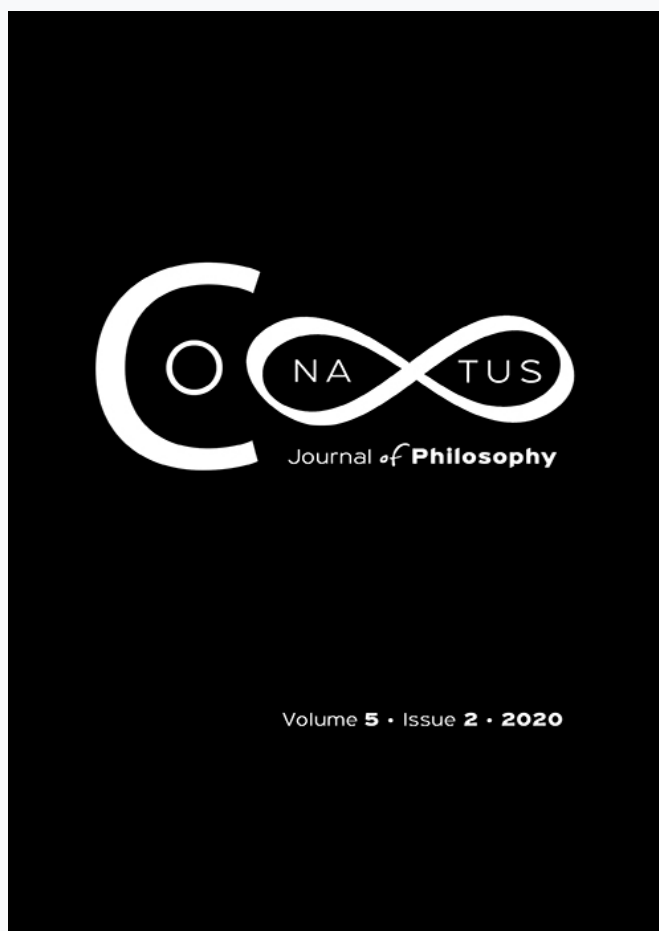


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# A Reply to Louis P. Pojman's Article "The Case Against Affirmative Action"

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## Abstract

*Affirmative action is a public policy purposed to compensate the victims of injustice at the cost of privileged groups; hence to some it appears as opposing the notion of equality and being against human dignity. Thinkers like Leslie Pickering Francis and John Rawls, on the other hand, argue that affirmative action policies should be implemented for the sake of the oppressed and under-represented groups. Louis P. Pojman in his article "The Case Against Affirmative Action" sets forth nine arguments against strong affirmative action. This paper sets out to challenge Pojman's arguments one by one, and prove the author's thesis in support of strong affirmative action.*

**Keywords:** *affirmative action; strong affirmative action; weak affirmative action; Louis Pojman; deontology; utilitarian ethics*

Many – if not most – people who are for or against affirmative action are for or against *the theory* of affirmative action. The factual question of what actually happens as a result of affirmative action policies receives remarkably little attention. Assumptions, beliefs, and rationales dominate controversies on this issue in countries around the world.<sup>1</sup>

The article "The Case Against Affirmative Action" by Louis P. Pojman<sup>2</sup> is a negation to affirmative action. However, Pojman makes a meek affirmation of weak affirmative action. So, at the beginning of the paper, it is necessary to mention that Pojman should always be considered, mainly, as an opponent of *strong* affirmative action, but not of weak affir-

<sup>1</sup> Thomas Sowell, *Affirmative Action around the World: An Empirical Study* (New Haven, NY: Yale University Press, 2004), x.

<sup>2</sup> Louis P Pojman, "The Case Against Affirmative Action," *International Journal of Applied Philosophy* 12, no. 1 (1998): 97-115.

mative action (both forms of affirmative action are being discussed in what follows).<sup>3</sup> The champions of affirmative action usually provide nine strong philosophical arguments in support of affirmative action policies. Pojman, in his effort to prove his view against such policies, has created nine counter-arguments against strong affirmative action. In another article of his entitled "The Moral Status of Affirmative Action"<sup>4</sup> Pojman brings forth the same set of arguments against strong affirmative action, focusing on the view that it violates the principle of meritocracy. As John Kekes and Louis Pojman both mention,<sup>5</sup> there are two kinds of affirmative action that differ in how each one makes use of the historicity and the nature of discrimination that each time prevailed in nation-states.

### I. Weak affirmative action

Weak affirmative action policies try to increase the opportunities and chances of unprivileged and under-represented people to avail desired goods and services. To this purpose, societies should guarantee the reassembling of workplaces, and unrestricted, unbiased flow of information to the oppressed groups or classes of the society,<sup>6</sup> that have been deliberately denied access to progress by privileged classes or groups. To safeguard equal representation weak affirmative action policies include dismantling the basic structure modern workplaces are based on, and providing benefits to the least advanced classes by creating an ambiance where people of unprivileged and under-represented background may flourish regardless of gender and race. Hence, weak affirmative action is based upon the principle of liberty, the underlying maxim of liberalism. According to this principle, there should be fair and just procedures to ensure universal access to all individuals irrespective of their race, gender, religion, culture, and ethnicity.<sup>7</sup> Equal opportunities for everyone regardless of environmental factors are favored to equal results.

### II. Strong affirmative action

Strong affirmative action policies include preferential treatment, unlike weak affirmative action, that aims to allow entry into the initial pool for candi-

<sup>3</sup> Ibid., 97-115.

<sup>4</sup> Louis P. Pojman, "The Moral Status of Affirmative Action," *Public Affairs Quarterly* 6, no. 2 (1992): 181-206.

<sup>5</sup> John Kekes, "The Injustice of Strong Affirmative Action," in *Affirmative Action and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 144-156 (Philadelphia: Temple University Press, 1993).

<sup>6</sup> Pojman, "The Case," 97-100.

<sup>7</sup> Kekes, 147.

dates who are members of unjustly treated communities, and ensure that fair procedural regulations are guiding the selection processes.<sup>8</sup> However, strong affirmative action policies are thought to be a congregation of laws, rights, and policies that result in discrimination against over-represented groups, e.g., whites, to favor under-represented groups, e.g., blacks, aiming to attain equal results.<sup>9</sup> Strong affirmative action can be seen as based upon John Rawls' *difference principle*, that asserts that inequalities are fair when they are expected to benefit the least advantaged people in a given society.<sup>10</sup> The ethical justification for the difference principle rests in that nobody within a community could claim to have attained desirable resources in their lives commensurate to their worth and merit. The idea behind such an approach comes from the notion of *birth-lottery*, that determines the status of an individual and its benefits over other members of society. Strong affirmative action goes beyond the rule of procedural justice, to that of substantive justice. It sets out to make amends for past injustice towards under-represented people on the cost of over-represented people's entitlements, entitlements that might have been more equally distributed in the case such a discrimination hadn't occurred. As John Kekes claims:

It is customary to distinguish between two forms such a policy may take. The aim of the weak form is to ensure both open access to the initial pool from which people are selected, and selection in accordance with fair procedural rules that apply to everyone equally. The aim of the strong form is to go beyond the weak one by altering the procedural rules so as to favor some people to increase the likelihood that they rather than others will achieve the desired position. The strong form of affirmative action, therefore, involves preferential treatment, while the weak one does not.<sup>11</sup>

Louis P. Pojman sets forth nine arguments against strong affirmative action, while at the same time he discounts weak affirmative action, as strong affirmative action, in short, in his view stands for preferential treatment, that can be seen as discrimination in favor of the members of under-represented layers of the society. The reason why remedial policies should be adopted to

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<sup>8</sup> Thomas H. Anderson, *The Pursuit of Fairness: A History of Affirmative Action* (New York: Oxford University Press, 2004), 12-79.

<sup>9</sup> Pojman, "The Case," 101-109.

<sup>10</sup> John Rawls, *A Theory of Justice* (Cambridge, MA: The Balknap Press of Harvard University, 1999), 52-53.

<sup>11</sup> Kekes, 144.

the benefit of specific groups is the unjust treatment of the whites towards other racial groups during the past. Unlike strong affirmative action, weak affirmative action concisely attempts to promote equal opportunities for all, and equal access to the institutions and services of a given society.

Louis P. Pojman has suggested a set of nine arguments; the first six are negative, as Pojman sets out to make it very clear that the best arguments in favor of strong affirmative action are unsound. The last three arguments are positive,<sup>12</sup> as opposing strong affirmative action policies, and Pojman seems to favor these three since the very beginning.

Negative arguments on affirmative action	Positive arguments on affirmative action
a. The need for role-models	g. Affirmative action requires discriminating against a different group
b. The compensation argument	h. Affirmative action encourages mediocracy and incompetence
c. The argument for the compensation from those who innocently benefitted from past injustice	i. An argument from the principle of merit
d. The diversity argument	
d. The equal results argument	
f. The no one-deserves-his-talents argument against meritocracy	

III. Negative arguments on affirmative action

a. The need for role-model

The proponents of strong affirmative action policies present the *argument of need for role-models* to secure some logical substratum and scientific certainty in favoring strong affirmative action. Their line of reasoning mostly relies on the very assumption that people in general tend to embrace an iconic individual-figure.<sup>13</sup> Role-models do not only provide criteria for evaluating one’s behavior; next to this, they take a hard grip on an individual’s life. Hence, role-models probably become imaging criteria for generating subjective experiences in the lives of those who aspire to them. The follower takes inspiration from the idolized person, and derives ceaseless encouragement and incitation from the adopted role-model’s personality, since he or she comes out imaging himself or herself as possessing the role-model’s virtues

<sup>12</sup> Pojman, “The Case,” 98-99.

<sup>13</sup> Anita L. Allen, “The Role Model Argument and Faculty Diversity,” in *The Affirmative Action Debate*, ed. Steven M. Cahn, 153-162 (New York: Routledge, 2002).

and intrepidity.<sup>14</sup> Nevertheless, the proponents of this view have to come to terms with crucial and controversial attributes related to ethnicity and sex. Essentially, the role-model should belong to the same community with the subject (follower) to maximize attachment (fulfilling the requirement of belongingness).<sup>15</sup> Role-model related arguments in favor of strong affirmative action assert that a role-model of one's own racial or sexual type is inevitably essential. Anita L. Allen in her article "The Role Model Argument and Faculty Diversity" defends role-model-based affirmative action policies on a different moral ground, that of utilitarian ethics. She adopts a psychological standpoint by asserting that the sense of belongingness is a dire need for educational institutions in order to redress slavery, or adds current economic injustice in the nation:

The soundness of the role model argument does not entail or presuppose the soundness of all of the liberal egalitarian arguments for affirmative action found in the philosophical literature. In fact, because what I am calling the role model argument defends minority faculty recruitment on utilitarian grounds referring to student and institutional need, rather than on grounds referring to compensatory justice [...] Nevertheless, some for whom the end of increasing the number of minority faculty is paramount may object on practical grounds to my call for the abandonment of the role model argument. Sure, the role model argument has the drawbacks you identify; but it works to get minorities onto faculties; it therefore has strategic value for minority inclusion and empowerment.<sup>16</sup>

*Pojman's reply:* Louis P. Pojman provides two strong counter-arguments against the role-model hypothesis. First of all, he asserts that any necessary scientific consensus concerning the possibility of having role-models within racial groups is lacking, or that the existence of such models is the one and only pre-condition for the development of under-represented and underprivileged classes. As an example he refers to his own hero, Mohandas Karamchand Gandhi, who was an Indian Hindu. Pojman's hero belonged to another racial, religious and ethnic group, yet to Pojman Gandhi is a continuous source of inspiration. In the light of this, he concludes, having a role-model does not mean that the model should belong to one's race or sex, but rather,

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<sup>14</sup> Kim-Sau Chung, "Role Models and Arguments for Affirmative Action," *American Economic Review* 90, no. 3 (2000): 640-648.

<sup>15</sup> Ibid.

<sup>16</sup> Allen, 161.

that it ought to be a genuinely admirable human being regardless of race and gender. Furthermore, how influential would be a role-model that, although it would belong to one's community, would nevertheless be inferior in terms of excellence to the most professors or doctors in the same community?<sup>17</sup> Moreover, if high-ranking positions were occupied according to strong affirmative action related criteria, the candidates would unavoidably bear the stigma of un-deservedness. Next to these, the need for creating role-models from one's community or group would be treating these individuals merely as a means: potential followers would use role-models as instruments or tools for their own development and success. Role-models would become *a material cause* for other people, which would be morally impermissible.<sup>18</sup>

*Objections:* It is evident that the members of underprivileged classes derive inspiration from leading figures within their community. The sense of affinity with the idealized person plays a crucial role in the community's overall development. Role-models who have overcome similar hardships, exploitation, and difficulties as the members of the community they belong, encourage their own people, especially when compared to idealized figures who belong to other communities. The mission of role-models is not to inspire others to become what they have become, or to achieve what they have achieved, but to stimulate their inner potential towards fulfilling desired objectives according to their own free will. In that sense role-models are not used as a means, but as ends-in-themselves, since taking incitation from an ideal does not violate one's intrinsic worth as an end-in-itself.<sup>19</sup> The sense of belongingness provides people immense encouragement to overcome hardships that are owed to centuries-long deprivation and exploitation.

Furthermore, strong affirmative action seemingly *biased* selection policies may find their justification in the inevitable fact of past unjust treatment and discrimination on behalf of the whites towards other groups. These undoubtedly unjustly gained privileges of the whites are sufficient justification for adopting reverse policies. The aftermath of past unjust behavior by the whites can only be *illicit* reasoning of the same kind, since there have to be made amends for ages of discrimination and subordination. Consider the case in which community-A has been exploiting community-B, and what the process of making up for the injustice would be. The profits and the development that would normally have been acquired by community-B, have been unjustly channeled to community-A, and this procedure has endured for many generations. This has resulted in disparity with regard to the community's social, po-

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<sup>17</sup> Pojman, "The Case," 98-104.

<sup>18</sup> Chung, 640-648.

<sup>19</sup> Allen, 153-162.

litical, and historical institutions, which is now visible in the absolute lack of candidates from deprived and under-represented communities. To safeguard optimum representation for the left-outs, community-B members should be granted access, even if favored: community-A rightfully *owes something* to community-B. This is a moral demand; the system ought to adjourn from procedural justice to substantive justice: development should be sought from the bottom towards the top, aiming at the lower strata of the hierarchical society, that have been oppressed due to differentiations related to caste, creed, color, gender, religion, and so on. This would include unrepresented or underrepresented classes in the life of the community, and give immense motivation to people belonging to oppressed communities.

The noteworthy notion is that eligibility and qualification are the by-products of social and historical pre-conditions in any society's variegated fabric. Hence, minimum and maximum eligibility criteria should be respectful of the historical background of the community. The following instance could provide some insight in cases that whites have discriminated against blacks on various grounds.<sup>20</sup>

If black people's present backward condition is a result of the historical background that has admittedly favored the whites, it should be the state's responsibility not to apply the same criteria when selecting candidates for any office, as the blacks are already in a backward position due to the previous unjust treatment by the whites. Thus, being the direct beneficiaries of unjust discrimination, the whites are pushed up in the line of development, while the blacks are pulled out.<sup>21</sup> Therefore, the state should provide for the unprivileged blacks, so as to ensure that they are represented, instead of strictly focusing on competitive qualification among the members of the dominating classes. After a certain period, when the blacks will be represented to the desirable extent, they will have been finally included in the society's fabric; then, meritorious criteria could be considered to the purpose of justly distributing offices.<sup>22</sup> Hence, Pojman's concern for affirmative action policies is grounded on the inconsistent analogy of moral justification. For instance, when it comes to strong affirmative action policies, the substantial intention is not to dominate certain already uplifted groups or classes of the society, but rather to uplift oppressed populations that have unjustly been deprived of their moral and constitutional rights. According to Albert Mosley:

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<sup>20</sup> Richard J. Arneson, "Preferential Treatment Versus Purported Meritocratic Rights," in *Affirmative Action and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 157-164 (Philadelphia: Temple University Press, 1993).

<sup>21</sup> Ibid.

<sup>22</sup> Ibid., 159.



Pojman is able to ignore the significant disanalogies between racism and sexism, on the one hand, and the so called "preferential policies," on the other hand. Policies designed to facilitate the inclusion of blacks and women are meant not as an expression of the racial and sexual superiority of blacks and females over white males, but to correct for the belief in the racial superiority of whites and the gender superiority of males. White males are not construed as innately inferior, morally tainted or in need of paternal guidance by blacks, and women.<sup>23</sup>

#### b. The compensation argument

The proponents of strong affirmative action defend relevant policies and legislation as a means of reparation. The justification of the compensatory argument is derived from the essential idea of remedying past wrongdoings. Interestingly, it is very clear that compensation is not required in the face of past individual wrongdoing, but rather, due to continuous oppression, discrimination, and domination of one class on another. This has resulted in severe deprivation and under-representation.<sup>24</sup> For instance, individuals that belong to majority groups have undue accessibility to outstanding services and privileged positions that might have been occupied by persons who belong to minority groups, and are under-represented in significant workplaces. In a nutshell, majority groups have unjustly acquired rights and wealth, which is morally unjustifiable. Surprisingly, the argument in favor of strong affirmative action extrapolates its validity from the constitutive to compensatory justice as well. This is because compensatory justice seeks to remunerate by means of essential services and amenities minority groups and women.<sup>25</sup> Robert K. Fullinwider has discussed the moral significance of compensation in his article "Preferential Hiring and Compensation," where he asserts that each injury demands compensation in return, and "he who wrongs another, owes the other."<sup>26</sup> This statement is the underlying rationale of the compensatory argument that supports strong affirmative action.

*Pojman's reply:* Pojman purports that the compensatory argument in favor of

<sup>23</sup> Albert Mosley, "Policies of Straw or Policies of Inclusion? A Review of Pojman's 'The Case against Affirmative Action,'" *International Journal of Applied Philosophy* 12, no. 2 (1998): 161.

<sup>24</sup> Leslie Pickering Francis, "In Defense of Affirmative Action," in *Affirmative Action and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 9-47 (Philadelphia: Temple University Press, 1993).

<sup>25</sup> Carl Cohen, and James P. Sterba, *Affirmative Action and Racial Preference: A Debate* (New York: Oxford University Press, 2003), 46-49.

<sup>26</sup> Robert K. Fullinwider, "Preferential Hiring and Compensation," *Social Theory and Practice* 3, no. 3 (1975): 309.

strong affirmative action is based on an aberrational conception of remedying for past unjustness, unfairness, and disservice. This is because compensation or remedy is a material notion of bipartite-relationships, which means remedial affirmative action, presumably, necessitates at least two parties.<sup>27</sup> For instance, consider that the first party is *A*, the perpetrator of discrimination, and the second party is *B*, the victim, and assume that *A* has stolen *B*'s car and uses it for making profit, which would have been, otherwise, directed to *B*. This injustice demands that *B* should be compensated, not only by having his car returned to him, but also by having a fair share in the profit made by *A* from using his or her car. Louis P. Pojman believes that moral issues arise if the compensation rationale is applied in this stance:

If John is the star tailback of our college team with a promising professional future, and I accidentally (but culpably) drive my pick-up truck over his legs, and so cripple him, John may be due compensation, but he is not due the tailback spot on the football team.<sup>28</sup>

Conversely, the thought experiment would become more intricate, in the case *A* stole the car and earned profit, then died, or disappeared, but *X*, the direct beneficiary of this, was still alive. Now, according to the above, *X* should indemnify the incurred loss of *B* against the damages caused by *A*. Pojman contends that this sort of descending the weight of remedy from *A* to others is morally abhorrent and dubious, and never permissible in any possible situation. Nevertheless, Pojman extends this line of reasoning to the struggle between blacks and whites for opportunities and satisfaction of preferences. By and large, the whites are considered to be the direct beneficiaries of discrimination against the blacks, because their ancestors have adopted discriminatory behaviors against the blacks; in the light of the above, there is no adequate moral bedrock or cornerstone for blaming the whites for their ancestors' unjustness and unfairness towards the blacks, and avouch remedy. Hence, Pojman has proven wrong each essential assumption for suggesting strong affirmative action,<sup>29</sup> and the compensatory argument to be unsound in theory and practice. Pojman has raised some more objections against the compensatory argument, that can be summarized as follows:

- i. Pojman purports that most of the discrimination was done either by individuals, or private institutions. Hence, it was not, by any chance,

<sup>27</sup> Pojman, "The Case," 98-104.

<sup>28</sup> *Ibid.*, 100.

<sup>29</sup> *Ibid.*

state-enforced action or legal discrimination.

- ii. Affirmative action is a state-policy; how can an institutional anti-discrimination policy make amends for individual unjustness and unfairness?
- iii. It has not been observed that, since the blacks were harmed in various ways, affirmative action would be capable of measuring the varied forms of discrimination. So, how can strong affirmative action end that vast series of past unjustness?
- iv. Undoubtedly, any indemnification by the whites for their past wrongdoings against the blacks would be morally justifiable. However, it ought to be in the form of financial compensation, not by randomly giving unqualified people access to significant positions, and thus minimize the efficiency of the institutions and the society in general.
- v. Strong affirmative action is the public policy of treating whites or powerful classes merely as a means to bring about desired social ends, rather than respecting their individual merits.

*Objections:* It is true that there are certain things which money cannot buy or replace, and discrimination, wrongdoing, and unjustness certainly belong to those things money cannot repair. The wrongdoings of the past are one thing, and compensating for the obnoxious results (deprivation and under-representation) are an other.<sup>30</sup> Moreover, Pojman puts the results of historical discrimination aside, and tries to amend for it by evaluating its monetary value. However, this is a categorical mistake. Pojman's contention of the compensatory argument merely attempts to betoken the flaws of the compensation argument, which is hinged on an exceptional and rare sort of instance that can be indemnified through monetary transactions. However, the wrongdoings and added aftermaths are not appropriately comparable to that of Pojman's exceptional instance.<sup>31</sup> Hence, Pojman's objection is not aimed at dealing with such unjustness and domination: previously unjust behavior and domination cannot be compensated by paying back any financial debt, as the injustice done was in regard to freedom of choice, equality, and fraternity. Pojman tries to exchange an uncouth assortment of the blacks' generational aftermaths of historical discrimination only based on the economic factor that does not include other essential aspects of socio-cultural reality.<sup>32</sup> For instance, assume that X stole a rare hunting rifle from Y right before X was about to return it, and the gun was destroyed in a fire. To give Y his gun back, or bying Y one exactly like it, would be the most

<sup>30</sup> Cohen, and Sterba, 37-72.

<sup>31</sup> Ibid., 37-58.

<sup>32</sup> Pojman, "The Case," 97-106.

fair compensation *Y* could expect from *X*. That is, no other rifle will serve as a replacement, nor would money compensate *Y* for his loss, since *Y* bought the rifle for its specific features, but not for the sake of its monetary value. Thus, the question on the best form of compensation can not be answered by focusing on monetary value. Next to these, assuming that financial compensation may make up for human loss and misery may appear morally abhorrent and demeaning for the intrinsic value of human life. Therefore Pojman's analogy could not stand.

Furthermore, it is the state that is supposed to be held responsible for guaranteeing justice and access to public facilities for citizens. If the blacks have been made to face severe harms, losses, and disadvantages by private or public action, they are the victims of this previously done unfairnesses. So, blacks hold the irrevocable right to be compensated by the state – the variety and vehemence of discrimination against different minority, marginalized groups assert the capacity of indemnification. As mentioned earlier, these thoughts are evidently sufficiently to deny the counter-arguments raised by Pojman against strong affirmative action, although states have to be very cautious as the compensation should vary from one group to the other. So, the state has to deal with the practical aspects of the compensatory argument in a very systematic, coherent, and pragmatic manner. It is needless to say that the wished-for development and representation of unprivileged classes cannot be addressed merely by financial compensation. It requires preferential treatment so as to reverse discrimination to the purpose of including the left-outs in the fabric of society. The fact that John became crippled killed any prospect for him to enjoy a prosperous future, and the situation requires the immediate intervention of the state to include him in any possible available mechanism so as he may be able to develop his potential.

It is interesting to mention that an equal level of competence is the universal criterion for selecting the best candidates. However, blacks and women have been dominated and discriminated against for centuries.<sup>33</sup> If this principle is applied, they would unavoidably find themselves among the losers. Pojman should take into consideration that in the normal course of life this universal criterion is already being applied. For instance, if a racer is handicapped and another is not, two different sets of rules. It is common sense that if both would compete according to the same rules, the disabled racer would have lost the race already before it started. Likewise, the blacks have been oppressed for many centuries by the whites; therefore, it would not be just to apply the same competition rules in their case. When offices or positions are

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<sup>33</sup> Robert L. Simon, "Affirmative Action and the University: Faculty Appointment and Preferential Treatment," in *Affirmative Action and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 48-92 (Philadelphia: Temple University Press, 1993).

at stake, any rational criterion of competence should be mindful not only for considerations of suitability and prospective aspiration, but also concerned of the least advantaged class.<sup>34</sup> If certain classes have been deliberately deprived of any possible advantage, the standard criterion of competence cannot be sufficient to ensure substantive justice, and the initial inclusion of the unprivileged must be the foremost priority of the state.

c. The argument for compensation by those who innocently benefitted from past injustice

The argument for compensation by those who innocently benefitted from past injustice is merely an extension of the compensation argument. The argument holds that compensation or remedy is owed to black people and women at the cost of white people and males that have previously discriminated against them. The argument seeks to assess the amount of debt that falls on innocent young white males' shoulders, who are not anymore the beneficiaries of discrimination. The argument concludes that, despite that these people are innocent against any charge of oppressing the blacks, minority groups, or women,<sup>35</sup> they still are the direct beneficiaries of past injustice in that they have privileged access to public offices, are better represented, and are more often eligible to occupy public and private workplaces, which are not that easily accessible by blacks and women. So, strong affirmative action is an utterly desirable *moral tool-box* to nullify the effects of past injustice even at the cost of innocent, young white males.

*Pojman's reply:* According to Pojman, the perpetrators of injustice and harm have been particular white persons or groups, and the victims have been particular individuals or groups of black people.<sup>36</sup> For instance, if *A* stole *B*'s car, in the light of the argument *A*'s son should compensate *B*'s son for *A*'s injustice against *B*, which would be morally and legally unjustifiable. The same applies in the case of the struggle of the blacks against the whites: the fact that the whites have oppressed the blacks in the past is no grounds for blaming currently existing white people for their ancestors' deeds, nor for black people's present misery. Therefore, strong affirmative action is morally unjustifiable, as well as not pragmatic as a solution. According to Pojman:

Suppose my parents, divining that I would grow up to have an unsurpassable desire to be a basketball player, bought an expensive growth hormone for me. Unfortunately, a neighbor stole

<sup>34</sup> Ibid., 48-62.

<sup>35</sup> Cohen, and Sterba, 240-259.

<sup>36</sup> Pojman, "The Case," 101-106.

it and gave it to little Michael, who gained the extra 13 inches – my 13 inches – and shot up to an enviable 6 feet 6 inches. Michael, better known as Michael Jordan, would have been a runt like me but for his luck. As it is he profited from the injustice and excelled in basketball, as I would have done had I had my proper dose. Do I have a right to the millions of dollars that Jordan made as a professional basketball player – the unjustly innocent beneficiary of my growth hormone? I have a right to something from the neighbor who stole the hormone, and it might be kind of Jordan to give me free tickets to the Bull's basketball games, and perhaps I should be remembered in his will. As far as I can see, however, he does not owe me anything, either legally or morally.<sup>37</sup>

*Objections:* As I previously claimed, compensation cannot be viewed solely in terms of financial remuneration; instead, it concerns composite and substantial justice that involves socio-political virtues and leads to the community's overall welfare. For instance, if A's son is profiting due to his father's legacy, it seems to be A's moral obligation to bear the burden of the fact that B was harmed by A's father. Any wrong must be compensated if the society is to advance towards the ideal of a world where all sorts of injustice are removed, and a harmonious society may be established. In Jordan's example, it is an illegal and immoral transaction that brings him to this advantageous position. The transaction's legality and morality must be upheld, and this demands for the acknowledgment of the unfair treatment. In this case, the role of the state is very crucial in resolving this value-oriented economic issue.<sup>38</sup>

Only mass inequality should be considered as the ground for strong affirmative action, therefore the analogy of basketball to life does not seem appropriate in this regard. Games are a significant part of life, but life is not restricted to games: the person who suffers the cost of being from birth in a disadvantageous position, is aware of the fact that it is not his or her capabilities to be blamed. Instead, specific categories in respective games are conceptualized to promote the ideal of composite justice to every member of the society because of other natural or anthropogenic reasons. In life, marginalized communities must get initial preference on purpose of being uplifted so as to be able to equally compete with others, and thus make possible co-existence, cooperation, and coordination of the communities.<sup>39</sup>

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<sup>37</sup> Ibid., 102.

<sup>38</sup> Francis, 9-47.

<sup>39</sup> Simon, 48-62.

#### d. The diversity argument

In the long history of civilization humans have developed so as to live in a pluralistic world. This has helped to enrich and integrate learning-process and personality more than in unitary cultures and races. This is also why educational and other significant social institutions seek to increase diversity in socio-political institutions. This very thought makes it essential to opt for preferential treatment that would maintain the richness and diversity in pertinent public and private institutions. John Rawls has famously viewed justice as fairness and nourishment of individual capability that requires an well-established basis such as family, society, etc.<sup>40</sup>

In the light of the above, supposing that one community somewhere in the world has been unsuccessful in achieving these goals, it would be a humble responsibility for global institutions to eliminate all responsible factors such as as societal deprivation, diversity, multiplicity, different cultural and linguistic criteria, etc., in order to include this community. Hence, each public and private institution should adopt strong affirmative action as a policy to develop individual cultural diversity in significant institutions.

In the *Grutter V. Bollinger* case, Barbara Grutter was a white female applicant. She was refused admission to the University of Michigan Law School on grounds of race, which was a direct violation of the Fourteenth amendment and the Title VI of the Civil Rights Act that was issued in 1964. The University argued that the state's compelling interest was to ensure a critical mass of students from minority classes, and the Supreme Court ruled that any affirmative action program in education should be permitted if it was harmonized with meeting the compelling interests of the state. The case was considered as related to ensuring the government's interests, since admitting the student was assumed to advance overall well-being, and the Supreme Court ruled in favor of this. Ever since several countries have tried to adopt affirmative action policies.<sup>41</sup>

*Pojman's reply:* Pojman claims that the concept of diversity for diversity's sake is morally impermissible, since it overlooks rational distinctions, therefore is morally unjustifiably – assuming each individual is taken to be an end-in-itself, which means that it counts equally as everybody else. Moreover, it downplays individual distinctness and characteristics by prioritizing the concept of using white people merely to achieve particular social ends that would bring about the welfare of blacks, minorities, and women. Moreover,

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<sup>40</sup> Thomas Nagel, "John Rawls and Affirmative Action," *The Journal of Blacks in Higher Education* 39 (2003): 82-84.

<sup>41</sup> Robert F. Card, "Making Sense of the Diversity-Based Legal Argument for Affirmative Action," *Public Affairs Quarterly* 19, no. 1 (2005): 11-24.



Pojman believes in maintaining quality and competence, rather than upkeeping diversity in institutions, as it is, for instance, in the case of white police officers who overreact against blacks.<sup>42</sup> This should not be seen as racial discrimination and it would be needless to consider it as a reason to distrust white police officers. It is absolutely beneficial that white police officers may address white persons, or that black police officers may scold a black person: it is easier for people who belong in the same group to relate. Nevertheless, it is not desirable to make policemen of unqualified persons at any cost, just for the sake of relatedness. Therefore, the argument is not acceptable.

*Objections:* Treating each person with equal respect is a moral requirement, and it provides the justification for strong affirmative action aiming at the inclusion of marginalized community members on purpose of maintaining diversity. Unique situations demand unique resolutions. Here, the maintenance of diversity is not a typical instance, but it carries the weight of reparation. Including members belonging to oppressed communities in order to maintain diversity in institutions inspires others to enhance their capabilities, and cannot be taken as using them only as a means to an end.<sup>43</sup> This would inculcate positive socio-cultural values, and inspire them to strive hard for the upliftment of their community's status. Qualitative change may follow by means of proper training. Quality matters a lot in every sphere of life; still, having similar expectations from those who have faced unbearable harms on the basis of di-conceptualized identity does not seem an appropriate way to deal with a situation as such. Initial inclusion safeguards diversity within an institution and paves the way for qualitative training and capacity enhancement, while it inspires other members of the concerned community to actualize their potential in desired areas.<sup>44</sup>

#### e. The equal results argument

The equal result view is rested on the ethical distinction between equality of outcome or result, and equality of opportunity. The argument's underlying rationale is that there is adequate proof that whites have already occupied advantageous positions and places by reaping the fruits of discriminating against the blacks and depriving them of their rights. Hence, to minimize the negative outcome of slavery and domination that has led the blacks to this disadvantageous position, the state should attentively evaluate the results of racial and sexual

<sup>42</sup> Pojman, "The Case," 102.

<sup>43</sup> Tom L. Beauchamp, "Quotas by Any Name: Some Problems of Affirmative Action in Faculty Appointments," in *Affirmative Action and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 212-216 (Philadelphia: Temple University Press, 1993).

<sup>44</sup> Paul Ellen Frankel, "Careers Open to Talent," in *Affirmative Action and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 250-263 (Philadelphia: Temple University Press, 1993).



projection. The equal result argument is based on the idea of attaining the desirable numerical projection to reach a racially-just and sexually-just society.<sup>45</sup>

*Pojman's reply:* Pojman's reply is based on the refutation of the hypothesis made by Sterling Harwood, John Arthur, and Albert Mosley.<sup>46</sup> The common view of all three is based on an experiment involving young white and black males, in which young black males scored significantly lower than young white males, that, according to all three, is owed to the legacy of slavery and racism, of living in segregation, of alienation, of poor schooling, of exclusion from unions, of malnutrition, and poverty.<sup>47</sup> Harwood also claims that strong affirmative action should go on until all unfair advantages have vanished. Pojman objects by insisting that there is no need to make such a projection; it would suffice to take into consideration the social, economic, and environmental conditions these people live in. He goes on with a thought experiment of his own device: he assumes two families of different racial groups, the Greens and the Blues. The Greens estimated their resources and capabilities correctly, and decided to have only two children, who succeed in a competition by scoring 99%. On the contrary, the Blues failed in family planning, and got fifteen children, while they could afford only two. In their case, it is not morally permissible to ask the state to aid them in providing quality life to their children, since their community never forced them to have more children than those they could afford, which is also the reason their kids' scores are low. In that sense, this argument in favor of strong affirmative action is neither consistent, nor sound.

*Objections:* Under this Pojman argues that equality is already instilled, and evidence to this is the equal percentage of blacks hired. Now, this argument can be refuted by two counter-claims:

- i. The argument is highly materialistic and talks about equality only in terms of jobs. However, one needs to realize that the center of the argument should include those unprivileged and deprived classes. One might provide them jobs, but if they keep feeling marginalized and stigmatized as beneficiaries of strong affirmative action, there would be no inclusion. Hence, strong affirmative action should be continued until equal opportunities for all become a reality. It is not about building the structure of equality; it is about believing in equality.

- ii. My next claim concerns the statistics Pojman mentions. To this I would object that the case of India would be devastating for Pojman's argument. In India social class structure is a complex feature of Indianism, and is based

<sup>45</sup> Cohen, and Sterba, 201.

<sup>46</sup> Pojman, "The Case," 105.

<sup>47</sup> Ibid., 104.

on the marginalization of a considerable amount of the population. The Dalit community in India can be contrasted to the Blacks in the US, but have suffered even more. The Brahmins are the ones who suppress them, and even after 70 years of strong affirmative action, the trend continues to remain the same. Pojman talks about an equal percentage of employment, however in India with Dalits and Brahmins the case is a whole lot different. As Arundhati Roy puts it:

Brahmins form no more than 3.5 per cent of the population of our country [...] today they hold as much as 70 per cent of government jobs. I presume the figure refers only to gazetted posts. In the senior echelons of the civil service from the rank of deputy secretaries upward, out of 500 there are 310 Brahmins, i.e. 63 per cent; of the 26 state chief secretaries, 19 are Brahmins; of the 27 Governors and Lt Governors, 13 are Brahmins; of the 16 Supreme Court Judges, 9 are Brahmins; of the 330 judges of High Courts, 166 are Brahmins; of 140 ambassadors, 58 are Brahmins; of the total 3,300 IAS officers, 2,376 are Brahmins. They do equally well in electoral posts; of the 508 Lok Sabha members, 190 were Brahmins; of 244 in the Rajya Sabha, 89 are Brahmins. These statistics clearly prove that this 3.5 per cent of the Brahmin community of India holds between 36 per cent to 63 per cent of all the plum jobs available in the country. How this has come about I do not know. But I can scarcely believe that it is entirely due to the Brahmin's higher IQ.<sup>48</sup>

Moreover, Pojman again reflects upon his highly privileged biases; this time, he uses an argument to imply that races and genders might lack general intelligence to compete with intelligent whites. What Pojman lacks is the sensibility to treat classes, sexes, and other community members as individuals. Also, the biggest fallacy lies in that these benchmarks of intelligence have been created by the privileged: they have selected the criteria according to the fields they felt they excelled.<sup>49</sup> Now when it comes to equality, they judge other communities (which have had no say in the development of these criteria) by those, and when others do not fit in, they either rule them out, or criticize affirmative

<sup>48</sup> Arundhati Roy, *The Doctor and the Saint: Caste, Race, and Annihilation of Caste: The Debate Between B. R. Ambedkar and M. K. Gandhi* (New Delhi: Penguin Random House India Private Limited, 2019), 30.

<sup>49</sup> Peter J. Markie, "Affirmative Action and the Awarding of Tenure," in *Affirmative Action and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 275-285 (Philadelphia: Temple University Press, 1993).

action. What is necessary is a change in the way excellence is being evaluated. As long as the established system applies, fallacies are unavoidable.

Additionally, the analogy Pojman produces focuses on sports. Nevertheless, there is a clear-cleaved difference between sports and education; for example, sports are of performative value, whereas education and employment are of welfare value. There are rules in sports to make the system transparent. However, in education, there are no clear benchmarks that are not biased in favor of the privileged. Pojman is not on neutral ground when refuting strong affirmative action; on the contrary, he stands on a platform placed on the remains of black, people whose blood and sweat made the platform possible, therefore he may overlook the historical fact that the privileged whites used the blacks to their benefit, and came up with a system of evaluation they expect each one to ace at in order to be accepted, otherwise be rejected either as *innocent* (the poor and ethnic whites), or as *reserved* (the blacks who struggle for equality).<sup>50</sup>

To Pojman, everything is a debate; the proponents and the opponents form segregated groups, and it is irrelevant whom they are debating for, and whom they are debating against: debate against the *equal abilities thesis* downplays the mental trauma that the underprivileged communities have gone through, a trauma that cannot be compensated by affirmative action. Still, affirmative action promotes a cause that helps the marginalized people realize their worth and support themselves. The tests Pojman talks about are still far away from the general understanding of the Dalits in India. Any Dalit has to beg for his life and dignity every day until he gets into a respectable position. Even after getting there, his capacity to hold that position is constantly being questioned. Affirmative action supports people as such and allows the hope that times will change; this hope is after all the debt suppressive communities owe to suppressed people for wronging them.

Furthermore, strong affirmative action is not *against* anyone; the opponents of affirmative action related policies here make this great blunder repeatedly, that strong affirmative action is against specific classes. This produces a sense of rivalry and undermines solidarity within the society. Conversely, strong affirmative action is not an act of revenge against any people or community; it is an attempt to secure justice and support for the underprivileged.<sup>51</sup>

#### f. The no-one-deserves-his-talents argument against meritocracy

Within any community, individuals are designed to live in specific ways of symbiotic relationships with others. The linear and random chains of relationships form a system in which each individual is dependent on others to

<sup>50</sup> Ibid., 281.

<sup>51</sup> Cohen, and Sterba, 206-212.

fulfill his or her own needs, and survive within the society: an individual finds himself attached to institutions like family, education, workplaces, etc. Since birth, each individual has to live within some institutional scenario, and it is the institution that regulates the thoughts and behavior of individuals. From birth till death, the whole life of an individual is being *administered*. Thus, it can be said that none deserves anything, and, therefore, the society may use any available means to uplift the unprivileged classes.<sup>52</sup>

*Pojman's reply:* Pojman challenges this claim with a thought experiment: let us assume that there are two friends, and each gets a gift of \$100 (keep in the mind that none of them deserved what they got). Now consider that one decides to bury his gift in the sand, while the other invests his share in such a way as to double its value after a period of five years. Applying the no-one-deserves-his-talents argument in this case would mean that the second person ought to split his property to half and give the other person his share, since none of them deserved the original gift. This, however, would be absurd, since he has got into efforts to invest and increase it, unlike his friend. In Pojman's view this argument suffices to disprove that black or under-represented people deserve a share in others' success on the basis that none deserved it at the first place.<sup>53</sup>

*Objections:* What is wrong with this argument is that it promotes judging people and their qualifications by a set of societal benchmarks. What Pojman asserts is that whites and privileged groups are the legislators and system-builders, and they judge everybody according to tailor-made criteria.<sup>54</sup> However, qualification should rely on more comprehensive criteria that test candidates against various historical and social backgrounds. When it comes to hiring a countryside administrator, for instance, it is irrelevant whether one has scored high marks in the exams, if he has never been in a village his whole life. My point is that exams and scores are just a way to set minimum benchmarks, and every individual has to be known as a person.

Furthermore, Pojman discusses the amount of money each person received in his analogy as a gift. It is again dubious whether the analogy reflects actual conditions in society. A more successful analogy would involve not burying one's money, but the other person stealing and investing them; this would mean that the remaining sum should indeed be splitted in two, since the privileged part has made sure that the marginalized one will not receive any benefit; Pojman's analogy seems irrelevant, capable only of supporting one's ignorance. The moral desert argument is too radical to be taken into

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<sup>52</sup> Pojman, "The Case," 108.

<sup>53</sup> *Ibid.*, 108-109.

<sup>54</sup> Cohen, and Sterba, 206-212.

account; social engineers in their effort to create a leveled society seek to distribute social resources that belong to the society as a whole, or the society itself avails, as it is with education and employment.

g. Affirmative action requires discriminating against a different group

This argument is supposed to be the most effective against strong affirmative action. According to this, it is assumed that strong affirmative action policies are established as a compensation for previous injustices. The argument rests on that wrongdoings perpetrated by the whites have led blacks, women, and other minority groups to be defenseless when it comes to the distribution of social or economical services and goods.<sup>55</sup> To make up for this, it is necessary to resort to wrongs of the past, and this is what affirmative action does. For instance, whites who exist in the present owe reparations to blacks who exist in the present, not because they are themselves guilty of bringing about disadvantages to them, but because they enjoy advantages that are due to their ancestors' gross past injustices, and particular benefits continue to be enjoyed by innocent whites because of the ongoing prejudice on behalf of other white people. Nevertheless, such a line of reasoning would have no moral relevance since strong affirmative action is not about discriminating in favor of a wealthy black people or females who have the opportunity to get the best possible education and services available against poor whites; white people should also be treated as individuals, as ends-in-themselves. Hence, respect for individuals is essential, and this entails treating each individual as an end in itself, not merely as a means for some social end. To quote Pojman:

What is wrong about the discrimination against Black is that it fails to treat Black people as individuals, judging them instead by their skin color and not their merit; what is wrong about discriminating 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. Present Affirmative Action is both racist and sexist.<sup>56</sup>

*Objections:* A general argument against Pojman's critique is that affirmative action, which is taken to be discriminating against a specific group, is actually far from being guilty of such a charge, at least to the extent that it allows privileged groups to compensate by means of preferential treatment

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<sup>55</sup> Pojman, "The Case," 109-110.

<sup>56</sup> *Ibid.*, 110.

those who have unjustly been treated for years as left-outs. Some philosophers might argue against this, as those who had once suffered have long passed away: it seems to be morally objectionable if existing people who belong to once-oppressed groups received compensation by innocent people who belong to the group of the once-oppressors. If this argument is to be challenged, one would need to understand that such a compensation on behalf of white people or other privileged groups is an acknowledgment of the wrongdoings perpetrated against vulnerable populations in the past, a *moral debt* collectively owed by classes or groups to classes or groups; this debt has to be paid not on purpose of empowering underprivileged classes, but of atoning the wrong inflicted upon them.<sup>57</sup>

Pojman in his effort to disprove strong affirmative action moves from communities to individuals, as if all the members of a community need to face the same conditions; the fact is that, instead, some of them might be well off, while others might be worse off. The same applies to smaller communities within larger ones: for example, many communities in Indian society are forced to face social exclusion to such an extent, that their only way to earn a living is by carrying on their heads baskets containing human feces collected from traditional-style toilets that use no water.<sup>58</sup> Furthermore, Pojman's argument – contrary to his general tendency to generalize and universalize – seems to be favoring *poor white males*, who nevertheless constitute a minor percentage compared to blacks, hispanic, native americans, asians, and women; this results in a morally weak line of reasoning. In addition, this small percentage of the population Pojman mentions, poor whites, is neither that backward nor oppressed, either racially, or sexually, or socially.

On the other hand, each marginalized community has to deal with different sets of problems: blacks, for example, are facing social exclusion, whereas Asians have to overcome cultural and regional exclusion. The minority of poor whites Pojman refers to has never been socially marginalized, at least not to such an extent as to be exposed to sheer discrimination and a plethora of other setbacks. This line of reasoning often serves as an excuse, as it recently has the case been in India: the concept of *innocent poor whites* was used as a pretext in the Economically Weaker Sections (EWS) Bill to acquit the general group of the castes, mainly whites and majority groups of the Indian society,<sup>59</sup> and save them from having to contribute to affirmative

<sup>57</sup> Cohen, and Sterba, 206-212.

<sup>58</sup> Roy, 30.

<sup>59</sup> Abusaleh Shariff, and M. Mohsin Alam Bhat, "Economically Weaker Section Quota in India: Realistic Target Group and Objective Criteria for Eligibility," May 5, 2019, [https://www.researchgate.net/publication/333699612\\_Economically\\_Weaker\\_Section\\_quota\\_in\\_India\\_Realistic\\_Target\\_Group\\_and\\_Objective\\_Criteria\\_for\\_Eligibility](https://www.researchgate.net/publication/333699612_Economically_Weaker_Section_quota_in_India_Realistic_Target_Group_and_Objective_Criteria_for_Eligibility)).

action policies. Economic suffering, however, is not the only trouble for unprivileged classes; they have to fight also with social, religious, and political discrimination among others. Focusing only on the low income dimension of the issue leaves out of the picture all the above, and most of all the psychological trauma that comes hand in hand with being a member of any marginalized community. It seems that oppressive societies tend first to marginalize some of the groups they consist of, and then play the self-victimization card. Against this, strong affirmative action holds no one back, and seeks to support those that are already marginalized.

Pojman claims that strong affirmative action disrespects white males, and denies them their dignity. This, however, strikes as somewhat biased on behalf of Pojman, provided that the aim of strong affirmative action is not to undermine anyone's moral status, but to uplift that of oppressed groups or classes. For instance, each particular member in India's scheduled caste communities does not only experience general social setback; they are also excluded from significant social institutions and denied fundamental constitutional rights. All members of the castes – irrespective of their financial condition – are in fact members of oppressed, disgraced minorities, and there is no exception to the rule; therefore, strong affirmative action in India may only aim at de-marginalizing oppressed population regardless of their financial status.

#### h. Affirmative action encourages mediocrity and incompetence

Strong affirmative action is always concerned with sufficiency and diversity, and focusing mainly on criteria as such could seriously affect the efficiency of workplaces, since high-level positions could be occupied by unqualified candidates just because they are, let's say, blacks or women.<sup>60</sup> This could totally demerit institutions, offices, etc. Following this line of thought, Louis P. Pojman assumes that there can apply no objective criteria to validate preferential hiring of blacks and women to the best possible position especially with regard to high positions, therefore affirmative action policies oppose meritocracy and competence.

*Objections:* In my view the argument from mediocrity and incompetence seems to be tailor-made to support members of the privileged classes: both these are relative terms, and the extent to which they are relevant is dependent on various factors each time. If one's academic status is at issue, for example, one's excellence can be assessed by one's score in several fields; but when it comes to life experience and better applicability of concepts, the definition of excellence may be totally different.<sup>61</sup> Imagine a case from India's cultural

<sup>60</sup> Arneson, 158-163.

<sup>61</sup> Lawrence C. Becker, "Affirmative Action and Faculty Appointments," in *Affirmative Action*



background, in which two individuals compete for an academic position. The first, *A*, comes from a respected Brahmin community, while the second, *B*, from the unprivileged Mahar community. *A* was instructed at a convent school in an urban area, has graduated from Oxford, has enjoyed every possible facility, and experienced the best of societal pleasures; on the other hand, *B* has studied at a public school, graduated from a public college, and has faced all possible odds including social exclusion all his life. The question now is, who makes a better candidate in the academic environment of India: *A* who got everything going for him, or *B* who knows exactly how the Indian society functions? Selecting *B* instead of *A* in any other case would be encouraging mediocrity, but in this particular environment excellence may seem to be in *B*'s side. This is why Pojman's argument seems somewhat biased to me: he defines excellence and competence in a way that it may apply only to more or less inclusive societies and communities. Pojman, for example, criticizes the policy in favor of black women adopted by the Harvard Law School on the basis of academic excellence, but fails to assess the various benefits that come hand in hand with hiring black women as faculty, benefits that include having a huge racially marginalized community represented, or even relying on individuals who have experienced injustice and, hence, are much more sensitive and concerned about what really justice is about. From another point of view, admitting black women in a law school could be taken as the epitome of racial justice and, and this could be taken as the heyday and the beauty of justice.<sup>62</sup> By and large, Pojman seems to undermine his own argument by focusing on class, race, and sex, and this becomes evident in phrases such as "clear case of racial over-representation,"<sup>63</sup> that is quite telling of a tendency to overlook possible alternative academic or functional roles, and just focus on the issue of representation instead.

i. An argument from the principle of merit

According to this line of thought, all job positions, but especially high-profile ones, should be occupied by the most qualified candidates, since this may be the only guarantee for efficiency and quality. As Pojman claims,

The Koran states that "A ruler who appoints any man to an office when there is in his dominion another man better qualified for it, sins against God and against the State."<sup>64</sup>

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*and the University: A Philosophical Inquiry*, ed. Steven M. Cahn, 93-122 (Philadelphia: Temple University Press, 1993).

<sup>62</sup> Beauchamp, 212-216.

<sup>63</sup> Pojman, "The Case," 113.

<sup>64</sup> *Ibid.*



As I have already argued, when it comes to qualification the whites are in a much more privileged position than, let's say, the blacks, since they are the direct beneficiaries of past unfairness inflicted on the blacks; this means that if affirmative action policies were implemented, job positions should be channelled to less qualified candidates, blacks and women for example. Pojman supports his view in favor of meritocracy with two moral arguments: on the one hand there is the Kantian argument that is based on the moral principle that each individual ought to be treated as an end in itself, and not merely as a means to some particular purpose.<sup>65</sup> In the case of strong affirmative action, however, white males, let's say, seem to be used as a means to uplift black people and women.

On the other hand, Pojman also relies on a utilitarian line of reasoning, that is based upon the claim that, since the best choice is the one that maximizes happiness, the wellbeing of the part should be regarded as inferior to that of the whole. This means, Pojman continues, that affirmative action should be rejected as a policy, since the society would be better off with the best available leaders, teachers, police officers, physicians, lawyers.

*Objections:* Since Pojman makes this reference to Qur'an, one could argue that Qur'anic studies, and Shari'ah, the jurisprudential basis of any Islamic society, show that Shari'ah invites modern interpretations according to the changes in a given society. Despite the fact that the Islamic law is often referred to as Shari'ah, these two are distinct: the Islamic law includes Shari'ah, but it also includes the law that has been derived from Shari'ah through human understanding and the application of reason, or *fiqh*.<sup>66</sup> Shari'ah, therefore, opens up the Qur'an for modern interpretation. This means that Qur'an's mention of "the best qualified" man is open to various interpretations according to current environmental conditions.

In that sense, one needs to define the import of excellence, since excellence cannot be restricted just to academic titles; a more nuanced definition of excellence would present it as a derivative of various qualities, as, for example, one's capability of accommodating diversity, and promoting co-existence. To quote Arundhati Roy,

Merit is the weapon of choice for an Indian elite that has dominated a system by allegedly divine authorization, and denied knowledge – of certain kinds – to the subordinated castes for thousands of years.<sup>67</sup>

<sup>65</sup> Ibid., 113-114.

<sup>66</sup> Susan C. Hascall, "Islamic Commercial Law and Social Justice: Shari'ah Compliant Companies, Workers' Rights, and the Living Wage," *St. John's Law Review* 88, no. 1 (2014): 1-36.

<sup>67</sup> Roy, 30-35.

Pojman's view also misses a significant aspect of what *merit* may also consist in, that is, not just what score one succeeds, but what it took one to succeed such a score. Consider the case in which *A* gets a score of 95%, while *B* one of 70%. Now take into account that *A* comes from an extremely supportive, affluent background, while *B* belongs to a marginalized social or racial group totally deprived of opportunities for personal development, education, etc. On whose side does *merit* stand? It would not be a matter of sympathy or emotional attachment, but more a fair moral judgement, to claim that the score one succeeds in this case is irrelevant. So much with the deontological approach; as far as the utilitarian evaluation is concerned, again preferring *B* instead of *A* would seem the best decision to take, since *B*'s lesser success was totally against the odds, while *A*'s was totally anticipated.

#### IV. Concluding summary

In this paper I set out to challenge and disprove all nine Pojman's arguments against the moral permissibility of affirmative action policies, and explain why in my view the rejection of strong affirmative action is questionable on various ethical and logical grounds. I agree with Albert Mosley's criticism against Pojman's view that Pojman's primary objections against affirmative action policies may only hold against strawmen.<sup>68</sup> Contrary to what Pojman believes, the implementation of affirmative action policies is a moral *desideratum*, and also a demand of reason. Affirmative action policies promote changes in legislation and human rights enforcement, but more than that changes in attitudes and mentality that aim to the upliftment of upprivileged, under-represented and oppressed people in society. Hence, affirmative action policy is not just policy, but rather the substantial realization by humans that they are humans in favor of fellow human beings. If the elementary unit of society is family, affirmative action could be seen as the equivalent to solidarity within a family: if a member of the family is not physically competent due to, let's say, having lost a leg or an eye in an accident, it is mere commonsense that other family members will provide all necessary aid.

On the other hand, it is a historical truth that in particular societies several groups have been oppressed for long by other, privileged groups, and this has deprived them of the possibility to develop equally, while their oppressors have largely benefited by this situation, and the present generations that belong to the oppressors' groups are the direct beneficiaries of the injustice done. If this is so, tagging along with Robert K. Fullinwider I say: "he who willingly benefits from wrong must pay for the wrong."<sup>69</sup> Despite Pojman's arguments to the contrary, I

<sup>68</sup> Mosley, 167.

<sup>69</sup> Card, 22.

strongly believe that there is an urgent need to focus not only on the procedural aspect of justice, but rather to serve justice through its substantial dimension, and consider affirmative action policies as an effective moral toolbox to promote individual welfare regardless of race, ethnicity, religion, caste, and gender.

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