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Affirming the Purpose of Affirmative Action: Understanding a Policy of the Past to Move Toward a More Informed Future

Meagan Schantz²

Abstract: The application of affirmative action policies to university admissions is a topic of ongoing controversy. This article amines the debate through an interdisciplinary lens, drawing on the fields of history, law, and ethics. The first section provides historical background on affirmative action policies, tracing how they expanded from the employment sector into higher education. Next examined are legal challenges to affirmative action in admissions, with a focus on the pivotal 1978 Bakke case. The ethical implications of affirmative action are next considered, in particular the question of how affirmative action can be applied in a way that supports disenfranchised groups while avoiding discrimination against other groups. In the final part of the article, the argument is made that affirmative action remains valuable to promote inclusion and diversity in admissions, but adjustments must be made to minimize its negative consequences, especially as the demographics of American universities change.

Key words: Affirmative action, admissions, higher education, *Regents of the University of California v. Bakke*, stereotype threat hypothesis, Harvard University.

Affirmative action, a program started in the 1960s to address discrimination in employment, has always been controversial. Vigorous debate in the last several years has occurred over the application of affirmative action in higher education admissions. Recently, some of the country's most elite institutions, including Harvard University and Yale University, have been the targets of lawsuits and intense public scrutiny. This article examines the origin and evolution of the policy to better comprehend its current value. Overall, at the heart of its intended purpose, affirmative action is a critical and necessary policy; however, to maintain its true effectiveness, the policy needs to be refined to minimize some of its negative consequences.

The Development of Affirmative Action

Affirmative action in its earliest form can be traced to the post-Civil War era of Reconstruction, when Congress ratified an act that established the Bureau of Refugees, Freedmen and Abandoned Lands.³ Referred to as the Freedmen's Bureau, this agency in the

² I would like to thank you to Dr. Brian Stiltner and Dr. Suzanne Deschenes for their contributions to the article, as well as their assistance throughout the revising process. Direct all inquiries to mschantz5@gmail.com.

³ "Freedmen's Bureau," History, accessed November 10, 2018, <https://www.history.com/topics/black-history/freedmens-bureau>.

War Department sought to provide basic necessities to newly freed slaves and impoverished white Southerners.⁴ According to Georgetown law professor Girardeau Spann, the establishment of the Freedmen's Bureau marked the earliest occurrence of affirmative action because special accommodations were guaranteed based solely on the belief that race would prevent individuals from receiving equal treatment and opportunities.⁵

The practice reemerged in 1954 with the *Brown vs. Board of Education of Topeka* decision rendered by the United States Supreme Court. The case questioned the legality of segregation within school systems. The Court unanimously held that "separate but equal educational facilities for racial minorities is inherently unequal."⁶ On paper, the ruling seemed incredibly promising and, to a certain extent, it was. This landmark case ended segregation in schools and reversed the *Plessy* decision (the law of the land at the time)—a massive historical feat. However, it was not the panacea to all of the issues of discrimination in the country.

The Civil Rights Era was a period critical of the establishment and evolution of affirmative action. In 1961, President John F. Kennedy first coined the term "affirmative action." In Executive Order 10925, aimed at establishing equal employment opportunities, Kennedy stated: "The contractor will not discriminate against any employee or applicant. The contractor will take *affirmative action* to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin."⁷ From there, the policy was further expanded to other sectors in which the federal government had leverage, such as the hiring of contractors—a portion of federal contracts had to go to minority-owned businesses—and funding for public education.

The response to affirmative action's growth varied greatly upon its introduction in the 1960s. According to Dennis Deslippe's *Protesting Affirmative Action: The Struggle Over Equality After the Civil Rights Revolution*, the degree of opposition varied depending on region and, in the case of employment, the industry in question. With regard to education, affirmative action was seen as "this strange madness."⁸ At one point, 60 percent of faculty did not support modified admissions processes, including affirmative action.⁹ Debate ensued over how affirmative action should be implemented and also if it should be implemented at all.

⁴ Ibid.

⁵ Spann, *The Law of Affirmative Action*, 4.

⁶ "Brown v. Board of Education of Topeka," Oyez, accessed November 10, 2018, <https://www.oyez.org/cases/1940-1955/347us483>.

⁷ "Executive Order 10925," EEOC, accessed November 10, 2018, <https://www.eeoc.gov/eeoc/history/35th/thelaw/eo-10925.html>; emphasis added.

⁸ Dennis Deslippe, *Protesting Affirmative Action: The Struggle Over Equality After the Civil Rights Revolution* (Baltimore, MD: Johns Hopkins University Press, 2012), 49.

⁹ Deslippe, *Protesting Affirmative Action*, 50.

The Misconceptions and Reality of Affirmative Action

There are a number of misconceptions regarding affirmative action and how it is implemented in the context of educational admissions. Essentially, institutions receiving federal funding are required to document some form of affirmative action plan. This plan includes a focus on a number of candidate characteristics, including race, gender, age, and disability.¹⁰ In the context of race, institutions typically draw upon Title IV of the Civil Rights Act of 1964, “Nondiscrimination Under Programs Receiving Federal Assistance Through the Department of Education.”¹¹ This clause outlines that “race, color, or national origin” cannot play a role in the denial of individuals from receiving educational services or benefits. Furthermore, segregation and preferential treatment for one group over another is not allowed.¹²

Bearing that in mind, the question arises: how is affirmative action applied in the admissions process? The answer is that there is really no single way, but a variety of strategies which are used. Generally speaking, affirmative action begins with a school actively seeking out minority students (whether by race, gender, first generation status) and encouraging them to apply for various opportunities.¹³ By aggressively presenting potential experiences to those who were most likely previously unaware, the belief is that the diversity of the incoming applicant pool will expand. From there, institutions build their own comprehensive plans in evaluating the applications they receive.

Perhaps one of the largest fallacies is that affirmative action is implemented as a “quota system,” with each group in society designated a certain number of spots within the incoming class. While such systems did exist at one point, they were deemed unconstitutional in *Regents of the University of California v. Bakke*.¹⁴ Following that decision, policies began to diverge, and institutions adopted programs that fit their location and educational values.

One manifestation of affirmative action is in a “comparative policy.” A comparative policy evaluates students in marginalized groups and compares data to see which students have excelled academically or have served as a leader in their community.¹⁵ These factors then play a role in the selection process, as it determines the most competitive candidates in the applicant pool. There is some debate surrounding the use of this system; yet the stated justification is that the most qualified students within these specific focus groups are being

¹⁰ “Affirmative Action,” Cornell Law School: Legal Information Institute, accessed November 10, 2018, https://www.law.cornell.edu/wex/affirmative_action.

¹¹ “Title IV,” The United States Department of Justice, accessed November 10, 2018, <https://www.justice.gov/crt/fcs/TitleVI-Overview>.

¹² *Ibid.*

¹³ Cornell, “Affirmative Action.”

¹⁴ *Ibid.*

¹⁵ Valerie Strauss, “What you should know about race-based affirmative action and diversity in schools,” *Washington Post*, July 3, 2018.

admitted, which reaffirms that merit is the guiding standard. Other methods of implementing affirmative action include percentage plans, specifically selecting candidates from underrepresented high schools, and decreasing the emphasis on standardized test scores in the hopes of encouraging more students from disadvantaged groups to apply.¹⁶

Due to local legal and political developments, some regions and institutions are exempt from affirmative action policies. In California, for instance, race-based selection processes are actually illegal. This statute developed as a result of California Proposition 209, which passed in 1996.¹⁷ In regard to specific institutions, how does affirmative action factor into admissions at schools with specific values or student qualifications (e.g. single-sex schools)? Essentially, these schools are exempt from affirmative action plans, as long as there is an equivalent institution available for the “discriminated” group. For instance, an all-girls institution can operate so long as there are all-boys and mixed-gender institutions available with similar services and opportunities. This speaks more to education before college because all single-sex colleges are private.¹⁸ This means that federal funding is not provided and, therefore, an affirmative action policy is not required.

The Debate

The debate surrounding affirmative action is multifaceted and, at times, can seem a bit convoluted. Those who support affirmative action base their justification on a number of concepts, including the significance of ensuring opportunities for disenfranchised groups and the overall benefits to society from diverse university classes. Supporters of affirmative action typically note that the program provides students with opportunities that would not have existed had the policy not been implemented. According to William Bowen and Derek Bok, authors of *The Shape of the River: Long-term Consequences of Considering Race in College Diversity Admissions*, graduation from “selective universities” provides students with opportunities “beyond the workplace” that would not have existed without their undergraduate experience.¹⁹ These opportunities allow for more long-term success and furthermore, greater positive contributions to the community.

Elaborating on community contributions, proponents of the policy also argue that in ensuring more diversity in schools, racial attitudes improve. As students are exposed to

¹⁶ Kristen M. Glasner, Christian A. Martell, and Julie R. Posselt, “Framing Diversity: Examining the Place of Race in Institutional Policy and Practice Post-Affirmative Action,” *Journal of Diversity in Higher Education* (2018).

¹⁷ Patricia Hurtado, “The Future of College Admissions: Experts Weigh the Harvard Case,” *Bloomberg*, November 12, 2018.

¹⁸ “Guidelines regarding Single Sex Classes and Schools,” U.S. Department of Education, accessed November 12, 2018, <https://www2.ed.gov/about/offices/list/ocr/t9-guidelines-ss.html>.

¹⁹ Bill Shaw, “Book Review,” *Business Ethics Quarterly* (July 1, 2001), 2.

different backgrounds and cultures, it is believed that acceptance of racial and ethnic differences improves.²⁰

The last major justification for affirmative action is the idea of compensating for past injustices. In other words, by providing increased opportunities now, previous discrimination will be erased or diminished. Though the power of this justification has weakened over time as the United States moves further away from the era of legal segregation, the compensation argument is still referenced as key support for affirmative action at times.²¹

Those who oppose affirmative action, on the other hand, frequently invoke worries about reduced meritocracy to portray their perspective. In regard to meritocracy, opponents of the policy argue that race as a preferential factor has the tendency to take attention away from an individual's academic credentials. Supporters of this theory argue that unqualified applicants take the places of qualified candidates simply due to their minority status.²² Another major argument against affirmative action is the idea that race-conscious admissions perpetuate racism and stereotyping.²³

As opinions surrounding the issue become less flexible, it is an open question on how a compromise position could be reached. In a study conducted by Matthew DeBell of Stanford University, the idea of progress was examined in relation to opinions regarding equality and affirmative action practices. At the start of the study, two separate groups consisting of all white individuals and all black individuals were asked to rate the progress made in five distinct policy areas over the last fifty years. Both groups tended to state that the other group was favored in the policy area in focus (e.g. government treatment). When further questioned on progress and equality, both groups asserted that they believed that equality was crucial, with minimal discrimination or interracial conflicts serving as the cornerstones of social policy. Yet despite agreement in that area, the study diverged when both groups were asked for their opinions regarding affirmative action and the current state of equality. For the group of white individuals, affirmative action was not viewed as a necessary policy because they believed that white-black equality was largely achieved. Conversely, the group of black individuals viewed affirmative action more positively, as they felt that there was still a long way for the country to reach equality.²⁴

²⁰ Leah Shafer, "The Case for Affirmative Action," Graduate School of Education, Harvard University, accessed October 1, 2018, <https://www.gse.harvard.edu/news/uk/18/07/case-affirmative-action>.

²¹ "Arguments for and Against Affirmative Action," Mount Holyoke, accessed October 18, 2018, <https://www.mtholyoke.edu/~jesan201/classweb/arguments.html>.

²² Mary J. Fischer and Douglas S. Massey, "The effects of affirmative action in higher education," *Social Science Research* 36, no. 2 (2007): 532-534.

²³ Ibid.

²⁴ Matthew DeBell, "Polarized Opinions on Racial Progress and Inequality: Measurement and Application to Affirmative Action Preferences," *Political Psychology* 38/3 (2017).

At the conclusion of the study, DeBell noted that the differences shown in the study exist not because of the view of progress. Instead, DeBell attributed much of the debate to the subjective perspectives on the notion of ideal equality. To each individual and social group, an ideal standard of equality exists. Essentially, how far society lies from that ideal point of equality influences individuals' views on social policy and advancement. In that sense, the subjective nature of ideal equality essentially keeps the debate ongoing because it is nearly impossible to agree on what is ideal, given the history, critical experiences, and cultures of the groups.

Policy and the Law

Supreme Court rulings have played a large role in the formation and evolution of affirmative action. When examining the influence of the Court, it is beneficial to study the evolution of the policy before, during, and after the 1978 *Bakke* decision. Such a perspective makes it easier to comprehend the initial purpose of the program as well as the Supreme Court's challenge to appropriately apply the policy in such a manner that would not advantage one group over another.

Pre-Bakke Decisions

Brown vs. Board of Education of Topeka (1954) turned the tides in favor of establishing an environment where a policy like affirmative action could potentially thrive. Following the *Brown* decision and into the 1960s, two cases emerged that further set the tone for a national discussion on affirmative action: *DeFunis v. Odegaard* (1974) and *United Jewish Organizations v. Carey* (1977). Though majority opinion decisions were not officially delivered in these two cases, illustrating the lack of a consensus, the opinions and deliberations released revealed much about the early circumstances of affirmative action.

The *DeFunis* case involved an early affirmative action-based plan that had been adopted by the University of Washington Law School. A white applicant who claimed that he was denied admission in favor of a "less-qualified minority applicant" raised the case, essentially challenging the institution's use of race-conscious admissions.²⁵ When the case reached the Supreme Court, it was dismissed, as the court argued that the plaintiff's forthcoming graduation from law school rendered the lawsuit "moot." According to Spann, the Supreme Court's decision "foreshadowed the fact that a majority of the Court would be unable to agree upon anything other than the contentiousness of the affirmative action issue."²⁶ Thus, nothing was truly resolved; however, the lack of a decision reflected the growing hesitation regarding race-conscious practices.

United Jewish Organizations v. Carey, a case which occurred nearly three years later, marked somewhat of a change but nonetheless still revealed mixed feelings on race-

²⁵ Spann, *The Law of Affirmative Action*, 14.

²⁶ *Ibid.*

conscious policies. In this particular case, Hasidic Jews in a New York community felt their political voice was being suppressed after district reapportionment favored African-American voters. In the suit, the Jewish community challenged the constitutionality of the reapportionment action, which was proposed under the Voting Rights Act of 1965. Collectively, the Court decided that the constitutionality of the action could not be disputed; yet the justices could not reach a majority ruling on the status of race-conscious practices. Essentially, four justices argued that the plan was acceptable because it did not violate constitutional statute, despite the use of target quotas. Three justices argued that the reapportionment did not “burden white voters” and thus, despite a racial preference, did not weaken anyone’s vote. The remaining two argued that since the plan did not purposely set out to burden white voters, its implementation was justified.²⁷ Essentially, this case further displayed the mixed opinions on affirmative action, though unlike the *DeFunis* case, its establishment was upheld.

The Bakke Decision

The 1978 *Regents of the University of California v. Bakke* case is, to date, the most monumental affirmative action case in the United States. Though the Court was divided in the two aforementioned cases, the opinions handed down had the effect of supporting the growth of race-conscious policies. This case, on the other hand, presented the first challenge to affirmative action and the implementation of race-conscious admissions.

The case challenged the admission practices of the University of California at Davis Medical School, which set aside 16 percent of the seats (16 out of 100) in the incoming class for minority students. Thirty-five-year-old Allan Bakke applied to the school twice and was rejected both times. Bakke questioned the legitimacy of the affirmative action program, as his qualifications exceeded those of the minority students accepted into the school.²⁸

As with the other two cases, there was no single majority opinion released in the case. Yet, unlike the other cases, the general consensus held that a racial quota system was unconstitutional, although the use of affirmative action was still valid.²⁹ In a 5-4 decision, Justice Lewis Franklin Powell asserted that race could be considered as a factor in admissions if other factors were considered and so long as it was used on a “case-by-case basis.”³⁰ This confirmed the use of race-based admissions practices. That said, in a 5-4 plurality decision also authored by Powell, it was found that “the Equal Protection Clause prohibits the university’s specific race-based admissions program.”³¹ This meant that the

²⁷ Ibid.

²⁸ “Regents of the University of California v. Bakke,” Oyez, accessed November 13, 2018, <https://www.oyez.org/cases/1979/76-811>.

²⁹ Ibid.

³⁰ “Regents of the University of California v. Bakke,” Thirteen, accessed December 11, 2018, https://www.thirteen.org/wnet/supremecourt/rights/landmark_regents.html.

³¹ Oyez, “Regents of the University of California v. Bakke.”

quota system was unconstitutional. Though it confirmed the policy of affirmative action, it also restrained it for the first time in over a decade.

Post-Bakke Developments

Following the *Bakke* decision, a series of events and decisions refined the critical viewpoint of affirmative action. In the 1990s, several civil rights ballot initiatives sought to ban race as an evaluating factor in employment and education. Furthermore, the question of affirmative action began to flood state courts. In California and Michigan, the policy of race-conscious practices was successfully banned through Proposition 209 and *Schuette v. Coalition to Defend Affirmative Action*, respectively. In Colorado, attempts were made to restrict affirmative action through the 2008 proposal Amendment 46, which did not pass.³²

The state of Texas has also played a key role in the evolution of affirmative action. Texas is known for opposing affirmative action practices, as seen in the *Hopwood v. Texas* case of 1996 and more recently, the 2013 *Fisher v. University of Texas* case. In both cases, affirmative action was challenged for allegedly awarding spots to less qualified individuals simply due to their race. Yet, most recently, it was determined that affirmative action could be applied on a limited scale.³³

In 2018, the Harvard case was introduced in which Asian-American students argued that the Ivy League school was discriminating against them. This lawsuit has been key in inciting discussion about the policy, as critics have gone so far as to say that the policy should be removed in favor of a “race-blind” process in order to restore merit as the deciding factor in admissions decisions.³⁴

Ethical Implications

Affirmative action undoubtedly poses points of contention, one of which is its social and ethical implications. Some of these implications are positive and beneficial, while others tend to be more negative and perhaps unintended. When balancing both sides, it can be difficult to determine if certain implications outweigh others; yet overall, the ethical implications seem to point towards the necessity of a regulatory system, so long as the system does not produce overbearing discriminatory consequences.

One of the most prominent negative implications of affirmative action is the seemingly unintentional yet continued practice of racism and stereotyping in society. In 1999, Mary J. Fischer of the University of Connecticut and Douglas S. Massey of Princeton University conducted a study on the impact of affirmative action in two respects: if the policy indeed

³² “The History of Affirmative Action in Education,” Pearson, accessed October 18, 2018, <https://www.pearsoned.com/history-of-affirmative-action-in-education/>.

³³ *Ibid.*

³⁴ Katie Benner, “Justice Dept. Backs Suit Accusing Harvard of Discriminating Against Asian-American Applicants,” *The New York Times*, August 30, 2018.

favors unqualified candidates (physical appearance vs. meritocracy), as well as if the policy creates a stigma of all minorities being inferior. In terms of qualifications, the study found that black students at “selective universities” were more likely to graduate than black students at “less selective universities.” This shows that the individuals admitted at higher level or elite institutions excelled and thus clearly met the institution’s qualifications. Furthermore, students with below average SAT scores upon entering college actually ended up outperforming some of their counterparts throughout their undergraduate career.³⁵ Thus, concerns about affirmative action leading to a proliferation of unqualified candidates are called into question by this study.

On the other hand, the study found some truth to the claim about promoting stigma. The study sought to examine if the degree to which an institution used affirmative action impacted minority students’ success as well as the perception of minorities on campus by students in the majority. According to Fischer and Massey, this phenomenon is not a result of affirmative action as much as it is perpetuated by affirmative action, if white students feel that minority students are only at the school due to the lowering of academic standards, or if minority students perceive that the majority population views them as inferior.³⁶ The key to understanding this concept is recognizing that it is based on perception of classmates and peers.

The study also found that the more an institution relies on affirmative action practices, the more the sentiment is exacerbated.³⁷ To clarify, students do not know if their enrollments are the product of an affirmative action practice; it is more about the perception of them by the student body. Nonetheless, if that perception is negative, meaning that a significant number of white students believe that minority students were granted admission due to their race or ethnicity alone, then minority students will feel inferior. This is important to recognize because as stereotypes and racism are continued, they have the potential to impact a student’s educational experience, including lower grades and a greater probability of leaving an institution. Though there is no complete solution, Fischer and Massey suggest that diversity of faculty and increased awareness of the problem could help to diminish the potential impact.³⁸

Nevertheless, it is significant to note that the impact is considered to be “modest” on the institutional level.³⁹ It is also not the most significant factor in determining a student’s success. Based on the available data, Fischer and Massey conclude that the benefits of affirmative action outweigh its negatives.

³⁵ Fischer and Massey, “The effects of affirmative action.”

³⁶ *Ibid.*

³⁷ *Ibid.*

³⁸ *Ibid.*

³⁹ *Ibid.*

In a second analysis of the ethical implications, Leah Shafer of Harvard University presented the positive implications of affirmative action in a way that goes beyond Fischer and Massey. In her 2018 study of affirmative action, Shafer argued that the policy is necessary for ensuring diversity in both the educational and employment fields. In ensuring diversity in an educational setting, Shafer argues that professional leadership will become more diverse. This would allow for more cultural and race-based conversations to develop, thus having the capability to potentially improve individuals' acceptance of differences. Shafer breaks with Fischer and Massey with regard to the benefits for others. In a strict educational setting, Shafer argues that other classmates can benefit from diversity as they "have more positive racial attitudes toward racial minorities, they report greater cognitive capacities, [and] they even seem to participate more civically when they leave college."⁴⁰ Both could be true, however, depending on the policies and sentiment at different campuses.

While there are negative ethical implications of the program, both studies seem to show that affirmative action's impact is a net gain. Thus, in terms of the ethical perspective, there seems to be strong evidence in support of the practice.

Analysis

There have been a number of court cases that have contributed to affirmative action's evolution. As a result, the Supreme Court must navigate these legal precedents to determine if and how race will continue to play a role in the admissions process. A number of speculations have developed considering the consequences that may arise from any court decision. According to Jennifer Mnookin, the dean of the UCLA School of Law, the breakdown of affirmative action would lead to less diverse classes at various institutions. This line of thinking represents one camp that has developed as a result of this case. For Mnookin, there is a firsthand experience with California's Proposition 209, which essentially made it illegal to consider race or gender in the admissions and employment process. Though UCLA Law found some loopholes, Mnookin recognized that the initial impact of the 1996 ballot measure greatly reduced diversity within incoming classes. Thus, if the Supreme Court determines that "race-blind" admissions are preferential to that of affirmative action, there is the real possibility that diversity-related outcomes will suffer.⁴¹

In contrast to Mnookin's perspective, those who support race-blind admissions procedures, such as Roger Clegg of the Center for Equal Opportunity, argue that having a check on affirmative action will essentially only level the playing field again. According to Clegg, "It's clear that there's an enormously disproportionate number of Asian-American students with top credentials getting turned down, as opposed to other groups."⁴² In

⁴⁰ Shafer.

⁴¹ Hurtado.

⁴² Ibid.

removing race from the admissions equation, individuals like Clegg or plaintiff Edward Blum argue that admissions will be founded on merit as opposed to other identifying factors.

In establishing race as a legitimate factor in admissions and employment, some of the historical and structural inequity was seemingly bridged. Providing greater opportunities for minority and previously marginalized groups has had an impact on education. Diversity in class settings enriches a student's learning experience, as they become exposed to different lifestyles and experiences. In addition, as some of the previous studies highlighted, racial attitudes can improve as students are exposed to different races and ethnicities.⁴³

Yet a policy that aims to overcome discrimination also can ironically contribute to the very thing it is attempting to prevent. As race becomes a key factor in admissions decisions, it becomes questionable if other qualities and characteristics suffer. Furthermore, are particular races favored over another? As seen in the Harvard case, minority groups were seemingly pinned against each other, as Asian Americans argued that black and Hispanic applicants were favored despite lesser credentials in some cases.

In an ideal world, one could simply advocate for the moderate, middle of the road implementation; however, as outlined by DeBell in his study, the moderate or ideal position is extremely subjective. What constitutes moderate for one individual may be considered underwhelming or overwhelming to others. Thus, when evaluating something as contested as affirmative action, it is hard to pinpoint when costs outweigh the benefits and vice versa. That is not to say that the policy cannot be thoroughly scrutinized to attempt to find some sort of balance between the concerns at hand. Affirmative action is not a perfect program, as the number of Supreme Court challenges illustrates. Nevertheless, changes can be made to improve the policy in a way that will meet its goals.

For one thing, there could be attempts made to try and resolve the feeling of inferiority that could develop. As outlined in Fischer and Massey's study, this could potentially be achieved by increasing diversity amongst university faculty and increasing education and awareness regarding the importance of the policy in righting historic wrongs.⁴⁴ Additionally, policies could be altered to place more emphasis on holistic admissions standards. Furthermore, other studies have argued that affirmative action could take a different route, in terms of geography-based practices that may ensure similar results.⁴⁵ As long as discrimination exists, affirmative action has a purpose. Yet legislators and proponents need to do all they can do make sure that the policy is not making matters worse.

⁴³ Shafer.

⁴⁴ Fischer and Massey, "The effects of affirmative action."

⁴⁵ Sheryll Cashin, "Place not Race: Affirmative Action and the Geography of Educational Opportunity," *University of Michigan Journal of Law Reform* 47, no. 4 (2014), 951-958.

Conclusion

The idea for affirmative action dates back to the mid-19th century; however, effective affirmative action policies only took hold in the in mid-1960s. Initially, affirmative action sought to create basic fairness in employment and education by ensuring that discrimination against certain races and ethnicities would not occur. Yet as time progressed, the policy became more concerned with quotas, thus promoting diversity at the expense of fairness.

When examining the initial purpose, it is clear that the policy is necessary; however, when examining it from a modern standpoint, affirmative action should be refined to attempt to reduce any of the negative implications (e.g. discriminating one group over another). The program does not reach its full potential when it is denying opportunities to certain groups in favor of others. There are clear and evident benefits as well as glaring flaws. Moving forward, it is significant to work on strengthening those benefits and attempting to reduce the flaws.

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