

The Effectiveness of Race-Based Affirmative Action in U.S. University Admissions and Other Comparative Proposals

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ABSTRACT

One of U.S. politics' great debates in recent decades has been the presence of race-based affirmative action in the admissions processes of their universities, with June 2023's landmark U.S. Supreme Court ruling *Students for Fair Admissions v. Harvard*, which banned this policy, a culmination of this debate. It has been suggested that educational race-based affirmative action is a necessary response to the historical injustices that existed for members of minority racial groups in the U.S. education system, as well as the ongoing consequences of these injustices. Similar issues regarding the reconciliation of past injustices perpetuated against racial minority groups have emerged as a prominent issue on a global level. Resolving this issue is complicated by the variety of perspectives on how these conflicts should be resolved as well as accurately determining the ongoing implications of historic injustices. Using the research question "To what extent can the presence of race-based affirmative action in admissions processes of U.S. universities be considered the most effective method of addressing historical racial injustices in education?" to focus the investigation, this paper contends that combining class-based affirmative action in the short-term with a long-term goal of following a method named 'the communitarian proposal' is the most effective way of addressing the aforementioned historical injustices in education.

Introduction

On June 29, 2023, the Supreme Court of the United States (SCOTUS) held that race-based affirmative action policies in the admissions processes of American universities were unconstitutional in *Students for Fair Admissions v. Harvard* (Hurley, 2023). In a 6-2 decision, the Supreme Court overruled precedents such as *Grutter v. Bollinger*, which had viewed some forms of affirmative action as constitutional, arguing that it violated the Equal Protection Clause of the 14th Amendment, which states, "nor shall any State ... deny to any person within its jurisdiction the equal protection of the laws" (National Archives, 1868). While this case was decided on a legal level, it reflects a broader political debate regarding whether providing special consideration for certain racial groups can be considered just. Furthermore, while this case is limited to the U.S., discussions surrounding the moral responsibility of heterogeneous societies to address historical injustices perpetuated against some of their members are ongoing around the world (e.g., the recent referendum on an Indigenous Voice to Parliament in Australia). This paper will investigate the research question, "To what extent can the presence of race-based affirmative action in admissions processes of U.S. universities be considered the most effective method of addressing historical racial injustices in education?"

The study will be organized in this manner. First, the historical context of racial injustice in education in the U.S. and why race-based affirmative action became perceived as necessary will be established. This will include the present-day consequences of these historic injustices on educational opportunities. Then, the question of the extent of U.S. society's moral responsibility to address these historic injustices will be discussed

with reference to Pierre Bourdieu's theory of forms of capital and John Rawl's theory of justice. Finally, three proposals that claim to provide the best pathway towards addressing these historical injustices will be assessed: the meritocratic proposal, the affirmative action-based proposal and the communitarian proposal. For the purposes of this paper, affirmative action in American university admissions processes will be referred to simply as 'affirmative action'.

Historical Context

In 1896, in *Plessy v. Ferguson*, the Supreme Court ruled that racial segregation was constitutional as long as it was 'in accordance' with the 'separate but equal' doctrine. The impact this ruling had on American society and its educational system was cataclysmic. It legitimised the Jim Crow Laws that enforced legal discrimination, including segregation for many racial groups or marginalised racial groups (MRGs) (Ferris State University, 2023). As a part of this, many Southern politicians, fuelled by the belief that educational access for MRGs was unimportant, allocated grossly unequal funding to segregated schools (Ramsey, 2023). For example, high school education for African Americans was available in only 28 of Florida's 67 counties (Project, 1939). As a result, many MRG families paid a double tax to maintain a minimum standard of education for their children, using their personal funds to support their own schools while paying conventional taxes (Ramsey, 2023). Furthermore, MRG teachers often used their own resources and worked outside paid hours to support students. These teachers would often be significantly underpaid compared to their white counterparts, with many states using biased tests to determine salary ranges.

Gradual progress was made towards desegregation in education, which culminated in the prohibition of explicit segregation in 1954 in *Brown v. Board of Education*. However, believing that the foundation of white superiority was threatened, many states embarked upon a 'massive resistance' to prevent integration. They used public protests and institutional mechanisms, such as grade-per-year plans, transfer plans, and school closings (Ramsey, 2023). The extent of federal intervention meant integration was inevitable, but the emergence of suburbia provided states with an opportunity to entrench unofficial segregation. While thousands of white working-class families moved to suburbs and their schools through the Federal Housing Association mortgages, these loans were not offered to MRG families of similar economic status (Ramsey, 2023). Busing (the practice of allowing children to attend schools outside their neighbourhood through buses) was also discouraged by the Nixon administration, and its long-term effectiveness was questionable regardless.

These measures undertaken by states to prevent integration have meant that disparities in educational access and outcomes for MRGs, while improved, have remained. Informal segregation continues in the U.S., with a 2012 report finding that 43% of Hispanic and 38% of African Americans attend schools where less than 10% of the student population are white (Noltemeyer et al., 2012). In addition, it has been found that 80% of students in school districts with the highest poverty rates are African and/or Hispanic American (Government Accountability Office, 2020). Schools with a higher proportion of MRG students have fewer qualified teachers and curriculum offerings, especially in STEM areas, while suburban schools (with higher white student percentages) will spend around 200% than urban schools (with higher MRG student percentages) (Darling-Hammond, 1998). Attitudes surrounding MRG students also limit their educational opportunities, with African American students 54% less likely than white students to be recommended for gifted programs and 3.8 times more likely to receive suspensions (Weir, 2016). Moreover, when assessing the same African American students, white teachers are 30% less inclined than African American teachers to positively anticipate the students' likelihood of graduating from university (Weir, 2016).

Moral Responsibility for Historic Injustices

The implications of the historic and current educational injustices experienced by MRGs in the U.S. raises the question whether U.S. society bears the moral responsibility to address these injustices. While a society of equal opportunity would be one without accumulation and where every moment is independent of its previous ones, this is not the case in the U.S. Capital takes time to accumulate, and once accumulated, maintains itself. According to Bourdieu, capital can manifest in three forms: economic, cultural, and social capital (Bourdieu, 1986). Because of the length and extent of the injustices perpetuated against MRGs, there is a significant disparity between the capital accumulated by MRG individuals and communities and that accumulated by white ones. The role that economic capital plays is self-evident, but the roles of cultural and social capital are less clear.

The conventional view regarding academic success is that it is determined by natural aptitude, and while this is not incorrect, it leads many to underestimate the role that academic investment and cultural capital plays in determining academic success. This is amplified by the way in which the present educational system maintains the hereditary transmission of cultural capital and the reproduction of existing social structures. Bourdieu (1986) argues that there are three forms of cultural capital: the embodied state (the cultural capital held by a person), the objectified state (the cultural capital held by an object), and the institutionalised state (the cultural capital held by an institution). A person can initially accumulate embodied cultural capital, but the issue lies in how to transfer the capital to their offspring in a legitimate manner. Furthermore, one can transfer objectified cultural capital, but its mastery, either directly or indirectly, faces similar issues as embodied cultural capital (Bourdieu, 1986). Institutionalised cultural capital (i.e., the higher education system) can be used to address this. The academic qualification provided by an elite university, for example, acts as a ‘guarantee’ of cultural competence. This means that embodied and objectified cultural capital can now be transferred in a legitimate manner, as this ‘guarantee’ has been provided by a recognised institution independent of its holder (Bourdieu, 1986). This is why society’s belief in the institution’s justice and fairness is so necessary, as the recognition imposed cannot be disputed if this is the case. Moreover, cultural competence can guarantee monetary value in a capitalist society, as individuals are in continuous competition with others, and the scarcity of certain cultural capital (a degree from an elite university) means its holders can exchange it and have improved chances of success in competition (Bourdieu, 1986). In sum, by ensuring that cultural capital is unequally distributed, the effect of holding the capital is exacerbated.

The effect of cultural capital is amplified by social capital, which is capital that is collectively accessible through connection to certain institutions and measured through the size of one’s network and the capital held by members of this network (Bourdieu, 1986). The effectiveness of this capital increases when established and maintained for a significant period, and difficulties in neutralising this advantage adds to its efficiency. Returning to the topic of responsibility, the present inequalities that exist between white Americans and MRGs are linked to historical injustices, because by preventing MRGs’ equal access to education, historical U.S. lawmakers diminished the ability of MRGs to accrue cultural and social capital. Because the disparity in available cultural and social capital between the two groups is so great, the competition for access to higher education would be unequal even if their present educational opportunities were.

Now, if this is the case, does society have a moral responsibility to address the implications of these historical injustices? Most theories accept that it does, but liberalism does not address the issue directly. John Rawls argues that the existence of multiple worldviews for almost any topic is acceptable in an ideal society if there is simultaneously a shared commitment to the preservation of democracy as its form of governance. However, this could mean that in a society with historical racial injustices, some of its members might maintain their racially discriminatory attitudes while not violating the conditions of the ideal society (Kelly, 2017).

Rawl’s ideal society is based on two principles of justice: equal rights and liberties for all and fair equality of opportunity that only allows inequality that would be most beneficial to the most disadvantaged

members of society (Wenar, 2021). Arguing that racial inequalities have been the result of disparities in economic resources and political power, the ideal society would see its racial inequalities disappear because the two justice principles would eradicate the aforementioned disparities. However, as Erin Kelly notes, racial inequalities could persist even in this ideal society if racial stigma is left unaddressed, as the “hiring and promotion decisions, the development of intellectual potential, and the recognition of creative accomplishments” would all still be affected by how individuals perceive candidates (Kelly, 2017). Furthermore, to achieve fair equality of opportunity, personal choices and interactions that maintain patterns of social marginalisation of MRGs (e.g., social capital) would need to be addressed so that MRGs can meaningfully influence their society (Kelly, 2017). Thus, even liberals have to accept that if there is a moral responsibility to attempt to create a just society, there is a moral responsibility to substantively address historic racial injustices by confronting the accumulated consequences of these injustices.

We have established that U.S. society holds a moral responsibility to address past injustices perpetuated against MRGs because past educational injustices have caused cultural and social capital to accumulate in favour of majority racial groups to such an extent that it does not allow academic success to be determined by natural aptitude and does not meet even liberal standards of equality. In the following section, we will explore three methods or pathways to ensure greater equality.

Pathways Towards Racial Justice

Three major proposals that claim to achieve racial justice will be evaluated in this section: the meritocratic proposal, the affirmative action-based proposal, and the communitarian proposal.

Meritocratic Proposal

The meritocratic proposal suggests that access to higher education at selective universities be granted to whoever is most qualified and deserving of it (Schwartz, 2023). This view is theoretically supported by the principle of meritocracy, which argues that the degree of socioeconomic success that an individual is able to achieve should be determined by the individual’s merit (Mulligan, 2023), which can include factors such as skills, effort, and performance. The major justification provided in support of this position is that the rewards generated in favour of ‘more meritorious’ candidates incentivise all candidates, whether white or MRG, to create the most competitive, or meritorious, application (Schwartz, 2023). However, relevant abilities that increase the quality of a candidate are not fundamentally meritorious but merely meritorious because of their utility to the role (Daniels, 1978). For example, a high SAT score is only relevant to the admissions process because it demonstrates that the candidate is likely to have the academic ability to deal with the rigours of education at an elite university. Therefore, even if a candidate has greater ability, they do not *deserve* to be admitted, but their ability is only considered more meritorious if it is beneficial to their university studies. Concerning MRG candidates, supporters of the meritocratic proposal contend that it provides a clear pathway towards success for MRGs, but that if the selection of a higher proportion of MRG candidates benefits the university or broader American society once they graduate, this should be included as part of the assessment of their merit (Daniels, 1978).

However, critics of meritocracy would argue that because meritocracy is inherently designed to create maximum efficiency and effectiveness and calls upon candidates to use all available resources at their disposal, including structural race-based advantages, it is ill-equipped to serve as the system which will advocate for racial justice. Furthermore, even if maximum efficiency was to be prioritised over racial justice, because of the accumulated cultural and social capital among other privilege sources of white Americans over MRGs that positively affects their portfolio, it is unclear that the information that is presented to universities is able to demonstrate the merit of candidates accurately. This view is strengthened by research which suggests that standardised tests such as the SAT and ACT are not an accurate determinant of success at university. For example,

a 2020 study found no correlation between ACT scores and university graduation rates, and it even found that the strongest ACT performers of some high schools were less likely to be successful at universities (Allensworth & Clark, 2020). There is also broader scepticism surrounding whether meritocracy can achieve its self-defined goal of efficiency.

Affirmative Action-Based Proposal

In contrast, the affirmative action-based proposal contends that affirmative action is a necessary and positive measure to transform the fundamentally unjust educational system in the U.S. Two major rationales are provided by the progressive perspective to justify the special consideration of MRGs (Meyer, 2023). The legal rationale is that the increased level of diversity generated by the policy fosters racial harmony and improves the educational experience for all students. The moral rationale is that it acts as a way of addressing historical and present injustices faced in education by MRGs. In other words, because of these injustices, the right of MRGs to education in the U.S. is positive rather than negative, which means that positive actions by governments and universities beyond removing formal disparities are appropriate. In sum, while the progressive perspective does not deny that meritocracy is a worthwhile ideal, because the U.S. does not exist in a state of meritocracy, it would be naïve to implement policies that assume it to be.

A common argument against the implementation of affirmative action, but especially race-based affirmative action, is that the policy violates principles of equality for all and meritocracy (Schwartz, 2023). While it is true that MRGs' experiences of historical injustice must be addressed, it is not so severe and/or important as to justify 'bending' these foundational principles. Furthermore, the notion of fairness is invoked, as it is argued that positive discrimination such as affirmative action is just as unjust as negative discrimination. Another contention is that affirmative action will not benefit MRG students in the long-term, as it will create the perception that they will not have to work as hard for their place, and in turn, reduce the value of their achievements (Augoustinos et al., 2005). Therefore, by implementing race-based affirmative action, universities would be 'taking away' the MRGs' chances of 'meritorious' acceptance and triggering the belief that their achievements have lower value.

A more specific criticism of race-based affirmative action is that, in the way that it is currently implemented, the policy disadvantages many Asian American applicants. For example, a 2009 Princeton study found that, on average, Asian American applicants were required to score 140 more SAT points than white applicants and 450 more points than African American applicants (Wu, 2012). Asian Americans are members of an MRG that have been the victims of extensive historical and current discrimination. While it has been argued that the disproportionately positive effect of legacy admissions for white applicants is responsible for this, this is not applicable for the discrepancy between Asian Americans and other MRGs. Thus, it is argued that contemporary versions of race-based affirmative action dismiss their oppressive experiences and their status as MRGs, while racial tension is exacerbated by using affirmative action as a wedge between Asian Americans and other MRGs (Gersen, 2017). There is a historical precedent of discrimination against 'overachieving' minority groups, with Harvard amongst other universities imposing an informal quota on Jewish students in the early 20th century after their proportion in student populations grew significantly (Feldberg, 2012). The language used at the time to justify the discrimination, such as 'great emphasis on character and personality' is similar to the language currently used by elite universities and proves incompatible with negative stereotypes of Asian Americans (Wu, 2012).

These limitations have led some to argue for class-based affirmative action, which would decide the beneficiaries of affirmative action by the candidate's socioeconomic condition (Kahlenberg, 2018). This would mean that upper- and middle- class MRG candidates would be unlikely to be eligible for affirmative action, while working class white candidates would likely be able to access this measure. Proponents of class-based affirmative action argue that the issues surrounding race-based affirmative action such as its divisiveness and

its treatment of Asian American candidates are not present for class-based affirmative action. Furthermore, since the beneficiaries are not decided by a factor which is inherent and unchangeable, meritocratic concerns surrounding justice and equality would be abated. All candidates who benefit from class-based affirmative action would also need affirmative action, with a study finding that economic disadvantages are seven times more impactful as an obstruction to student excellence than race (Kahlenberg, 2018). Critics argue that class-based affirmative action would be highly inadequate compared to its race-based counterpart in fostering racial diversity (Rothstein, 2023), and while supporters note that it would still benefit MRGs given that they have lower median wealth than white households, it is nonetheless the case that class-based affirmative action dismisses the negative implications on college preparation faced by MRG candidates purely on the basis of their race.

Communitarian Proposal

The third major proposal, the communitarian proposal, dismisses meritocracy both as a valid ideal to pursue and as a solution to this issue (Sandel, 2020). This is because, in a meritocracy, those who have achieved success have supposedly done so as a result of their own merit, while those who have not have only their own limitations to blame and must take responsibility for their failures (Sandel, 2020). Thus, a moral justification for success and failure is created rather than an acknowledgement of the luck, privilege, and inequality that has resulted in the success of the ‘winners.’ Furthermore, the communitarian perspective believes that the current discourses and policies surrounding racial justice in American education, including race-based affirmative action, have been designed to maintain the power and privilege of the current elite (Bell, 2003). This is because, for example, race-based affirmative action diverts attention away from having to address broader socioeconomic injustices and legitimises meritocracy and elitism, acting as a form of cultural capital. The notion that inequality resulting from equal opportunity is just is also rejected, as even talent is a result of luck rather than one’s own actions, and effort without talent is insufficient in a meritocracy (Sandel, 2020). The communitarian perspective thus reaches the conclusion that all forms of meritocracy will exacerbate existing injustices, including that of MRGs.

Because of this, communitarians propose that more fundamental, comprehensive reforms that place a renewed focus on the common good and/or tangibly diminish the power of the elite are needed to address historical injustices for MRGs in education. At the university level, this could include reducing the impact that admission to a selective university, or even a degree from a four-year university, has on an individual’s socioeconomic prospects, reducing the consideration of factors that are significantly influenced by one’s socioeconomic status (such as standardised tests), assigning university places via lottery (amongst a pool of suitable candidates), or abolishing selective universities altogether (Sandel, 2020). However, it is not enough that reforms occur in university admissions or operations, but in other, broader areas of society that influence university admissions, such as K-12 education (Tašner & Gaber, 2022). Society’s understanding of the role of universities and success must also change so that they can genuinely act as ‘engines of upward mobility’ and that jobs which do not require university degrees are not viewed as less valuable than those that do (Sandel, 2020). By doing so, access to universities will become more equitable, while individuals’ chances of socioeconomic success will become more likely without having to attend university. The latter is especially important, as it is estimated that MRGs will form the majority of the American working class by 2032 (Wilson, 2016), while all of these factors will also mean that the effectiveness of universities as a form of cultural capital will diminish significantly. However, the weaknesses of the communitarian approach are whether it is realistic that such extensive challenges to existing structures can be implemented and whether solutions such as the abolition of elite universities creates more problems. This is especially true as meritocracy is also ingrained in the belief systems of many cultures and religions, which is reflected in a June 2023 Pew Research Center poll that found that only 47% of African Americans and 39% of Hispanic Americans supported race-based affirmative action. (Pew Research Center, 2023). Supporters of meritocracy also dispute the failures of the system, positing that it has been successful in generating productivity and economic outcomes, including for MRGs (Schwartz, 2023).

Conclusion

The presence of race-based affirmative action in the admissions processes of U.S. universities has been a divisive political issue, with both advocates and opponents of the policy accusing the other side of racism. To gain a deeper understanding of this issue, this paper explored why such a policy became viewed as necessary in the first place by examining the extent and legacy of historical injustices perpetrated against U.S. MRGs in education and by utilising Bourdieu's theory of forms of capital to understand the moral responsibility of modern U.S. society to address these historical injustices. Three major proposals presented as responses to the historical injustice were then evaluated: the meritocratic proposal, the affirmative action-based proposal, and the communitarian proposal. The paper concludes that while race-based affirmative action is the most explicit method of addressing historical racial injustices in education, it is not the most effective. While it does allow universities to maintain a politically acceptable level of racial diversity in university populations, it does not address the broader contemporary injustices experienced by MRGs, which are contributing to socioeconomic inequalities between white Americans and MRGs, or remedy the divisions that continue to exist between these groups. In this sense, race-based affirmative action acts to maintain the cultural and social capital of the existing elite, while its treatment of Asian American candidates is also highly concerning. Instead, this paper supports the communitarian proposal as the most effective method of addressing historical racial injustices. However, since it is unlikely that the extensive reforms outlined in the communitarian proposal can be effectively achieved in the short-term, class-based affirmative action should be used in the interim (provided that tangible steps are consistently taken towards the communitarian proposal), both to ease this transition and to continue to progress on this issue. While it is true that this proposal does not address historical racial injustices overtly, it can be argued that the most effective method is not the one which is most explicit, but the one which results in the most substantial reductions in contemporary educational injustices for MRGs. These changes should be accompanied by significant short- and long-term investment in addressing the equality of education at the K-12 level to ensure that the deeper causes of educational racial inequality are not ignored.

Acknowledgments

I would like to thank my advisor for the valuable insight provided to me on this topic.

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