, or harvesting healthy organs to benefit people who have voluntarily damaged their own organs: (i) incentives, (ii) self-ownership...

—Still, Pojman has a point that II and its implication that no one ever deserves anything are pretty implausible.