24.236 Final Paper
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As a student of a top tier university in America, affirmative action is a very relevant issue to me. I have very highly qualified friends from home not eligible for affirmative action who did not get accepted into the top universities. I also have made many friends during my time here who did not have the strongest pre-college backgrounds but have thrived here due to the chance that affirmative action has given them. Despite affirmative action being an issue that continues to be pertinent to my life and the lives of those around me, it is an issue that I have found difficult to form an opinion on. Affirmative action is inherently a very controversial policy that is produced from considerations from a wide variety of areas including but not limited to justice, social policy, and economic freedom. Due to the intricacies in how these considerations overlap, I have always erred on the side of caution in forming an opinion on affirmative action with the fear of missing some important consideration or lacking some historical context. This paper will provide a survey of arguments for and against affirmative action, providing the resources necessary to construct an informed opinion. We will start by giving a historical background of affirmative action in the United States [Fullinwider], describing some of the landmark cases that have guided policy. We will then consider the different challenges and factors involved in two different realms of affirmative action, in the workplace and in the university. Finally, we will provide the main arguments for and against affirmative action from the most relevant professional literature. After this brief survey, I will focus specifically on the effects of affirmative action, both for the intended beneficiaries and for the recipient institutions. We will consider results of outcome studies to determine the relative effectiveness of affirmative action in reaching its goals. No matter the intention behind affirmative action, the culminating effects of the policy are what I used to evaluate and form my opinion. I will argue that as of now the benefits of affirmative action outweigh the downsides, but with the caveat that this scale will eventually tip in the other direction. As affirmative action continues to improve the distribution of minorities in higher positions, the future benefits will not be as great. It will be important for us to continue to monitor this question as eventually there will come a time when the benefits do not outweigh the costs and the system will have to be redone.

Affirmative action first was brought to the public spotlight in 1972 with the Secretary of Labor's Revised Order No. 4, which fully implemented President Lyndon B. Johnson's Executive Order to take affirmative action against institutions to fight against discrimination. This order span across a large set of institutions in both the public and private sectors allowing for directives for

hiring goals of minority populations. Several years after this revised order, the first large landmark case, Regents of University of California v Bakke, hit the Supreme Court in 1977. During this time that institutions were working to increase minority representation, highly selective universities developed different initiatives to allow for admission for minorities (specifically African-American and Hispanic). This is because there was not a large pool of candidate minority students able to meet the high standard of requirements for these top schools. The medical school of University of California at Davis developed a system of admission reserving sixteen of its one hundred available slots for minority students. Allan Bakke, a white student, sued the university after being denied admission to the medical school in 1973 and 1974 even though his credentials were equal to or better than those of the students accepted through the affirmative action program. The court voted 5-4 in favor of Bakke. The majority opinion written by Justice Lewis Powell. It argued that although the university's desire for a diverse student body is their right by academic freedom, the way in which they did this was not constitutional. Admission requires looking at a broad scope of qualifications and characteristics where ethnic diversity is only a single, though important, factor. The medical school's affirmative action policy considers ethnic diversity as the only factor in selecting a subset of its class. With this, Justice Powell left the precedent that universities can uphold affirmative action in a fair way with consideration of other qualifications, but any program with two tracks will not be allowed.

The next important landmark to consider is a pair of cases, Grutter v Bollinger, regarding law school admission to University of Michigan, and Gratz v Bollinger, regarding undergraduate admission to University of Michigan. Michigan provides an integration argument for its affirmative action policies arguing for the benefits of a racially diverse student body not only from the perspective of the minority students but also for the students of the majority race. The leadership of the state and of other institutions should be representative of the state's racial and ethnic distribution. The university, being the state's main source of training such leaders, should create a racially diverse environment where students can work together and learn to become successful future leaders. This argument is known as the "Michigan Mandate" and is an example of an Integration Argument. The Supreme Court ruled in favor of the school for Grutter, but against in Gratz. Justice O'Conner supported Justice Powell's precedent of giving every individual student a fair opportunity where race can be a consideration in deciding admission. She found the law school system to correctly perform this consideration. The undergraduate admissions process was based on a scoring system in which minority students would receive an

automatic 20 points. Justice O'Conner found this system to be too "mechanical" and did not give fair consideration to students not part of a minority group. With this Supreme Court decision supporting the previous decision from Bakke, the precedent for affirmative action was firmly set in place.

We have looked extensively at the considerations and precedents that are in place for affirmative action in the university setting, but have not considered the very different realm of affirmative action in the workplace. Title VII of the Civil Rights Act of 1964 prohibits all employment practices that discriminate on the basis of race, gender, religion, or national origin. Although this clause may seem like it does not leave much room for affirmative action policies, the unclear definition of "discriminate" gives policy enforcers some leeway. This clause has been used as a basis to sue companies over facially neutral hiring criteria unrelated to the job description that on the surface seem neutral, but result in excluding members of a minority group. In the landmark Supreme Court case of Griggs v Duke Power, it was ruled that "the absence of discriminatory motive does not redeem employment procedures or testing mechanisms that operate as 'built in headwinds' for minority groups and are unrelated to measuring job capacity'". These types of cases are known as "Disparate Impact" cases. Thus, each institution is responsible for monitoring its hiring practices and ensuring exclusionary effects do not come into place. It is then expected if an institution were successful in non-discriminating that over time the distribution of races/gender of the institution would fall closer to the distribution of society.

Now that we are familiar with the historical context of affirmative action both in the university and in the workplace, we are equipped to examine the most well regarded arguments for and against affirmative action in professional literature. We will start by considering four arguments in support of affirmative action policies.

- One of the oldest and original arguments for affirmative action is that affirmative action serves as compensation or reparation for historical injustice against these groups. Some of the main arguments against this compensatory affirmative action view is that it is overinclusive, including minority groups not subject to discrimination, and underinclusive, excluding whites (such as Irish) who have suffered discrimination. Although this argument is not generally regarded as a driving force behind affirmative action now, Nickel [Nickel1974] provides a defense for the counterpoints stated above by arguing for

compensation for the individual and allowing for group-based compensation as a necessity for government policy effectiveness.

- The next argument is that it helps block existing mechanisms of discrimination and will then help end current causes of race-based disadvantage. This view argues that affirmative action gives minority groups the chance to combat race-based disadvantage by giving them opportunities at the highest levels.
- The third argument in support of affirmative action is that it increases professional services to disadvantaged populations [Cantor1996]. Although there have been mixed studies on the extent to which this argument holds, the idea is that minority students who earn their professional degrees are then more likely than other students to go back and serve in disadvantaged neighborhoods.
- The final argument is that affirmative action promotes racial diversity in the institutions that implement it which then leads to various other beneficial consequences regardless of your race. Whether it be the workplace or the university, a racially diverse environment allows individuals to grow and be equipped to handle challenges in the real world. This is the argument that the University of Michigan followed in their "Michigan Mandate" for student leadership in the Gratz and Grutter cases described above.

Let us now examine the other side of the argument, considering four arguments opposed to affirmative action.

- The first one is the argument of reverse discrimination against members of the majority group. Every person is subject to a fundamental principle of equal protection by the law, including discrimination by race. This view argues that affirmative action creates a form of discrimination on the majority group that is as unjust as the original discrimination.
- The second argument against affirmative action is that it goes against the principles of merit-based system. This view argues that the job or position should go to the most qualified candidate.
- Hand in hand with this argument is the argument that affirmative action is economically inefficient. Loury argues [Loury1997] that affirmative action serves to skew the incentive system for minorities by lowering their standards of admission and employment opportunities.
- The final and most currently relevant argument against affirmative action is that it results in harms to its intended beneficiaries. The first of these harms to be considered is of the stigma that recipients of affirmative action receive as being somehow inferior in needing

affirmative action to get the position. The second harm to consider is known as the "Mismatch Hypothesis". This hypothesis considers the harms that the minority recipients undergo when placed in a position that they may not be fully qualified for and not able to compete. An example would be the performance of minority students in highly selective competitive universities. We will examine the validity of this argument further in evaluating the effects of affirmative action from outcome studies.

We looked briefly at a lot of different arguments in support of and opposed to affirmative action. The survey provides us with a working knowledge for some of the main motivations behind affirmative action policies, whether it be for reparations or beneficial consequences of racial diversity. However, despite the motivations, we must look at the results of affirmative action policies to determine if it is in fact a valuable contribution. The outcome studies show both positive and negative effects of affirmative action. In general, the positive effects of increasing racial diversity and decreasing disparities among minority proportions in wealth and among high ranking/high qualification positions seem to occur on a longer timeline, while the negative effects of racial stigma and lower performance are shorter term. Due to this, I believe the benefits in the long term outweigh the shortcomings in the short term. However, as the disparity continues to lessen, the relative benefits will decrease and we will need to look to other alternatives to continue to achieve the benefits for society we desire.

First consider the effects of affirmative action in the university setting. The first outcome case we will examine is the expert report of Patricia Gurin [Gurin2003] completed for the landmark case of Gratz described above. Gurin conducted a longitudinal study surveying a set of students at University of Michigan over a period of time. Students were assigned a classroom diversity measurement and an informal interactional diversity measurement. Gurin found in her research that students with a higher combined value of the above measurements, achieved higher scores on a number of categories measured from the surveys including active-thinking, motivation, citizenship engagement, and compatibility of differences. She concludes that there exists a compelling need for diversity in higher education.

In a response to Gurin's study, Rothman, Lipset, and Nevitte [RLN2003] argued that the ways in which Gurin phrased her survey questions resulted in "politically correct" responses that do not represent the true feelings of students. Their opposing study featured responses from over 140 universities across the United States and Canada. Their modified survey results showed that

higher racial diversity on a campus is correlated with higher reports of racial discrimination, lower perceived work ethic among students, and high levels of discontent or stigma against recipients of affirmative action.

In another recent study completed by Richard Sander [Sander2004], Sander argues for the Mismatch Hypothesis that recipients of affirmative action are being placed in highly selective schools in which they cannot compete. He looks specifically at law schools and brings up the startling statistic that in 1991 of the African American students who enrolled in law school, 43% did not graduate or did not pass the bar exam within two years of graduation; this is comparison with 17% of white students. Sander argues that if affirmative action in law school were eliminated then although less African American students would be admitted into law schools, they would be successful at a much higher rate and predicts that the overall graduation number would actually increase. In an objection piece to Sander's study, David Chambers [Chambers2005] agrees that the statistic on number of unsuccessful African American students is alarming, he calls attention to the fact that from 1970 to 2003, the number of African American lawyers has increased from 4000 to 40,000. Chambers then calls into question the statistics Sander uses in predicting that there will actually be more successful African American students without affirmative action. The final point Chambers makes is to consider what the distribution of African American students across law schools would be without affirmative action, and concluded that the number accepted into the elite schools would decrease substantially (75%) while others would remain more or less the same. This decline in the elite schools would be followed by a decline in African American students attaining leadership positions that graduates of these elite schools attain.

Before concluding, we look briefly at an outcome study regarding affirmative action in the workplace. While there have been numerous controversial studies on affirmative action in the university, the studies completed in the workplace have been relatively stable. Holzer and Neumark [HN2000] found that although affirmative action has resulted in companies hiring candidates of originally lower qualifications, after a lag in which the candidate becomes proficient, the overall performance in the long term is unaffected. A side effect observed from affirmative action is a large increase in employers providing training and formal evaluation of its employees.

Balancing the positive long term effects of addressing the racial disparity in the United States and giving minority groups opportunities to succeed in leadership positions with the negative shorter term effects such as stigma from Mismatch Hypothesis and lag in performance in the workplace is the crux of affirmative action policy. In my opinion, the argument of ending race-based disadvantage is the strongest argument for affirmative action. In society, minorities are far over-represented in the lower impoverished classes. We live in a system where many opportunities are given to you to succeed based on your class - proper college preparation, connections for employment, etc. Without the opportunities of affirmative action, this racial divide in success, wealth, and opportunity will continue to be a self-fulfilling cycle. In my mind, this argument alone overshadows many of the arguments against such as merit, reverse discrimination, and economic efficiency. These downsides pale in comparison to the serious social issue affirmative action has the potential to end. Additionally, it was shown in the outcome studies that many of these concerns are unwarranted and only temporary. The only argument against that I give weight to is the argument of negative stigma caused by affirmative action.

As argued by Chambers, we have seen incredible growth in the number of minority members in positions not available to them without the help of affirmative action. This growth is what fuels the long term benefits. However, as this growth continue to develop, the relative growth becomes less and less and we will start to see marginal benefits that will no longer outweigh the negatives. In a society where races are distributed proportionately across the class spectrum, it is no longer race-based disadvantage that affirmative action should be targeting. We need to be aware of this and continue to challenge the affirmative action model to determine when it is no longer as effective as it once was. There have been alternatives proposed that continue to target giving aid to under-privileged groups. One such alternative is a class-based affirmative action. In conclusion, although the current affirmative action system has numerous negative effects, the long term positive effects it produces and the societal problems it targets outweigh the current alternatives.

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24.236 / 24.636 Topics in Social Theory and Practice: Race and Racism
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