

**The Injustice of Affirmative Action: A  
Dworkian Perspective**

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In this paper, I employ Ronald Dworkin's framework of egalitarian liberalism to evaluate affirmative action for racial minorities at American institutions of higher learning. While affirmative action initially endeavored to eliminate brute luck while preserving option luck, it currently seeks to mitigate both, in clear opposition to Dworkin's premises. To establish this contention, I begin by discussing the two principles that anchor his philosophy: equal importance and special responsibility. I proceed to argue that these principles are plausible in the abstract, but untenable in the case of affirmative action. In formulating this latter argument, I invoke Dworkin's conception of a hypothetical insurance market. I conclude by engaging some common counterarguments, and thereafter by offering some summary remarks.

### *A Brief Treatment of Dworkin's Two Principles*

Dworkin argues that a satisfactory framework of justice must embody two principles: equal importance and special responsibility. The first of these principles states that, objectively, the success of each individual's life is equally important. The second of them states that each individual is uniquely accountable for the success of his or her own life. If a system of justice is to uphold these two tenets, therefore, it must reflect the choices that individuals make, not their initial endowments of, say, income or talent; it must also be weighed when state institutions are established, as I will presently illustrate in the case of affirmative action.

To demonstrate the aforementioned principles' abstract feasibility, I resolve one seeming point of tension between them. Namely, why is it that one must be uniquely responsible for one's welfare? If we grant that the success of each individual's life is equally important, is it not reasonable to propose that other individuals who are sufficiently enabled work to ensure this outcome? After all, it is possible and, indeed, highly probable, that societies in which individuals

are expected to fend for themselves will witness great socioeconomic disparities. This line of objection, however, overlooks three aspects of Dworkin's reasoning. First, affirming the principle of equal importance does not equate to arguing for the achievement of parity among society's members.<sup>1</sup> Second, an individual's sovereignty is compromised when others interfere in, or attempt to guide, that individual's life. Third, an individual can only achieve success by practicing values that he or she endorses. Implicit in this argument is the assumption that, were others to interfere in that individual's life, they would advocate that that individual adopt a certain set of values that he or she might independently reject.

Conceptually, then, if we take into consideration these subtleties, we see that there is no inherent tension between equal importance and special responsibility. It is my contention, however, that these principles cannot be reconciled to the policy of affirmative action as it is currently practiced. To establish this claim, I describe the "mandatory-interventionist" insurance policy that Dworkin advocates, and thereafter illustrate that affirmative action represents an improper implementation of this scheme.

### *The Incompatibility of Affirmative Action and Dworkin's Principles*

Affirmative action operates when students, by virtue of belonging to racial minorities, receive preferential treatment in admissions processes. It should be noted that, as *originally conceived*, it largely embodied Dworkian philosophy. For at the time of its inception, there were clear discriminatory barriers that prevented minorities from gaining admission to colleges and universities. Affirmative action was legitimate, therefore, because it attempted to ensure that minority students had as great an opportunity to gain admission into postsecondary institutions as

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<sup>1</sup> It is for this reason that Dworkin distinguishes his posture from the "rescue approach." Indeed, while he seeks to place individuals in an equal position with respect to risk, he does not seek to eliminate risk itself.

white students did. It thus upheld the principle of equal importance by denying white students the “racial endowment” that they had once possessed. Furthermore, because it did not *privilege* minority students over white students, as it does now, affirmative action as originally conceived upheld the principle of special responsibility. Each student, minority or not, was uniquely responsible for ensuring that he or she was maximally competitive, since admissions committees were expected to evaluate the merits of each application by uniform standards.

To understand why Dworkin would reject affirmative action as currently practiced, it is necessary to understand his preferred system of justice. To redress disparities in individuals’ unemployment statuses and, accordingly, in their socioeconomic positions, Dworkin proposes a hypothetical insurance market in which individuals are allowed to select an unemployment welfare scheme. This scheme, importantly, places them in conditions that they would have preferred had they been able to select it on equal terms. He delineates four possible insurance policies, and ultimately endorses a “mandatory-interventionist” posture, which comprises three distinct positions: (1) the insurer must provide the claimant with job training, and fully commit itself to securing employment for him or her; (2) the claimant must accept employment if the insurer either offers or locates it; and (3) the claimant forfeits compensation if he or she refuses a given number of the employment opportunities that the insurer provides.

More importantly, as concerns this paper, Dworkin’s proposed scheme internalizes three assumptions: (1) compensation is conditional on the claimant’s “good-faith endeavor to find employment”; (2) although insurance companies would initially incur high costs by practicing mandatory interventionism, they would gradually profit, as their expected savings from reduced payments began to exceed their expenditures on job training and employment location; and (3) the aforementioned profit would best be invested so as to eliminate the conditions that compel

individuals to seek insurance. Dworkin recommends that the government finance “improved public education [and] education and training loans for would-be professionals.”

An analogous policy of affirmative action would make three parallel assumptions: (1) minority students would receive preferential treatment contingent on their working as diligently as possible to be competitive in the admissions process; (2) although affirmative action would initially complicate admissions processes, it would figure less prominently in them with the passage of time; and (3) institutions of higher learning would endeavor to eliminate the conditions that compel minority students to rely on affirmative action. A general appraisal of affirmative action as currently practiced suggests that it violates each of these presumptions.

First, intuition suggests that, if minority students were indeed working to the greatest of their abilities, they would, on average, have become much more competitive with whites in recent decades, as judged by their academic record. One might object that academic performance is intimately related to one’s starting endowment and that, on average, minorities’ starting endowments are lower than those of whites. This objection is plausible *only* if we assume that racial minorities’ socioeconomic position in the United States has stagnated or regressed since the time of affirmative action’s institution. Most available data suggest otherwise.<sup>2</sup> One must conclude, then, that minorities have come to expect continued compensation that is *not conditioned* on their industry and application.<sup>3</sup> If minority students consciously chose not to work as assiduously as their counterparts, by assuming that admissions committees will nonetheless reward them for belonging to underrepresented groups, and will not penalize them

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<sup>2</sup> Even if the data supported this objection, however, one could respond with a simple question: how are we, with any measure of confidence, to judge the extent to which circumstance, rather than choice, accounts for these lamentable outcomes, especially when the two are invariably intertwined? Dworkin, understandably, devotes much thought to resolving this “strategic dilemma.”

<sup>3</sup> Dworkin makes a similar argument in the case of unemployment. Namely, while he rejects the conservative contention that diligence can lift individuals out of unemployment, regardless of their circumstances, he insists that it is equally obvious that hard work and dedication can help many who would be unemployable without it.”

for their indolence, Dworkin would quite vigorously argue that affirmative action violates the principle of special responsibility. Individuals should not be permitted and, in some sense, encouraged, to make imprudent choices without facing due consequences. Neither should they come to expect that they should or will always be recipients of outside assistance.

Second, judging by the growing number of institutions that employ affirmative action, and the increasingly common belief that racial diversity may legitimately trump other, more traditional considerations in admissions processes, it has become more entrenched since its inception. That is to say, far from nurturing a society in which racial strata are rendered irrelevant, it highlights and accentuates these differences.<sup>4</sup> Indeed, some schools appear willing to compromise the academic caliber of their student bodies if doing so will improve their diversity. In *Grutter v. Bollinger* (2003), for example, the Supreme Court affirmed the University of Michigan Law School's decision to employ race as a criterion in its admissions process, citing "a compelling interest in obtaining the educational benefits that flow from a diverse student body." Two scholars at Princeton University performed a study in which they attempted to calculate the impact of race on admissions decisions. Using the same scale that is used to score the SAT Reasoning Test (with 2,400 being a perfect score), the authors concluded that a student applying to college, on average, received 230 additional points if he or she was black, and 185 additional points if he or she was Hispanic.<sup>5</sup>

Admissions committees that accord preferential treatment to students of certain minority groups in this manner violate the principle of equal importance. In particular, they ignore the principle of endowment-insensitivity. A student's minority status, or lack thereof, derives not

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<sup>4</sup> Recall Dworkin's argument that the principle of equal importance "requires government to adopt laws and policies that insure that its citizens' fates are, so far as government can achieve this, insensitive to who they otherwise are – their economic backgrounds, gender, *race*, or particular sets of skills and handicaps." Emphasis my own.

<sup>5</sup> Thomas J. Espenshade and Chang Y. Chung, "The Opportunity Cost of Admission Preferences at Elite Universities," *Social Science Quarterly*, 86:2 (June 2005) 293.

from independent choices, but rather, from genetic factors that are entirely independent of that student's control. Thus, students who, by some contingency, belong to racial minorities possess an endowment that unfairly advantages them over white students.

Third, the aforementioned point rubric does not substantively correct for antecedent brute luck, because it does not attempt to address the deeply rooted socioeconomic disparities that cripple generation after generation of minority students. If affirmative action were working in the manner that Dworkin would endorse, we would see, at the very least, a steady calibration in minorities' and whites' scholastic achievement at primary and secondary levels of schooling. Available studies do not suggest any tendency towards such parity.

#### *Appraising Some Counterarguments*

Two objections are commonly raised in response to the type of reasoning that I have presented above. First, proponents of affirmative action argue that the socioeconomic effects of historic prejudice pass down from generation to generation and, accordingly, require continued compensation. In effect, then, they condemn the minority students whom they claim to support to a condition of perpetual dependency. While I have no intention of discounting the historic plight of certain minority groups, there is no logical limit to their claim to special entitlement. Indeed, what is to prevent members of every minority group – racial, ethnic, or other – from arguing for unique dispensation on the basis that, at some point in its history, it was aggrieved in some irreversible way? Native American students, for example, could argue that their predecessors' extermination precluded the possibility of their achieving economic success. How is it possible to objectively designate certain grievances as worthy of compensation, and others as not? The infeasibility of such moral arbitration invalidates affirmative action as it is currently practiced.

The second counterargument that is often cited is that affirmative action confers not only direct benefits upon minority students, but also indirect benefits upon white students. A more racially diverse campus, it is argued, exposes students to those whose backgrounds and experiences differ from their own, thereby increasing the value of their education. Although I do not dispute this argument, in principle, I object to its asymmetric application. Affirmative action presumes that white students stand to benefit far more from exposure to minority students than minority students do from exposure to white students. The fallacy of such reasoning is clear, especially since substantial numbers of minority students live in urban enclaves in which they are exposed only to other members of their minority group. Could one not argue that such individuals stand to benefit at least to some extent from greater exposure to whites?

#### *Concluding Remarks*

Dworkin would support affirmative action as it was originally conceived, not as it is currently practiced. In particular, he would argue that a policy of according minority students preferential treatment is legitimate only to the extent that they work to eliminate their dependence on it. Affirmative action was introduced to make minority students the architects of their destinies, unencumbered by legal restrictions or discriminatory barriers. It was not intended to reward minority students for exploiting others' beneficence and making poor choices. Surely, then, a system that rewards certain groups' sloth and fails to reward others' diligence runs wholly counter to the principle of special responsibility. One must hope that affirmative action passes into obsolescence, not only so that white students may regain their former competitiveness, but also, perhaps more importantly, as concerns this paper, so that minority students are maximally empowered to realize their potential.