

THE RELEVANT ETHICAL ANALYSIS OF AFFIRMATIVE ACTION IN 21ST CENTURY

Najjuma Oliver Babirye

Department of Philosophy, The Catholic University of Eastern Africa, Nairobi, Kenya

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Abstract: Currently when one talks about affirmative action, a lot of controversy is generated in people's mind. Those who oppose it, mostly argue that the progress by racial, ethnic minorities and women has been reached in the previous decades and so affirmative action is no longer necessary. On the other hand, the supporters of affirmative action maintain that discrimination and its effects is not yet eradicated; women and minorities are still underrepresented in higher-level positions in most organizations. In this article, we shall argue for the relevance of affirmative action using different ethical theories. Affirmative action programs were designed to end the effects of discriminatory practices that violate the inherent equality of persons on the basis of sex, skin colour and country of origin. Presently, discriminatory practices are portrayed in activities like; human trafficking, pornography, bullying and disability. It is due to such activities that we shall focus on the ethical analysis of affirmative action in the 21st Century, with the view of empowering the minority and women.

Keywords: Relevant, Ethical Analysis, Affirmative Action 21st Century, Discrimination, Current Issues..

1.0. Introduction

In this article, we intend to examine the contemporary moral issue of affirmative action. In considering this, we shall review the history of affirmative action, study the different approaches undertaken, and evaluate the arguments offered by both its proponents and opponents. After this, we shall briefly deal with the theory of consequentialism and then elaborate on the current issues which necessitate affirmative action. Due to affirmative action's nature of controversy it is under applied ethics. Applied ethics conceived broadly, is the application of ethical considerations, that is, reasons, principles, values, ideals to any policy or practice, personal or social, for the purpose of evaluating that policy or practice on ethical grounds. Thus, applied ethics is the branch of practical reasoning in which ethical considerations are employed to guide individual and collective conduct. It also offers opportunities for philosophers to apply theory to concrete cases ¹

1.1. The Meaning of Affirmative Action

Affirmative action is a term used in the United States of America to portray a set of laws, policies, guidelines, government administrative practices including those of private institutions, intended to end and correct the effects of discrimination. It seeks to end the effects of discriminatory practices that violate the inherent equality of persons on the basis of sex or skin colour. People who share such attributes have been denied opportunities on the grounds that they are inferior or different. Affirmative action aims to reduce present discrimination against members of targeted groups such as Africans, Native or Hispanic Americans, women and the handicapped and to increase their numbers within certain occupations, professions and at universities and colleges. In other words, affirmative action seeks ultimately to raise the standing of the targeted group so that the basis of their previous exclusion based on race, gender, ethnicity and disability, will no longer be used in determining the distribution of the desired good.² Affirmative action, looked at differently, is "a term that in a broad sense encompasses any measure, beyond a simple termination of discriminatory practice, adopted to correct past or present discrimination or to prevent discrimination recurring in the future."³ This definition is appropriate to our study since it focuses not only on the

¹ Lawrence C. Becker and Charlotte B. Becker, Eds. *Encyclopedia of Ethics*. Vol. I. Second Edition under 'applied ethics' Routledge: New York, 2001.

² Cf. Hugh LaFollette, *The Oxford Hand Book of Practical Ethics* (Oxford: New York, 2003), 272. Henceforth will be referred to as LaFollette, *The Oxford Hand Book of Practical Ethics*.

³ Philip F. Rubio, *A History of Affirmative Action 1619–2000*. (Mississippi: United States of America, 2001), 2. Hence forth will be referred to as Rubio, *A History of Affirmative Action*.

past discrimination, but also on the present and the future. In other words, it portrays the relevance of affirmative action in fighting discrimination at all times.

The persistent nature of the debate over affirmative action from Kellough's point of view⁴ is indicative of the policy's significant implications. Alternative interpretations of such fundamental values as justice and equality lie at the heart of the dispute. Employment, educational, and business prospects are at stake, not only for groups targeted to benefit from the policy, but also for others who wish to compete for a share of those opportunities. From this analysis, it is necessary to examine the policy with care. Therefore, our goal is to consider knowing how the policy originated and evolved, to recognize what affirmative action requires, to understand arguments on both sides of the debate, and to separate facts from fiction.

1.2. The History of Affirmative Action

We cannot talk about the history of affirmative action without speaking about discrimination. Since affirmative action is meant to fight the strong, persistent, and irrational discrimination made by large portions of society, it is important to focus first on discrimination while evaluating whether affirmative action can be ethically justified. Irrational discrimination here means the use of irrelevant characteristics like color and gender to judge an individual's human worth or capability. We shall deal with the ethical part of affirmative action mainly when dealing with the arguments for and against affirmative action. Let us first focus on its history.

Kellough while concentrating on the early efforts on equality of opportunity stresses that,

The history of discrimination directed against minorities and women in the United States because of racist, ethnocentric, or sexist attitudes has been long and painful. Discrimination has bred violence, fear, and desperation and has left an indelible mark on the American psyche. It is based on the notion that some people, distinguished by their cultural identities or immutable characteristics such as sex or the amount of melanin present in the skin, are inferior to others. Americans have been struggling with the question of how to deal with discrimination most effectively. Not until the later decades of the twentieth century, however, were substantial efforts undertaken to address practices that kept untold numbers of women and minorities from achieving what their talents and abilities would allow. Affirmative action, in all of its various forms, is an outgrowth of those efforts.⁵

From this, it is evident that affirmative action is taken on as a policy to fight discrimination based on race, sex, ethnicity to mention but a few. Kellough here focuses on the United States of America but this does not rule out the fact that globally many other countries are battling with this problem of discrimination. It is due to this concern that affirmative action raises a big debate. To understand more about affirmative action, the following historical facts are essential.

The earliest administrative programs designed to deal specifically with the problem of racial discrimination can be traced back only as far as the early 1940s. Those initial efforts were to a significant degree a reaction to injustices suffered by African Americans as a result of employment practices in the private sector and in government.⁶

A significant change in the efforts to combat discrimination however, occurred only in the 1960s. Early in his term, President John F. Kennedy announced his support for the concept of equal employment opportunity and immediately re-organized the federal effort. Kennedy's Executive Order 10925, issued on March 6th, 1961, required substantially more than a focus on complaint processing which was ineffective. He placed new obligations on employers and required them to take specific actions to promote greater equality of opportunity. The shift in orientation was articulated in Section 301 Part III of Kennedy's order, which outlined new obligations for federal contractors and subcontractors. It states in part that,

⁴ Edward J. Kellough, *Understanding Affirmative Action; Politics, Discrimination, and the Search for Justice*. (Georgetown: Washington, D.C., 2006),3. Henceforth will be referred to as Kellough, *Understanding Affirmative Action*.

⁵ Kellough, *Understanding Affirmative Action*, 21.

⁶ Cf. Kellough, *Understanding Affirmative Action*, 23-24.

The contractor will not discriminate against any employee or applicant for employment because of race, creed, color, or national origin. The contractor will take affirmative action to ensure that all applicants are employed, and that employees are treated well during employment, without regard to their race, creed, color, or national origin.⁷

Briefly, this policy orientation meant that a greater initiative in the battle against discrimination is what is expected of the employers. It entailed reaching out to minority high school and college graduates and recruits them for employment. This demanded also offering training and apprentice programs to provide skills development that would enable minority applicants to qualify for entry-level and higher positions. It was the employer's task to re-evaluate qualifications standards to make certain that they were job related and did not artificially block the hiring or advancement of minorities who may not have enjoyed educational opportunities equivalent to those of majority whites. These distinct activities entailed in part III of Kennedy's order marked the beginning of affirmative action.

As mentioned earlier, affirmative action is not only restricted to U.S.A., in other places too like Africa people realized the need for affirmative action. One of the countries which embraced it fully is South Africa; this is attributed to the imbalances created by years of apartheid. Uduak Archibong and Oluyinka Adejumo give a further elaboration on this as follows,

South Africa went through a formalized apartheid system of government from 1948 until it was replaced by a democratically elected government in 1994. Before 1994, a series of about 25 statutes enacted between 1948 and 1974 institutionalized racial discrimination, classifying the people of South Africa racially into either White, Colored, Asian or Indian, and Black (African), in that order of importance and allocation of benefits within the apartheid system. The legislation specified where and how the different races could live, travel, work, be educated, get married, and mingle. During the apartheid era, Black people were not allowed to run businesses or professional practices in areas reserved for White South Africans. Certain jobs were designated "White only", and Black education was specifically designed to prepare Blacks for the laboring class. Ownership of land was such that the Whites, about 10% of the total population, owned more than 80% of the land, and Black women experienced both racial and gender discrimination. Black women further had few or no legal rights, very limited access to education, and generally had no right to own property.⁸

With such a background, affirmative action became the best strategy to achieve equal employment opportunity rooted in the principles of justice and equity.

Briefly, affirmative action was consequently established to redress the gender as well as racial imbalances perceived to be the consequence of apartheid in the country. The goal of affirmative action in South Africa was to make sure that those formerly disadvantaged, enjoyed the same benefits and opportunities guaranteed in the post-apartheid constitution. Andrew Levy too stresses this when he argues that, "Affirmative Action is a temporary strategy to achieve equality at work without lowering standards and without limiting the prospects of existing competent employees"⁹

In 1995, Uganda too, took a bold step to protect and enforce the rights of groups of people who had been marginalized in previous government systems. It included an affirmative-action clause within its new constitution, which ran as follows,

Notwithstanding anything in this constitution, the state shall take affirmative action in favour of groups marginalized on the basis of gender, age, disability or any other reasons created by history, tradition or custom, for the purpose of redressing imbalances which exist against them (Article, 32.1).¹⁰

The constitution outlines the specific rights of women, as one of the marginalized groups noted above. This commitment to affirmative action and redressing past imbalances has offered an opportunity for some Ugandan women to participate in the politics of the country.

⁷ Kellough, *Understanding Affirmative Action*, 30.

⁸ Uduak Archibong, & Oluyinka Adejumo, "Affirmative action in South Africa Are We Creating New Casualties?" in *The Journal of Psychological Issues in Organizational Culture*, 2013, 3(1), 14-27.

⁹ Andrew Levy, *The Complete Guide to Affirmative Action and Workplace Discrimination* (Johannesburg: South Africa, 1994), 42.

¹⁰ Deb Johnson, Hope Kabuchu and Santa Vusiya Kayonga, "Women in Ugandan Local Government: The Impact of Affirmative Action" in *Gender and Development*, Vol. 11, No. 3, Citizenship, 2003, 8-18. Taylor & Francis, Ltd. Stable URL: <http://www.jstor.org/stable/4030556>. Henceforth will be referred to as Johnson, *Women in Ugandan Local Government*.

After becoming conversant with the history of affirmative action one can easily assume that the issue of discrimination is already overcome, and thus the irrelevance of affirmative action. To take it literally like that is illusory, since even up to date, there are some cases where people are treated with discrimination depending on their races, sex, and country of origin.

1.3. The Forms of Affirmative Action

Before mentioning the forms affirmative action takes, it is worth noting that, affirmative action involves efforts to reach out to members of groups that have historically suffered discrimination, and to encourage them to apply for jobs or other opportunities and in some instances to ensure that they receive training. According to Barbara MacKinnon, the idea suggested by the term affirmative action to remedy certain injustices requires doing more than following the negative requirement like; 'Do not discriminate' or 'Stop discriminating'. The only way to change things, is to do something more positive, which would change the established patterns of discrimination. One of the possibilities is to make a greater positive effort to find qualified persons from underrepresented groups. Thus, in hiring, a company might place advertisements in minority newspapers. In college admissions, counselors might recruit more actively among disadvantaged minority groups. Once the pool is enlarged, then all in the pool are judged by the same criteria, and no special preferences are given on the basis of race or sex.¹¹

1.3.1. Affirmative Action as Preference

In the approach of preferences, preference is given to minority group members or women who are as well qualified as other candidates. Preference also may be given to underrepresented group members who are somehow less well qualified than other applicants. This last part has raised many questions especially among the opponents of affirmative action; we shall deal with their views later on.

1.3.2. Affirmative Action as Goals and Quotas

Other systems of affirmative action are in the form of goals and quotas to be achieved for increasing minority or female representation. Goals are usually thought of as ideals that we aim for but that we are not absolutely required to reach. Goals can be formulated in terms of percentages or numbers. Quotas, in contrast, are usually fixed percentages or numbers that an institution intends to actually reach. Thus a university or professional school might set aside a fixed number of slots for its incoming first-year class for certain minority group members.¹² Affirmative action takes the form of recruitment and outreach efforts, goals and timetables, or other preferential strategies.

Affirmative action is usually practiced specifically in three domains: employment, education, and government contracting. Apart from these domains, Elizabeth Anderson identifies four models of race-based affirmative action: compensatory, diversity, discrimination-blocking, and integrative. The compensatory model represents racial preferences as a way to compensate for the effects of past discrimination. It aims to restore justice by undoing wrongs of the past. The diversity model represents racial preferences as a means to increase the cultural and epistemic diversity. This epistemic diversity enriches the educational mission of schools and the public discourse needed to advance democracy. The discrimination-blocking model represents affirmative action as a tool for counteracting continuing discrimination. The integrative model represents racial preferences as a means to racially integrate the main institutions of civil society. Integration is also needed to advance a democratic culture, by providing opportunities for citizens from all walks of life to communicate on matters of public interest.¹³

1.4. The Arguments for and against Affirmative Action

Here it is important to note earlier that the arguments for and against affirmative action programs rely mostly on consequentialist considerations for their justification. They are mainly utilitarian in nature and so their emphasis is on whether affirmative action programs do more good than harm or more harm than good. On the other hand,

¹¹ Barbara MacKinnon & Andrew Fiala, *Ethics Theory and Contemporary Issues*. (Cengage Learning; USA, 2015), 306. Henceforth will be referred to as MacKinnon & Fiala *Ethics Theory and Contemporary Issues*.

¹² Cf. Mackinnon & Fiala, *Ethics Theory and Contemporary Issues*, 307.

¹³ Elizabeth Anderson, *The Imperative of Integration* (Princeton: Oxford, 2010), 135.

other arguments base on deontological considerations. It is due to this fact that we need to examine briefly these two theories.

The Theory of Consequentialism

Consequentialism assesses the rightness or wrongness of actions in terms of the value of their consequences. An action is morally right if the consequences of that action are more favorable than unfavorable. Act-consequentialism is the most popular version of consequentialism. It states that, of all the actions open to the agent, the right one is that which produces the most good. In other words, the right action is the one which would produce the greatest balance of good over bad consequences; that is, the one which would maximize the good. Rule-consequentialism holds that an action is right if it is in accordance with a set of rules whose general acceptance would best promote the good consequences.¹⁴

Apart from act and rule consequentialism, there are other divisions of consequentialism which are worthy of our attention. These include; ethical egoism, ethical altruism and utilitarianism. Ethical egoism asserts that moral decision making should be guided entirely by self-interest,¹⁵ that is, an action is morally right if the consequences of that action are more favorable than unfavorable only to the agent performing the action. Ethical altruism holds that an action is morally right if the consequences of that action are more favorable than unfavorable to everyone except the agent. Altruism requires benefiting others merely for their sake, whereas the egoist insists that one's ultimate goal must be solely one's own good.¹⁶

Utilitarianism states that the morality of an action or policy is determined solely by its consequences. Utilitarians maintain that the desire for happiness is universal and that we intuitively recognize it as the greatest good. Happiness here is synonymous with pleasure, unhappiness with pain. Actions are right to the extent that they tend to promote overall happiness, and wrong to the extent that they tend to promote overall unhappiness.¹⁷ Briefly, utilitarianism stresses that an action is morally right if the consequences of that action are more favorable than unfavorable to everyone.

1.4.1. Arguments for Affirmative Action

1.4.1.1. The Arguments for Affirmative Action on Consequentialist Grounds

(i.) One of the major arguments for affirmative action is rooted in the value of diversity. Here the supporters have a strong belief that integration and diversity within organizations brings broadly desirable outcomes. This is based on the fact that racial, ethnic, and gender identities carry with them distinctive socialization experiences that often result in diverse values and perspectives. While all employees, regardless of background must accept their organization's fundamental mission, the presence of a diversity of views may help to ensure that effective options are not overlooked and that a wider range of possibilities is considered. In this sense, diversity is clearly valuable. It builds strength within the organization, and it may lead to greater productivity or improved performance, especially when an organization or group is confronted with a series of difficult or complicated tasks.¹⁸ Consequently, racial, ethnic, and sex diversity creates a diversity of information and perspectives that can ultimately be beneficial.

(ii.) Affirmative action in higher education may also ultimately assist in the alleviation of a range of other social difficulties. Within the overall goal of social equality, greater minority representation in professions like law and medicine is desirable for several reasons. Members of minority groups are more likely to work among their own people than those who come from the mainstream ethnic groups, and this may help to overcome the scarcity of doctors and lawyers in poor neighbourhoods where most members of disadvantaged minorities live. They may also have a better understanding of the problems disadvantaged people face than any outsider would have. Minority and

¹⁴ Edward, Craig, "Consequentialism" Routledge Encyclopedia of Philosophy Version 1.0, (London and New York: Routledge, 1998)

¹⁵ Brian Duignan, Ed., *The History of Western Ethics* (Britannica, Rosen: New York, 2011),149. Henceforth will be referred to as Duignan, *The History of Western Ethics*.

¹⁶ Edward, Craig, "Egoism and Altruism" Routledge Encyclopedia of Philosophy Version 1.0, (London and New York: Routledge, 1998)

¹⁷Judith A.Boss, *Analyzing Moral Issues*. (McGraw-Hill New York, 2013). 23.

¹⁸ Cf. Kellough, *Understanding Affirmative Action*, 78.

female doctors and lawyers can serve as role models to other members of minority groups and to women, breaking down the unconscious mental barriers against aspiring to such positions.¹⁹

(iii.) Affirmative action enhances democratic values, another view is that since affirmative action enhances integration in employment and educational segments of the society, there is no doubt that the core democratic values are enriched too. Democracy requires participation and inclusiveness, not only in the political process, but in all aspects of society. Democracy implies that all individuals and their views are valuable. According to this point of view, any efforts that promote inclusiveness, including affirmative action, also help to build a democratic culture. According to Elizabeth Anderson, the dismantling of barriers to opportunity, which have worked to the disadvantage of minority racial and ethnic groups and women, is essential for the promotion of a democratic civil society. This can be understood fully by looking at her views on democracy, she states that,

Democracy is a way of life that can be understood on three levels: as a membership organization, a mode of government, and a culture. As a membership organization, democracy involves universal and equal citizenship of all the permanent members of a society who live under a state's jurisdiction. As a mode of government, democracy is government by the people, carried out by discussion among equals. As a culture, democracy consists in the free, cooperative interaction of citizens from all walks of life on terms of equality in civil society. These three levels work together to realize universality and equal standing.²⁰

All the three levels mentioned by Anderson stresses universality and equality of members; this reveals why all efforts that promote inclusiveness like affirmative action shapes democracy.

(iv.) Some proponents like MacKinnon and Fiala argue that affirmative action is one way to break the vicious cycle of discrimination and inequality. Past discrimination has put women and some minority group members at a continuing disadvantage. Unless something is done, they will never be able to compete on an equal basis. These two argue that without affirmative action programs, things are not likely to change. Discrimination and its long-term effects are so entrenched that drastic measures are needed to overcome them.²¹

Deontological Theory

Deontological ethics, emphasizes notions of duty and obligation, that is, it stresses the rules and principles, which impose obligations we have a duty to fulfill. It is characterized by looking backwards for justification.

1.4.1.2. Arguments for Affirmative Action on Deontological Considerations.

(i.) The proponent's of affirmative action programs argue on the grounds that they provide compensatory justice, a way of compensating for past wrongs done to members of certain groups. Proponents of affirmative action also argue for a redistribution of opportunity, so that those who have been excluded in the past or those who are currently excluded will be fully included. They emphasize however, that since unjust discrimination has restricted opportunities for minorities and women, justice demands some form of compensation for losses suffered. To emphasize the need for compensatory justice as an aspect of affirmative action, Lyndon Baines Johnson, the 36th President of United States, states that; "You do not take a person who, for years, has been hobbled by chains, and liberate him, bring him to the starting line of a race, and then say, 'you are free to compete with all the others,' and still justly believe you have been completely fair."²² From this point of view, justice demands an end to discrimination and a just compensation for past and current discrimination.

(ii.) In the same line of argument Bill Shaw emphasizes that, under a distributive justice theory of affirmative action, group members are entitled to preferential treatment, not because society is admitting and paying for past errors, but because those persons deserve a greater 'shot' at the limited resources available simply in virtue of being members of the human community. Distributive theories require no admission of social or collective guilt; they

¹⁹ Peter Singer, *Practical Ethics* (Cambridge: New York, 1980), 43. Henceforth will be referred to as Singer, *Practical Ethics*,

²⁰ Elizabeth Anderson, *The Imperative of Integration* (Princeton and Oxford, 2010), 89.

²¹ Cf. MacKinnon & Fiala, *Ethics Theory and Contemporary Issues*, 308.

²² Kellough, *Understanding Affirmative Action*, 77.

merely require the acknowledgement that, from this time forward, society's resources be distributed on the basis of morally relevant factors.²³

Peter Singer summarizes the arguments for preferential treatment into two forms. He calls these forward-looking argument and backward-looking argument. Forward-looking argument justifies preferential treatment because of its supposed good consequences. Backward-looking argument justifies preferential treatment as compensation for past wrongful injuries.²⁴

1.4.2. The Arguments Against Affirmative Action

1.4.2.1. Arguments Against Affirmative Action on Consequentialist Grounds

(i.) Those who argue against affirmative action on consequentialist grounds usually maintain that it stigmatizes its beneficiaries. The argument here is that many people will see the success of minority group members or women as coming only from affirmative action and will assume that in the absence of affirmative action they would not have received the jobs, promotions, or college seats awarded. As a result, the beneficiaries of affirmative action are considered unworthy. Because, from this view, minorities or women received their positions only due to race, ethnicity, or sex, they were unjustly selected. Indeed, in some instances, the beneficiaries of affirmative action themselves may be filled with self-doubt.²⁵

This argument is similar to Thomas Sowell's view when he stresses that,

Affirmative action compromises the cooperation and collaboration of colleagues. This collaboration can be important in a variety of occupations from scholars to policemen. For example, some professors being thought of as "affirmative action" professors by their colleagues has led to less intellectual and research interaction, which in turn reduces the minority faculty's development as scholars. This can be a serious handicap in achieving one's potential. In life and death situations, such as those faced by the police, fire-fighters, and soldiers, mutual confidence is even more important. Yet black police sergeants promoted in Chicago over white policemen with higher test scores found themselves taunted as "quota sergeants" when they made mistakes.²⁶

From the above argument, one however, may ask whether such individuals receive their positions merely because of race or sex. From the perspective of the proponents of affirmative action, this is not true unless the policy is not properly applied. By echoing Bill's idea, this argument can be addressed by setting up certain minimum standards of competence that every applicant must meet, that is, applicants must demonstrate some basic degree of proficiency in order to qualify for the labor pool. It should be noted that by opening up opportunities for women and minorities, affirmative action broadens the talent base of business and leads to a recognition of the potential of these groups. A utilitarian argument would demonstrate that a refusal to employ these talents to their best use is wasteful, and further that affirmative action would benefit the general welfare, first by promoting minority role models, and secondly, by improving services for minority communities.²⁷

(ii.) Another basic argument against preferential forms of affirmative action is that such policies run counter to the widely shared American view that the individual is the relevant unit in society and that justice should be color (and usually sex) blind. In other words, individuals should be evaluated, not groups, and they should be judged on the basis of their personal merits. Individuals are the victims of discrimination, and the right to be free from injustice must be attached to them rather than to groups from which they may be drawn. From this perspective, then, no preference should be given on the basis of group identity or other characteristics unrelated to an individual's qualifications. A policy of strict nondiscrimination, with selection based purely on qualifications, would be more

²³ Bill Shaw, "Affirmative Action: An Ethical Evaluation" *Journal of Business Ethics* 7 (Kluwer Academic Publishers, 1988), 763-770. Henceforth will be referred to as Shaw, *Affirmative Action*,

²⁴ Peter Singer, *Blackwell Companions to Philosophy; A Companion to Ethics* (Blackwell Publishers Ltd, Oxford, 1991), 333. Henceforth will be referred to as Singer, *Blackwell Companions to Philosophy*,

²⁵ Cf. Kellough, *Understanding Affirmative Action*, 89.

²⁶ Thomas Sowell, *Affirmative Action Around the World. An Empirical Study* (Yale University Press New Haven & London, 2004), 15. Henceforth will be referred to as Sowell, *Affirmative Action Around the World*.

²⁷ Cf. Shaw, *Affirmative Action*, 763-770.

desirable than one relying on racial or gender preferences. Self-reliance and individualism are principles by which the economy is organized and citizenship is understood. Group-based preferences are anathema to those principles.

This line of argument is persuasive to many, but the defenders of affirmative action respond that history shows that groups, as well as individuals, are the targets of harmful activity. Violence directed toward individual members of specific racial groups, for example, has intimidated, threatened, and harmed all members of those groups, not just the individual victims of violence. Indeed, the purpose of such violence has often been to threaten and suppress entire groups. Shaw stresses that historical injuries cannot be separated from the present effects of history. He gives a classical example which involves seniority systems: in the past, black employees were demoted to the lowest paying positions in a company with no chance of elevating themselves. The higher paying jobs were restricted to whites only. After civil rights legislation prohibited such segregation in the work place, blacks were allowed to compete for and attain higher level positions. However, when it came to receiving employment benefits and avoiding layoffs, black employees suffered by virtue of past segregation. Due to their lack of seniority, black employees were denied employment benefits and fell victim to the 'last hired, first fired rule of seniority.'²⁸

(iii.) Another argument in opposition to affirmative action is that it is simply no longer needed. Given the advances that have been made for minorities and women, members of those groups are not nearly as disadvantaged as they have been in the past, and as a result, preferential practices cannot be defended on any grounds. Promoters of affirmative action usually acknowledge that one day, hopefully, a point will be reached when such programs truly are no longer needed. The essential question, from their position, is whether that point has already been reached. Affirmative action is supported by its proponents as a way of increasing the representation of minorities and women in areas where they are underrepresented. Affirmative action may be justified less frequently than before, but still, in areas where underrepresentation persists, preferential affirmative action may be necessary. Discrimination against minorities and women has not been completely eradicated, according to supporters of affirmative action.

(iv.) Sowell in his views against affirmative action states that; just as we cannot presuppose continuing control over the scope and duration of preferential policies, so we cannot simply assume what will actually happen to those designated as the preferred groups. Both the preferred and non-preferred groups react in their own ways. Some of the reactions include re-designating themselves, altering their own efforts and attitudes toward achievement, and altering their attitudes toward members of other groups. One of the reactions of members of non-preferred groups has been to get themselves re-designated as members of the preferred group.²⁹

(v.) Another argument against affirmative action process is that minor transfers of benefits can cause major resentments among far more people than those who have actually lost anything. Moreover, these resentments do not end with political or legal actions. In India, where preferential policies have a longer history than in the United States, they have also had more bitter consequences. Forty-two people died in riots over the seven places reserved for untouchables in a medical school in the state of Gujarat.³⁰

(vi.) Some opponents of affirmative action argue that affirmative action harms white men. From this perspective, affirmative action will not only operate to benefit the wrong individuals, it also places the cost of compensation for past or present discrimination on people who may not be guilty of discrimination themselves. White men are unfairly harmed by affirmative action. It is, in effect, reverse discrimination. Instead of being allowed to compete fairly for employment or other valued positions, non-minority men suffer the disadvantage of competing against those who receive preferential consideration.

Here it is important to note that, the argument for affirmative action relies in part on the assertion that to have a broader distribution of opportunities, the proportion of positions held by white men must decline. As society moves from a system that has worked to the advantage of white men, because of discrimination against minorities and women, to a system where minorities and women are granted a greater share of opportunity, opportunities for white men will be reduced. As noted earlier, this is the re-distributive nature of affirmative action. Proponents

²⁸ Cf. Shaw, *Affirmative Action*, 763-770.

²⁹ Sowell, *Affirmative Action Around the World*. 9.

³⁰ Marc Galanter, *Competing Equalities. Law and the Backward Classes in India* (California: London, 1984), 448.

suggest that this propels society from a non-competitive to a competitive system. From this perspective, affirmative action is not reverse discrimination. Stanley Fish has argued, for example, that “to equate the efforts to remedy the plight of racial minorities with the actions that produced it is to twist history.” Fish charges further that to suggest that affirmative action treats white men unfairly is to suggest that their situation is equal to that of minorities.³¹

In addressing both the unfairness and inefficiency claims of affirmative action, Shaw notes first that,

Whatever injury white males incur does not give rise to a constitutional claim because the damage does not derive from a scheme animated by racial prejudice. If white males are deprived of anything, it is the expectation of unearned position. Only because they stand to gain so much from past discrimination do they stand to lose from affirmative action. But white males are not excluded on the basis of racial prejudice; they are excluded because of a rational calculation about the socially most beneficial use of limited resources. While these individuals may not have discriminated, they have received the benefits of a society that has discriminated and has supplied them better education and better economic conditions.³²

From this view, there is no reason for the opponents of affirmative action to emphasize that it is reverse discrimination since the white males do not suffer because of the prejudices based on race and gender as the minority and women do.

1.4.2.2. Arguments Against Affirmative Action on Deontological Grounds

(i.) Some non-consequentialist critics also argue against affirmative action on grounds of its injustice. They appeal to the principle of equality, arguing that race and sex are irrelevant characteristics that should not be recognized by government policy. Just as it was wrong in the past to use these characteristics to deny people equal chances, so it is also wrong in the present, even if it is used this time to their advantage. Race and sex are not differences that should count in treating people differently, they argue. Preferences for some also mean denial of benefits to others. Barbara MacKinnon stresses that those who oppose affirmative action based on considerations of justice will succeed if they can effectively apply the principle of equality to their arguments. The opponents may argue, for example, that affirmative action singles out some groups for special treatment in a way that is inconsistent with the idea of equality. But if opponents rely primarily on the harms done by continuing to use race or sex as grounds for differential treatment, then they will be appealing to a consequentialist consideration and must be judged on that basis.³³

Generally, basing on the above arguments against affirmative action, it is clear that they are resting so heavily on myth and misunderstanding. It is also important to note that most of the assessments for and against affirmative action are grounded on consequentialist views of which as mentioned earlier, has some loopholes.

Consequentialist theories are good, but they cannot give us a philosophical foundation for affirmative action. They all focus on the consequences; Act consequentialism requires that in deciding what to do, someone has to calculate and see what would produce the most good on any particular occasion when one is called upon to act. In instances where the agent lacks time and knowledge, this may not be efficient.³⁴ Apart from that, the consequences of affirmative action may be good or bad depending on those initiating it. If they are egoists, the consequences they will focus on, will only be for their own good. If they are altruistic, they will focus on benefitting others and excluding themselves. If they are utilitarians, they will look forward to the greatest happiness of the greatest number and thus excluding the minority. Thus after considering these views, the researcher opts for Kant's deontological ethics for the foundation of affirmative action. Meanwhile, at this juncture, let us focus on the current issues which necessitate affirmative action.

³¹ Kellough, *Understanding Affirmative Action*, 88.

³² Shaw, *Affirmative Action*, 763-770.

³³ Cf. MacKinnon & Fiala, *Ethics Theory and Contemporary Issues*, 309.

³⁴ Cf. Edward, Craig, “*Consequentialism*”.

1.5. The Current Issues Which Necessitate Affirmative Action

1.5.1. Disability

Disability may involve different types, for example, physical disability, where someone may be unable to walk or to see, intellectual disability or learning disability like dyslexia. Certain mental health issues may also be a form of disability. Disability could also mean that you suffer from a particular medical condition, which is potentially chronic, long-term, debilitating or that gets worse over time.³⁵

According to Singer, disabled people by definition are lacking at least some ability that normal people have. Their disabilities will sometimes mean that they should be treated differently from others. For example, if we are looking for firefighters, we can justifiably exclude someone who is confined to a wheelchair; and if we are seeking a proofreader, a blind person need not apply. The fact that a specific disability may rule a person out of consideration for a particular position does not, however, mean that, that person's interests should be given less consideration than those of anyone else. Nor does it justify discrimination against disabled people in any situation in which the particular disability a person has is irrelevant to the employment or service offered.³⁶ Singer emphasizes that,

For centuries, people with disabilities have been subjected to prejudice, in some cases no less severe than those under which racial minorities have suffered. Disabled people have been locked up, out of sight of the public, in awful conditions. Some were virtual slaves, exploited for cheap labour in households or factories. Under a so-called euthanasia program, the Nazis murdered tens of thousands of intellectually disabled people, many of whom were enjoying their lives but were deemed 'useless mouths' and a blot on the Aryan race. Similar arguments were used against employing members of racial minorities. We can best overcome such prejudices by becoming more familiar with people who are different from us, which will not happen if they are not employed in positions where they meet members of the public.³⁷

These ideas are just to stress the urgency in considering the interests of the disabled, since they too, regardless of their disabilities, are human beings.

There is a need to ensure that a legislation that prohibits discrimination on grounds of race, ethnicity or gender also prohibits discrimination on the grounds of disability, unless the disability can be shown to be relevant to the employment or service offered. Many of the arguments for affirmative action in the case of those disadvantaged by race or gender apply even more strongly to people with disabilities. Mere equality of opportunity will not be enough in situations in which a disability makes it impossible to become an equal member of the community. For example, giving disabled people equal opportunity to attend university is not of much use if the library is accessible only by a flight of stairs that they cannot use. Many disabled children are capable of benefiting from normal schooling but are prevented because additional resources are required to cope with their special needs.³⁸

1.5.2. Human Trafficking

Human trafficking is commonly used to describe a form of modern-day slavery wherein victims are coerced into labor or sex both across and within states and international borders. The United Nations defines human trafficking as the recruitment, transportation, transfer, harboring or receipt of persons, by means of the threat or use of force or other forms of coercion, of abduction, of fraud, of deception, of the abuse of power or of a position of vulnerability or of the giving or receiving of payments or benefits to achieve the consent of a person, having control over another person, for the purpose of exploitation. Exploitation includes sexual exploitation, forced labor, slavery or practices similar to slavery, servitude or the removal of organs.³⁹ Human trafficking from this definition reveals that it is dynamic and opportunistic, it takes advantage of conflicts, humanitarian disasters, and the vulnerability of people in situations of crisis. Human trafficking is modern-day slavery and so it violates human rights.

³⁵ Irish Human Rights and Equality Commission, *Your Equal Status Rights Explained: Guide to the Equal Status Acts 2000-2012*. 16-22 Green Street, Dublin 7, D07 CR20. https://www.ihrec.ie/download/pdf/ihrec_equal.

³⁶ Cf. Singer, *Practical Ethics*. 45.

³⁷ Singer, *Practical Ethics*. 46.

³⁸ Cf. Singer, *Practical Ethics*. 46.

³⁹ Cf. Alexis A. Aronowitz, *Human Trafficking, Human Misery; The Global Trade in Human Beings* (Westport: London, 2009), 1-2.

1.5.2.1. Ethical Concerns on Human Trafficking

The underlying idea behind Kantian ethics is that every person, by virtue of his/her humanity, has an inherent dignity. Apart from Kant's emphasis on human dignity, article 1 of the Universal Declaration of Human Rights, which was adopted by the United Nations on December 10, 1948, begins with the statement that: "All human beings are born free and equal in dignity and rights." The Preamble to the Declaration also speaks of human dignity and human rights in the same breath. It reaffirms the "faith in fundamental human rights, in the dignity and worth of the human person." The first sentence of the Preamble calls at the same time for recognition of the "inherent dignity" and the "equal and inalienable rights of all members of the human family."⁴⁰ Hence considering such acts as human trafficking in human.

According to utilitarianism, the rightness or goodness of an act is to be understood wholly in terms of its consequences. The consequence of the act is the one which determines the morality of an act. In other words, we may use whatever means which we perceive necessary to an end that increases happiness. An act is right insofar as it maximizes the utility or happiness for the greatest number.

This principle poses a great danger regarding human trafficking, as it may not answer whether it is morally right or wrong. For example, sex trafficking would be good if it proves income for the sex worker and pleasure for the customer, or bad if it corrupts the morals of the society. Human trafficking would seem to benefit the trafficker only and do harm to the exploited and so be judged wrong because it harms more people than those it benefits. Thus, it can be said that utilitarianism seems to have an unclear stand on whether human trafficking is moral or not. Utilitarian principles often run contrary to individual's rights, and while utilitarian decisions benefit the majority at the expense of the minority, the minority's rights may not be taken into account.

Generally, I can say that human trafficking as a practice is unhuman. It violates human rights and devalues the dignity of a human person. It is opportunistic and it takes advantage of conflicts, humanitarian disasters, and the vulnerability of people in situations of crisis. Many people have suffered so much because of it to an extent of losing their lives. Although there are other forms of human trafficking like; forced labor, debt bondage, sex trafficking, is the most common one. Women and girls make up 80% of the people trafficked for sex. By applying Affirmative action programs, with their goal of reaching to the minority and women this moral issue can be combated and this should be the goal of every nation suffering from human trafficking.

1.5.3. Bullying

Bullying is generally used to describe a repeated pattern of behavior that seeks to threaten, humiliate, and diminish the self-confidence and esteem of the target and to destroy his or her ability to effectively function and perform. In other words, bullying is the willful, conscious desire to hurt or threaten someone else. Kimberly Frazier in his article suggests that for incidents to be labelled bullying there must be; an imbalance of power between the bully and the person bullied, the behavior must occur in a long-term time frame and also where those bullied find it difficult to defend/retaliate against the bullying behavior.⁴¹ Bullying takes different forms; the following are some of them.

1.5.3.1. Physical Bullying.

Physical bullying is more than punching and kicking and can assume indirect forms, including taking possessions, damaging property or school work with a view to dis-empower. Included in such forms of bullying is extortion, where threat of violence leads to the victim giving up money or possessions, and the threat of violence or gestures and body language that is intimidating. Physical bullying may also be based on race, for example, the whites and blacks, Chinese and blacks.

⁴⁰ Claudio Corradetti Ed. *Philosophical Dimensions of Human Rights. Some Contemporary Views* (Springer Dordrecht Heidelberg London New York, 2012), 63-64.

⁴¹ Kimberly Frazier, *Academic Bullying: A Barrier to Tenure and Promotion for African-American Faculty*. Florida Journal of Educational Administration and Policy. 2011, 5. Henceforth will be referred to as Frazier, *Academic Bullying*.

1.5.3.2. Verbal Bullying.

This is one of the most common forms of bullying and it can have an immediate impact, it is often done in front of an audience, with very little effort on the part of the perpetrator. Name-calling and offensive, threatening and insulting remarks are all forms that this can take and can be directed at or seek to create vulnerable groups. Sexual orientation, ethnic group and learning difficulties are all catalysts for those seeking power at the expense of others. The advent of bullying by mobile phone and computers provides new means by which verbal bullying can be carried out away from the physical presence of the victim.⁴²

1.5.3.3. Social Bullying.

This form of bullying incorporates deliberate exclusion from social groups or intimidation within the group. Like other forms it can be direct, with exclusion experienced by the victim, or it can be indirect, that is, carried out away from the victim and not experienced by them until they are informed of it or they attempt to join the group.⁴³

1.5.3.4. Workplace Bullying in Universities

The notion of the university as a 'sanctuary of like-minded scholars' and supposedly 'rational workplace' according to Professor Divya Singh has, in some instances, become an environment characterized by harassment and bullying. Unlike the school environment and bullying between scholars, bullying in the university is seldom a public act and almost never includes physical violence. Despite the fact that this bullying lacks physical violence however, it is more demoralizing since it remains unexpected. A bully in the university workplace is usually quite conscious of the environment. Therefore, different from the school-ground bully, they do not engage in acts of physical assault and bloodied noses, their behavior is more insidious.⁴⁴ In the university set-up, the bully, whether in the management, the academic departments, and the administrative or professional support staff identifies the target and wears him down through emotional and psychological battering.

1.5.3.5. Mobbing as a Type of Workplace Bullying

Another form of bullying commonly used in universities is called mobbing, what makes it fundamentally different is that it involves a group of people directly interacting with the target in a way that causes harm. The case of Justine Sergent is an excellent example of how mobbing can take place in the university. Justine Sergent born in 1950 and died in 1994, was a researcher in the field of cognitive neuroscience. She was an associate professor of neurology and neurosurgery at the Montreal Neurological Institute at McGill University from 1979 to 1982. Sergent was considered a top scientist in her field, until she was anonymously accused of violating research ethics. The stress of the attack on her character and on her research was so much that she and her husband committed suicide together less than two years later. Three years after her death, the inquiry was unable to come up with any evidence of fraud.⁴⁵ Apart from death, bullying in the university set-up can have seriously debilitating effect on the careers, health, well-being, and relationships of the targets. Once such cases are noticed, affirmative action is necessary to uplift such elites who turn out to be underprivileged.

1.5.3.6. The Ethical Views on Bullying

As a remedy for overcoming bullying in schools and outside the classroom, ethics education is necessary. Ethics education at a young age can teach young people values such as respect, responsibility, accountability, caring, compassion, and empathy and all the essential characteristics of an ethical person. Virtue ethics here can be applied since it is based on the virtues of the mind and character. Virtuous people will naturally act morally. Like any other types of ethics education, when it comes to bullying, the discussion should focus on the rights of the bullied, that is, freedom to be whatever a person wants to be without ridicule or harmful behavior targeted against that person. We may not like what a person stands for or how one acts, but that person has a right to be that way and as long as the behavior does not harm another, it should be respected and accepted.

⁴² Cf. Frazier, *Academic Bullying*.

⁴³ Chris Lee, *Preventing Bullying in Schools. A Guide for Teachers and Other Professionals*. (Paul Chapman Publishing, 2004) 9.

⁴⁴ Divya Singh, Online module developed for Globethics.net <https://www.globethics.net/academy>.

⁴⁵ Kenneth Heilman, "Justine Saade Sergent: Neuropsychologist extraordinaire March 31, 1950–April 11, 1994." *In*

The Journal of the International Neuropsychological Society, 1996, 2(5),474-474.

Ethics education focused on bullying should teach young people to examine the consequences of their actions to the bullied, the family and the school. This will help the bullies to learn that their actions have consequences. The best theory for this is the one of consequentialism. It assesses the rightness or wrongness of actions in terms of the value of their consequences. The most popular version is act-consequentialism; it states that, of all the actions open to the agent, the right one is that which produces the most good.⁴⁶ Thus according to consequentialism, the consequences of one's conduct are the ultimate basis for any judgment about the rightness or wrongness of that conduct.

Apart from consequentialism, in ethics we teach the universality of one's actions. It is based on the Kantian categorical imperative that we should act in ways that we would want others to act in similar situations for similar reasons. In other words, we ought never to proceed except in such a way that we could also will that my maxim should become a universal law.⁴⁷ Since we do not want to be bullied so we should not bully others. It goes back to the *Golden Rule* that, treat others the way you want to be treated.

From an ethical point of view, bullying is evil no matter the age of a person; no one would wish to be bullied. The use of force, threat, or coercion to abuse, intimidate, or aggressively dominate others is unethical and it violates people's freedom and rights. Bullying dehumanizes a person and as already mentioned, it has a serious impact on the victim's life, where majority choose death in such experiences. It is also important to note that the root cause of bullying is mainly discrimination based on sex, race, and ethnicity to mention but a few. Affirmative action programs appeal to everyone to be sensitive and concerned of the victims of bullying practices. We should be available to them and show interest in their lives. Not forgetting that there is a need to build trust so that the victims can be able to open up.

1.5.4. Pornography

Etymologically, the word pornography is derived from the two Greek words '*porni*' and '*graphein*'. '*Porni*' means prostitute and '*graphein*' means to write. Thus the original meaning of pornography is based on any work of art or literature portraying the life of prostitutes.⁴⁸ Later on the term pornography meant the depiction of women as prostitutes, and although this may now appear an inappropriate definition, some feminists have appealed to it as part of an argument for the legal restriction of pornography. Consequently, Andrea Dworkin and Catharine MacKinnon have proposed that pornography be defined as 'the graphic, sexually explicit subordination of women whether in pictures or in words', and they go on to include within the definition representations in which women are presented dehumanized as sexual objects. Some people however find this definition contentious for a number of reasons. First, it seems unduly restrictive, since it excludes, for example, gay pornography and child pornography. It also limits prostitution to women yet there are men prostitutes too. Some writers however, have proposed a 'neutral' definition of pornography, which aims to identify pornographic material by reference to its degree of sexual explicitness and to leave open the question whether such explicitness is morally objectionable or an appropriate object of legal restriction.⁴⁹

1.5.4.1. The Ethical Views on Pornography

There is a considerable dispute about whether and why pornography is morally wrong, and about whether the nature of any wrongness is sufficient to justify legal restriction or prohibition. Some argue that pornography corrupts those who consume it. Indeed, this claim is built into the current British law governing obscenity, which defines material as obscene when it has a tendency to deprave and corrupt those who are likely to read, see or hear it. Still on the wrongness of pornography, is the Dworkin-MacKinnon Ordinance, which construes pornography as a supplier of sexist images of women and a corrupting influence on society. For them, pornography acts as a kind of moral poison in the society, and can serve to legitimize contemptuous attitudes towards women, and possibly even sexual violence against them.

⁴⁶ Edward. Craig, *Routledge Encyclopedia of Philosophy*, Version 1.0, under '*consequentialism*' (London and New York: Routledge 1998)

⁴⁷ Callanan, *Kant's Groundwork*, 41.

⁴⁸ John Philip Jenkins, "*Pornography*" in the *Encyclopedia Britannica Inc.* Feb. 10, 2020. URL: <https://www.britannica.com/topic/pornography>. Accessed on 21/06/2020.

⁴⁹ Cf. Edward, Craig., *Routledge Encyclopedia of Philosophy* Version 1.0, under '*pornography*' (London and New York: Routledge, 1998)

Looking at these two cases, generally one can conclude that, there is no doubt that obscene material, and pornographic material in particular, is morally damaging, this can be to the individuals who consume it or to society in general. Some people however avoid reference to moral harm and they only deem it wrong in so far as its production involves the infliction of physical harm, or if it causes offence to innocent and unwilling observers. Currently, the level at which pornography is practiced is very high and diverse. However, due to the fact that it has an element of discrimination based on sex, affirmative action is necessary to reach out to the minority and women who are deeply involved in this and find a way out for them. This may not be only for the advantage of the few but for the entire society.

Conclusion

Generally, after exploring affirmative action, one can easily note that human dignity and individual moral worth are the ideas behind these programs. Unjust discrimination which bases people's actions on prejudices rather than relevant differences is what affirmative action fights. Discrimination entails treating people differently basing on their group membership. Racial discrimination for example can include many forms like, hate speech, being indifferent to evil acts like genocide, human trafficking, prostitution, bullying to mention but a few. All these lower the dignity of the human person. An ethical theory which upholds human dignity is necessary to back up the goals of affirmative action. This is the researcher's move in the subsequent article.

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