

Affirmative Action: A Philosophical & Legal Defense

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PHIL 102

Ethics, Politics, & Law

Power, Discrimination, & Racism

- **Linguistic precision**
- **Semantic legislation**
- **Racial attitudes**
- **Racial hostility**
- **Power**
 - **More than attitudes or hostility**
 - **Doing something tangible**
 - **Discrimination**
 - **“Strong” racism**

Justice

- Freedom
- Equality
- Fairness
- Color (gender, etc.) blindness?
- Justice in an ideal society
- Justice in an unjust society
 - What's fair?
- Color consciousness?
- Affirmative action
- Can affirmative action be just?

Zero Sum Games

- Scarcity
- Desirable things in society
 - Jobs
 - Education
 - Scholarships
- Zero sum games
- Critics of color consciousness
 - Reverse discrimination
 - Unjust – liberty, equality, fairness
 - Vested interests?

Merit

- Being qualified
- Being the *most* qualified
- Single metric
 - SAT score
 - GPA
 - Personal essay
 - Life story
 - Artificial precision
- My students' naivety
- Who is the most meritorious?

Affirmative Action

- John Kennedy
 - Executive Order 10925 (1961)
 - projects financed with federal funds "take affirmative action" to ensure that hiring and employment practices are free of racial bias
- Lyndon Johnson
 - 1965 speech at Howard University

Getting It Right

"You do not wipe away the scars of centuries by saying: 'now, you are free to go where you want, do as you desire, and choose the leaders you please.' You do not take a man who for years has been hobbled by chains, liberate him, bring him to the starting line of a race, saying, 'you are free to compete with all the others,' and still justly believe you have been completely fair . . . This is the next and more profound stage of the battle for civil rights. We seek not just freedom but opportunity—not just legal equity but human ability—not just equality as a right and a theory, but equality as a fact and as a result."

Lyndon Johnson's Argument

- Comes from white liberal, not from minorities
- Not about reparations for past injustice
- Not being color blind
- Commitment to fairness
- Is it still relevant in the 21st Century?

Ronald Dworkin's Argument

- U.C. Davis program
- Purpose of the program
- Relevant characteristics – race?
- Class discussion
- Why are certain characteristics legitimate, but others are not?

Bakke v. Regents of Univ of Cal

- U C Davis medical school
- Davis' "set aside" program
- Alan Bakke
- Title VI Civil Rights Act of 1964
- Equal Protection Clause

Grutter v. Bollinger

- **Post-Bakke controversy over affirmative action**
- **Recent cases**
- **Jennifer Gratz**
- **Barbara Grutter**
- **University of Michigan's programs**

Opinions

- **Justice O'Connor**
- **The undergraduate point system violates Equal Protection**
- **The Law School method does not**
- **Affirmative Action is still constitutional**
- **This surprising Supreme Court**
- **But I fear, not for long**