

Worker rights worker obligations



Worker Rights/Worker Obligations

Affirmative Action Running Head: AFFIRMATIVE ACTION AFFIRMATIVE

ACTION: REVERSE DISCRIMINATION OR COMPENSATORY JUSTICE? Affirmative

Action 2

Abstract

To resolve the prevailing unlawful practice of employee discrimination, mandatory compliance with “affirmative action” was imposed by law to afford protected groups the chance to avail of equal employment opportunities as the majority white males. Hailed by some as egalitarian, this measure was also strongly criticized as being itself discriminatory as it imposed preferential treatment according to race, color, sex, creed, and national origin. Rawlsianism sees this as an ethical measure that finds its validity in the principles of justice and equity. It debunks the theory of affirmative action as reverse discrimination, and upholds the theory of affirmative action as compensatory justice.

Affirmative Action 3

AFFIRMATIVE ACTION:

REVERSE DISCRIMINATION OR COMPENSATORY JUSTICE?

From the birth of our nation, until some forty years ago, the communal helm had been accorded, as if by birthright, by our traditional social order to the white male. The absolute and unquestioned dominance of this, the majority group, allowed them to assume the choicest positions in business, government, civic society, sports, the arts, and all facets of our national culture.

It was not until 1964 that a cornerstone piece of legislation, the Civil Rights

Act, made “ affirmative action” a remedy federal courts could impose on violators of that Act. The Civil Rights made it illegal for an employer to discriminate against (i. e. fail or refuse to hire or to discharge) any individual on the basis of his race, color, religion, sex or national origin, with respect to his compensation, terms, conditions, or privileges of employment, and espoused “ affirmative action” for the first time. In the following year, President Lyndon B Johnson promulgated Executive Order (EO) 11246 requiring affirmative action. Originally, affirmative action did not spark too much of a controversy, since the African-Americans and Hispanics who benefited from this were relatively few and “ contained,” so to speak. However, in 1972, the Secretary of Labor’s Order No. 4, which fully implemented EO 11246, was revised to include women among the “ protected classes” whose “ underutilization” demanded the setting of “ goals” and “ timetables” for “ full utilization” (Graham, 1990, 413, cited in Affirmative Action, Stanford Univ). This presented a threat to the majority group, because women who were getting PhDs accelerated in numbers that presented a threat to the dominant white male. It was this extension

Affirmative Action 4

of the protection of affirmative action on women (who would represent half or nearly half of the total population) as a group that sparked the widespread controversy.

What in particular is affirmative action? According to the Stanford Encyclopedia of Philosophy, “ Affirmative action” referred to “ the positive steps taken to increase the representation of women and minorities in areas of employment, education, and business from which they have been historically excluded. When those steps involve preferential selection—

selection on the basis of race, gender, or ethnicity—affirmative action generates intense controversy” (Stanford Encyclopedia of Philosophy). Affirmative action involves the requisite of admitting to employment a number of workers coming from the protected classes until a “ quota” or goal is met. In many cases, it meant that, given a choice between hiring a white male applicant and hiring an equally (sometimes less) qualified applicant from the minority groups, an employer is constrained, pursuant to affirmative action, to accept the latter. Thus, some sectors have come to take affirmative action synonymous to “ reverse discrimination.”

Affirmative action has been hailed and supported by many as a positive act to abolish discrimination against minorities. On the other hand, its critics point to the illegality and inequity of its implementation. Based on the law, they had contended that since the Civil Rights of 1964 condemned discrimination against employees or potential employees on the basis of race, color, religion, sex or national origin, then the apparent advantage given protected groups is itself discrimination on the very same basis. From the point of view of equity, it was not fair that more qualified individuals are turned down in favor of less qualified applicants, simply to comply with the quotas and targets imposed by law. They argue that to be truly non-discriminatory, merit alone should be the basis in the choice and promotion of personnel. Acts

Affirmative Action 5

of discrimination could not be contained or remedied by other acts no less discriminatory. (“ The first problem with affirmative action is the obvious fact that it is an attempt to end discrimination with discrimination.” – Hoffman, 2002, p. 36)

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How, now does one assess the propriety and ethics of affirmative action? It appears that its assessment on the basis of justice and equity is best addressed by the theory according to John Rawls. Rawlsianism is an ethical theory centered on justice. He states that there is an “ original position”, a theoretical situation wherein people are covered by a “ veil of ignorance” so that they do not identify with any person, or interest, on the other side. From this original position, the natural tendency is for people of diverse background to commonly adhere to a social order based on the morality of the equality of justice.

The equality spoken of here is not strictly egalitarian, but is qualified by two principles found in the original position. The first, the liberty principle, advocates a system of liberty applicable to all which ensures each person to be assured as many basic liberties as possible. The second is the difference principle, necessitates that “ social and economic equalities be arranged so that they benefit those who are least advantaged...This principle also requires that systems allow for all people to have access to goods and positions under conditions of fair equality of opportunity based on both need and merit” (Regis University, 2009).

This ethical theory of justice tempered with equity fits foursquare into the issue of affirmative action. When white males are favored over minorities, it is discriminatory insofar as it is an “ exclusionary practice not necessary to an institutions activities” (Pincus). Where the exclusionary practice excludes disadvantaged minorities, then it enforces the unjust status quo and thus works against justice and equity. On the other hand, if preferential advantage be to a

Affirmative Action 6

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certain extent applied to the least advantaged social groups then the measure is not unethical nor unjust, based on the Rawlsian principle that slight inequalities be tolerated if it benefits those least advantaged.

In this sense, affirmative action is not reverse discrimination, with all its negative connotations, but compensatory justice (Ghassemian 2003; Taylor, 1973). Since the move is seen as an equalizing measure to break away from the status quo and establish a pluralistic workforce, slight disregard of merit at the beginning, for a temporary period, may be tolerated, until the pluralistic situation becomes not only tolerable but socially accepted.

Affirmative Action 7

REFERENCES

About. com: Agnosticism and Atheism (n. d.). Affirmative Action is Reverse Discrimination: Are affirmative action programs a source of discrimination?

Retrieved April 1, 2009, from

http://atheism.about.com/library/FAQs/phil/blphil_eth_aa_reverse.htm

Ghassemian, A. J. III (2003). Compensatory Justice in Affirmative Action. *Current Surgery*, 60 (November): 596-597.

Graham, H. D. (1990). *The Civil Rights Era: Origins and Development of National Policy 1960-1972*, New York: Oxford University Press.

Hoffman, C. (2002). Affirmative Action--Moral Compensation or Reverse Discrimination? *The Journal of Intergroup Relations* Volume XXXVIII, No. 4 Winter 2001/2002, pp. 36-38. Retrieved April 1, 2009, from <http://www.colby.edu/par/Winter%2000/AFFIRMATIVE%20ACTION.htm>

Office of Federal Contract Compliance Programs (OFCCP) (2002). *Facts on Executive Order 11246 — Affirmative Action*. Retrieved April 1, 2009, from <https://assignbuster.com/worker-rightsworker-obligations/>

<http://www.dol.gov/esa/ofccp/regs/compliance/aa.htm>

Pincus, F. L. (n. d.) The Social Construction of Reverse Discrimination: The Impact of Affirmative Action on Whites. Retrieved April 1, 2009, from

http://www.adversity.net/Pro_AA/pincus_main_frame.htm

Regis University (2009). Rawlsian Ethics. Retrieved April 1, 2009, from

[http://rhchp.regis.](http://rhchp.regis.edu/HCE/EthicsAtAGlance/RawlsianEthics/RawlsianEthics_01.html)

[edu/HCE/EthicsAtAGlance/RawlsianEthics/RawlsianEthics_01.html](http://rhchp.regis.edu/HCE/EthicsAtAGlance/RawlsianEthics/RawlsianEthics_01.html)

Stanford Encyclopedia of Philosophy (2009). Affirmative Action. Metaphysics

Research Lab, CSLI, Stanford University. Retrieved April 1, 2009, from

<http://plato.stanford.edu/entries/affirmative-action/>

Taylor, P. (1973). Reverse Discrimination and Compensatory Justice,

Analysis, 33 (June): 177-182.