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“Restoring the Dignity of the Victims”
Rectificatory Justice and Affirmative Action in University Admissions

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In 2006, the State of Michigan passed Proposal 2, an amendment to the Michigan Constitution which effectively banned affirmative action and race-conscious admissions policies for Michigan universities. Despite arguments that this prevented ethnic and racial minorities from advocating their constituents be specifically granted the opportunity of higher education, the Supreme Court upheld Proposal 2 as constitutional in the 2014 case Schuette v. Coalition to Defend Affirmative Action (“Schuette v. Coalition to Defend Affirmative Action” 1). In his concurring opinion, Chief Justice John Roberts stated “the way to stop discrimination on the basis of race is to stop discriminating on the basis of race.” Conversely, Justice Sonia Sotomayor wrote in her dissenting opinion “the way to stop discrimination on the basis of race is to speak openly and candidly on the subject of race, and to apply the Constitution with eyes open to the unfortunate effects of centuries of racial discrimination” (Rothstein 1). Both Justices demonstrate a desire to remedy the injustices of racial discrimination with which the United States has wrestled for years but take radically different approaches to resolving the issue. In Book II of Aristotle’s work Nicomachean Ethics, he lays out the Doctrine of the Mean – the idea that justice exists when all are given what is due them, and injustice when there is too much or too little assigned to a particular group or individual (1106a26-b28). Applied to race relations, we would interpret this Doctrine to mean that racial minorities are the victims of injustice when they are not given what they are due as individuals. Later in Book V, Aristotle devises a means through which such injustices may be redressed which he terms “rectificatory justice.” When distribution of a good, privilege, or ability has not occurred in a just manner, rectificatory justice may be employed as a method of what the United Nations would call “restoring the dignity of the victim(s)” (2009 Durban Review Conference Outcome Document 8.63). In this paper I will argue that, in the interest of rectificatory justice, race-conscious university admissions policies are still necessary today to account for centuries of discrimination experienced by minorities.

I will begin my discussion by taking a brief look at historical racial discrimination policies in the United States and examine their negative effects on racial minorities, giving particular emphasis to African Americans in the fields of university admissions. From this foundational perspective, I will causally link the victimization of racial and ethnic minorities through such involuntary transactions to Aristotle’s conception of injustice and demonstrate a need for rectificatory justice in the form of affirmative action university admissions policies. In this manner, I plan to refute the notion intimated by Justice
Roberts that the most appropriate way to address racial discrimination is to feign colorblindness. Aristotle concludes in Book I of *Nicomachean Ethics* that “happiness, then, is the best, noblest, and most pleasant thing in the world” (1099a 24-25). Similarly, the United States Declaration of Independence finds that all have the right to “the pursuit of happiness.” So long as we pretend to live in a post-racial society – a society where race has no affect on the educational outcomes of an individual – we ignore the inherent injustice of unequal educational distribution among Americans, impede prominent factions of United States’ citizens from their own pursuits of happiness, and fail to make appropriate restitution for historic disenfranchisement of minority groups.

**THE RACE GAP IN HIGHER EDUCATION: CAUSES AND RESULTS**

More than ever before, becoming a successful member of the American workforce requires a college education. Thus, it follows reasonably that to eliminate disparities between white Americans and racial minorities and facilitate achievement for all citizens, adequate access to postsecondary education is essential. According to a 2011 report by the American Council on Education *Minorities in Higher Education*, rates of college enrollment have increased over the past several decades among all racial groups. While superficially this appears to be good news, closer analysis revealed that the disparity between African American enrollment and white enrollment actually widened between 1990 and 2009 by two percentage points. African American enrollment also increased at one of the slowest rates when compared to those of other racial minorities such as Hispanics and Asian Americans (2). While whites and Asian Americans demonstrated a higher level of achievement than their elders, African Americans did not (1). With the knowledge that minorities have historically attained the lowest levels of education, these groups should be targeted as groups whose access must be improved.

An examination of the circumstances and policies that have created and perpetuated racial disparity in American society grants nuance to the divisions seen in the present day. While early policy solutions such as the Voting Rights Act of 1865 and *Brown v. Board of Education* were intended to remedy the injustices of slavery in the United States, new laws were often bent or broken by white Americans with greater political and social capital to such an extent that conditions improved little for African Americans until the mid to late 1900s. Jim Crow laws, poll taxes, lynching, and other horrors in the American South caused a mass exodus of nearly 6 million African Americans to the North over the course of the 20th century known as the Great Migration. Migrants believed they would find the equal legal protection granted them under the 14th Amendment but in fact discovered they were trading one hell for another. This new terror was encompassed in a single word: redlining. In his article for *The Atlantic* *The Case for Reparations*, Ta-Nehisi Coates describes the plight of African Americans seeking to become homeowners between the 1930s and 1960s:

“The Federal Housing Authority had adopted a system of maps that rated neighborhoods according to their perceived stability. On the maps, green areas, rated ‘A,’ indicated ‘in demand’ neighborhoods that, as one appraiser put it, lacked ‘a single foreigner or Negro.’ These neighborhoods were considered excellent prospects for insurance. Neighborhoods where black people
lived were rated ‘D’ and were usually considered ineligible for FHA backing. They were colored in red. Neither the percentage of black people living there nor their social class mattered. Black people were viewed as a contagion. Redlining went beyond FHA-backed loans and spread to the entire mortgage industry, which was already rife with racism, excluding black people from most legitimate means of obtaining a mortgage” (Chapter I).

With the home ownership movement of the 20th century came one of the most concentrated accumulations of wealth in American history. However, redlining effectively barred African Americans from stability of such asset acquisition, turning an already wide wealth disparity between races into a veritable chasm. As Coates states, “If you sought to advantage one group of Americans and disadvantage another, you could scarcely choose a more graceful method than housing discrimination” (This Town Needs A Better Class of Racist 1).

In their book Black Wealth/White Wealth, Melvin L. Oliver and Thomas M. Shapiro describe the long-lasting effects of housing discrimination on the black community. They found that “it generally takes years and years to accumulate substantial wealth assets” and noted a “powerful connections between wealth accumulation and the life cycle” (113). African American parents who were interviewed by the authors described that their primary desire for their children was “to have the chance to get a good education, to go to the right college, and to start their lives on the ‘right track.’ Assets were viewed as crucial to fulfilling these desires” (125). And after centuries of discrimination and a seemingly endless game of catch-up, who can blame them?

The authors are not the first to draw a causal link between discriminatory public policies and today’s higher education race gap. Richard Rothstein, senior fellow of the Chief Justice Earl Warren Institute on Law and Social Policy at the University of California (Berkeley) School of Law recently authored an article for the Washington Post entitled Why race-based affirmative action in college admissions still matters in which he argued that “federal housing policy in the mid-twentieth century explicitly forbade suburban developers from selling homes to African Americans, how black working-class families consequently did not acquire wealth from housing equity appreciation as did white working class families, and how, as a result, African American families who were denied the opportunity to move to the suburbs have been less able to afford to send their children, and their children’s children to college. Race-based affirmative action can help to remedy this result” (Rothstein 1).

THE AFFIRMATIVE ACTION DEBATE
While there is a more general consensus on the existence of racial disparity in modern society and the need for remedy, whether affirmative action may serve as a viable solution has been a hotly debated topic for decades. Gerald Early, Director of the Center for Joint Projects in the Humanities and Social Sciences at Washington University outlines the concerns on both sides of the affirmative action debate in a recent article for the Washington Post. Regarding the American political tableau, conservatives find meritocracy to be the most advantageous way to grow and advance society. Applied to university admissions policies, pundits and policy makers on the political right find the
prioritizing of individuals based on group identity rather than personal merit alarming, possibly going to far as to intensify “racial consciousness by creating a compensatory racial caste system as a form of bourgeois patronage” (Early 1). American liberals take a differing perspective on the issue. By providing increased access to racial minorities, particularly African Americans, society begins to make some form of reparation for the injustices of the past, and to a certain degree the injustices of the present. Affirmative action university admissions policies provide an avenue to integrate the subgroups to form a more cohesive society and ensure a greater degree of economic equality. Certainly the elimination of wealth and achievement difference in society is not the aim, but ensuring these differences do not fall along the lines of racial identity is necessary for a healthier America.

ARISTOTLE, RECTIFICATORY JUSTICE, AND AFFIRMATIVE ACTION

As was mentioned at this paper’s outset, the political philosophies of Aristotle prove to be particularly applicable to the debate over how to close achievement gaps in higher education. As the philosopher presents in his work *Nichomachean Ethics*, injustices occur in the form of involuntary transactions. While Aristotle presents involuntary transactions in the more tangible forms of theft and assault, the concept may be applied to more nebulous circumstances such as the deprivation of opportunity or theft of success. As our historical perspective demonstrated, the African American community has been the subjected to a multitude of involuntary transactions since the advent of slavery, some of which continue today. Under Aristotle’s model, involuntary transactions and injustice may be identified according to the Doctrine of the Mean, in which one party has more and another party less than their given due. In these cases, rectificatory justice is necessary and should be administrated by competent judicial intervention to restore what has been taken from the disadvantaged party. In short what has been stolen must be transferred from the thief to the victim of the theft. In the racial kleptocracy of pre-civil rights America, it is clear the African American community fits both Aristotle’s description of the victim and model of a party in need of such restorative justice.

In another work of Aristotle’s *Politics*, he states “no one will doubt that the legislator should direct his attention above all to the education of the youth,” adding that, “since the whole [society] has one end, it is manifest that education should be one and the same for all…[citizens] belong to the state, and are each of them a part of the state, and the care of each part is inseparable from the care of the whole” (Book 8, Part I). Taken together, it would appear Aristotle has made a convincing argument for race-conscious university admissions policies. Before drawing this conclusion, however, we must address a seemingly contradictory discussion of merit in *Politics* Book 3, Part XII: the metaphor of the flautist. Aristotle uses flute players as an example of why those who are the highest achieving or most qualified should receive the greatest rewards, stating:

“When a number of flute players are equal in their art, there is no reason why those of them who are better born should have better flutes given to them; for they will not play any better on the flute, and the superior instrument should be reserved for him who is the superior artist. If what I am saying is still obscure, it
will be made clearer as we proceed. For if there were a superior flute player who was far inferior in birth and beauty, although either of these may be a greater good than the art of flute playing, and may excel flute playing in a greater ratio than he excels the others in his art, still he ought to have the best flutes given to him, unless the advantages of wealth and birth contribute to excellence in flute playing, which they do not.”

Seemingly Aristotle is using this metaphor to argue for the meritocratic side of the debate examined above. It is here that we must make an important distinction between Aristotle’s discussions. As may be seen from the philosopher’s Book 8 discussion, education is discussed as a nurturing process that grows individuals towards being productive members of society. As such, it is only right that educational outcomes be a primary concern of the legislator. In contrast, Aristotle’s Book 3 discussion of the flautist sets a framework of individuals who have received all the training necessary to compete in a competitive market, in this case the competition for the resource of the best flute. Certainly there will always be talent and merit discrepancies within society. This paper does not seek to argue otherwise or encourage societal structure where all are confined to remaining on the same playing field. However, within the framework of the flute lesson, this paper seeks to argue that while all may not be competitive enough to receive the best flute, all deserve the opportunity to receive flute lessons. For the sake of our argument we will make flute lessons and their distribution analogous to the distribution of education capital, specifically university admissions. Here, we separate the field of affirmative action into separate spheres. The expressed advocation for race conscious university admissions policies and affirmative action in the workplace may be seen as similar but different. By employing the political philosophies of Aristotle it is possible to argue in favor of one without an obligation to defend the other.

Integrating these three texts from *Nicomachean Ethics* and *Politics* an argument begins to emerge in favor of affirmative action university admissions. To begin, we have large groups of citizens within society who have been the victims of involuntary transactions beginning with slavery and followed by decades of discriminatory public policies and societal prejudice. According to Aristotle, rectificatory justice is the appropriate manner through which to restore to these groups what has been taken from them. Next, we have Aristotle’s argument for the tantamount importance of educating all citizens if society is to grow and progress. Finally, we have the final argument that only through accessible training (i.e. flute lessons) are individuals able to compete for resources within the framework of society. The latter is of particular significance in the capitalist society of the United States, where resources and capital are both competed for and necessary for success. I would argue Aristotle makes a competitive case on behalf of affirmative action university admissions policies and would side with Justice Sotomayor if sitting on the bench today.

To a certain extent, societal competition is healthy and has propelled America forward in a multitude of areas spanning from scientific research to the fine arts. However, the United States has also propagated a legacy of being an environment where all are presented with equal access to social mobility. The debate
between how to appropriately balance and reconcile these ideas that sometimes find themselves at odds has been ongoing since the signing of the Declaration of Independence, our foundational document which guarantees all the right to the pursuit of happiness. I hope that I have contributed to this discourse as we seek how to provide Americans everything that is owed them.

We praise our nation as the Land of Opportunity and the great Melting Pot, establishing an image that we are a country where no matter your race, ethnicity, or socioeconomic background, success is yours for the taking. Surveying disparity in America today, an unfortunate reality is that not all citizens of our country are able to relate to this narrative, particularly certain racial minorities. The wealth gap between whites and African Americans is particularly concerning, and strong evidence that we have no reached a post racial society.

Horace Mann once said “Education then, beyond all other devices of human origin, is the great equalizer of the conditions of men, the balance-wheel of the social machinery.” If we are truly serious about becoming the nation America portrays itself to be, it is time to begin ensuring disparity no longer occurs along the lines of race or color. It is time to right past wrongs and distribute the rectificatory justice Aristotle calls for. It is time to equalize our society by protecting affirmative action university admissions policies. Only in this manner will we move into the bright future where the United States truly is the Land of Opportunity for every American.

BIBLIOGRAPHY


