

## The "No One Deserves His or Her Talents" Argument for Affirmative Action: A Critical Analysis

Much has been written on the moral and legal justification of affirmative action in all its forms.<sup>1</sup> I do not intend here to rehash this ground. Rather, my purpose is to raise what I believe is a new objection to an old argument in support of affirmative action. The argument, which I call the "no one deserves his or her talents" argument (NODHT), is found throughout the literature and is defended by many people, including Richard Wasserstrom,<sup>2</sup> John Rawls, and Michael Kinsley.<sup>3</sup> Although there have been some very good responses to this argument,<sup>4</sup> as far as I know the objection I present has never been raised. I will argue that NODHT is either fatally inconsistent or morally inadequate, and therefore provides no support for affirmative action as either a moral viewpoint or a public policy.

### The NODHT Argument

Although affirmative action is used in many different venues and institutions (e.g., college admissions, government contracting) the focus of this paper will be on public and private employment. Most commentators see two major versions of affirmative action. The first, *weak affirmative action*, is the use of "such measures as the elimination of segregation, widespread advertisement to groups not previously represented in certain privileged positions, special scholarships for the disadvantaged classes, using under-representation or a history of past discrimination as a tie-breaker when candidates are relatively equal, and so on."<sup>5</sup> This view stresses *equal opportunity* rather than equal results. In other words, an employer should in all cases, except perhaps in the case of a tie, ignore the race or gender of the candidate and judge on the basis of qualifications. If this results in a particular profession having a disproportionate number of a certain group in comparison to the percentage of the general population (e.g., 95% of the employees are white while only 78% of the general population are white), the result is not unfair since everyone was given an equal opportunity to excel.

On the other hand, *strong affirmative action* “involves more positive steps to eliminate past injustice, such as reverse discrimination, hiring candidates on the basis of race or gender in order to reach equal or near equal results, proportionate representation in each area of society.”<sup>6</sup> This view stresses *equal results* (or at least some goal or pattern of employment that ought to be achieved) by using timetables, goals, or quotas as criteria by which to judge whether one has achieved “fairness.” Rather than stressing fair process, the proponents of this position see fairness as result, which is why they can ignore what their opponents think are ordinary canons of fair play and maintain that it is permissible (if not obligatory in some cases) to hire a less though adequately qualified candidate for a position because such a hiring results in “equality” or “fairness.” Proponents often defend this notion of fairness by appealing to ethnic and gender diversity, proportional representation, and/or some form of reparations for past injustice (e.g., whites must pay blacks for slavery and its unjust results).

Because its proponents believe that NODHT is successful and thus lowers the level for which merit, to the exclusion of race or gender, should be considered in hiring, NODHT is vital in the moral and public policy justification of strong affirmative action. Consequently, if NODHT is flawed, then the case for strong affirmative action is weakened significantly.

It is important to make one more qualification. When I talk about someone being the *most able* or *most qualified* for a position, I do not mean that she *deserves* the position in the strong sense of entitlement (e.g., “I am entitled to a portion of my father’s inheritance if he puts me in his will”). All I am saying is that among the candidates for a given position, X, and given what we know would make an outstanding X, candidate Y merits the position if she *best* exemplifies the qualities that would make an outstanding X.

The NODHT argument has been summarized by Michael Kinsley:

Opponents of affirmative action are hung up on a distinction that seems profoundly irrelevant: treating individuals versus treating groups. What is the moral difference between dispensing favors to people on their “merits” as individuals and passing out society’s benefits on the basis of group identification? . . . Group identifications like race and sex are, of course, immutable. They have nothing to do with a person’s moral worth. But the same is true of most of what comes under the label “merit.” The tools you need for getting ahead in a meritocratic society—not all of them but most: talent, education, instilled cultural values such as ambition—are distributed just as arbitrarily as skin color. They are fate. The notion that people somehow “deserve” the advantages of these characteristics in a way they don’t “deserve” the advantage of their race is powerful, but illogical.<sup>7</sup>

Rawls, waxing a bit more philosophical than Kinsley, maintains that

no one deserves his place in the distribution of native endowments, any more than one deserves one's initial starting place in society. The assertion that a man deserves the superior character that enables him to make the effort to cultivate his abilities is equally problematic; for his character depends in large part upon fortunate family and social circumstances for which he can claim no credit. The notion of desert seems not to apply to these cases.

Of course, if no one deserves his or her talents and therefore no one deserves the merit that results from those talents, then everyone, including those who redistribute the goods of society (i.e., the social engineers), do not deserve their talents and merit as well. This has a fatal implication for the social philosophy that employs the NODHT argument as a basis for justifying strong affirmative action and/or other redistribution schemes.

### **A Critique of the Argument**

Although, as I mentioned earlier, there are a number of good critiques of this argument, I think there is a new objection that shows the argument to be either fatally inconsistent or morally inadequate.

According to its proponents, since no one deserves his or her talents because such talents are the result of forces beyond his or her control (e.g., family upbringing, genetics, and so on), therefore, no one deserves the merit that results from the employment of that talent. Keep in mind, however, that since ordinary canons of merit ought to be discarded, the defender of NODHT believes that certain elites or social engineers (SE) in society must figure out and put into action plans or schemes to distribute the social goods (e.g., jobs, school admissions, and so on) in an equitable manner. But this raises a serious question: On what basis do we award people the status of SE? Let us consider answers to this question that the defender of NODHT may provide.

One could say that the basis for awarding people the status of SE is that they are the most able at performing this task. That is, society runs more efficiently when the best people at being SEs run the state's affirmative action program. But there is a serious problem with this. It is saying that the most qualified performers ought to receive the job. But this flies in the face of everything the defender of NODHT has told us previously. For if no one deserves his or her talents and thus no one deserves the merit that results from that

talent, then prospective SEs do not deserve their talents and the merit that results from that talent. Consequently, either the defender of NODHT cannot employ merit as a basis for deciding who deserves and does not deserve to be an SE or if he employs merit as a standard then his theory is imperiled by a fatal inconsistency. If he opts for the former, then he must provide some nonarbitrary basis by which to choose SEs. This leads us to a second possible response.

Perhaps the defender of NODHT will answer the first question in this way: the SE jobs will be distributed on the basis of statistical proportionality with the general population rather than on the basis of merit alone. That is, if the state in question has a population of 50% male, 50% female, 20% black, and 12% Hispanic, the scarce SE jobs will be distributed accordingly. This will mean, of course, that there would be no guarantee that people who would make better SEs than others would lose out to inferior applicants, unless all ethnic groups are roughly equal in ability. But then there would be no need for affirmative action and the statistical proportionality would occur naturally. Also, the defender of NODHT would not need to use NODHT if abilities were not unevenly distributed between groups and individuals. Nevertheless, this second response poses several problems for the NODHT defender. First, it is question-begging, since the purpose of the NODHT argument is to *justify* affirmative action. To appeal to a strong affirmative action social pattern, without providing justification for it, assumes the very social policy that NODHT was supposed to prove. Second, the statistical proportionality pattern seems less just than simply choosing the best SEs. For the best SEs would do a better job of dispensing justice to those for whom affirmative action is supposed to help in the first place.

Therefore, to employ SEs on the basis of merit rather than on the basis of preferential treatment is to do justice. But if hiring the best social engineers, regardless of race or gender, is just for society, then hiring the best professors, physicians, attorneys, carpenters, and police officers, regardless of race or gender, is just for their respective communities and employers as well.

The defender of NODHT may offer two replies: (1) the *threshold argument*, and (2) the *consequentialist objection*. The former asserts that universities, employment, and so on are forums for the distribution of goods. Some goods are things like socially necessary skills (e.g., becoming a doctor) but in addition, they distribute wealth, status, power, and so forth. Society has an interest in making sure that these latter goods do not line up with divisions along ethnic

and gender lines. In this case we would think in terms of thresholds, not in terms of an absolute hierarchy of merit.<sup>9</sup>

Several comments are in order. First, this reply begs the question, since it assumes that society's interest in making sure that certain goods do not line up along ethnic and gender lines is just, which would mean that if I refute NODHT it would not matter, because preferential treatment is just on other grounds. Perhaps this is true; perhaps not. But my point is, can the carrying out of society's interest in diversity be grounded in an appeal to NODHT? If it can't, there may be other arguments on which society's interest may be grounded. And certainly it would be wrong not to entertain them.

Second, the threshold argument seems to be saying that at above some level of competence in certain professional positions, greater qualifications are unnecessary, and for that reason it would not be unjust for an employer or manager to select an employee on the basis of other factors, such as race or gender, since society has an interest in the diverse distribution of its goods. Although this is an important point, I don't see how it undermines my critique of NODHT in this paper, if all that the threshold argument is saying is that when roughly equally qualified candidates are competing for a scarce number of positions it is permissible to consider other factors. The question, of course, is whether race and gender are morally permissible factors for an employer to consider rather than others, such as religion, bad breath, or "gets along with others." Although this is an important topic, it is for another paper at another venue.

However, if the threshold argument is saying that race and gender membership should trump better qualifications when they are important to the job but not necessary for minimal competence, then we are back to the issue of whether society's interest in making sure that certain goods do not line up along ethnic and gender lines is just. The question then would be: How does one morally ground such preferential treatment? One argument offered is NODHT, which I have critiqued in this paper. There may or may not be others, as I have already pointed out. But my purpose here is not to refute gender and racial preferences in general; it is merely to critique one argument employed to defend them.

The proponent of the consequentialist objection understands my argument to be identifying the claim that the most able performers (SEs, for example) ought to receive the job with the claim that they deserve to be selected because of their merit.<sup>10</sup> She maintains that these claims are not necessarily identical. After all, one might consis-

tently believe that there are good, forward-looking (i.e., consequentialist) reasons why the most able SE ought to be selected without in any way being committed to the view that the most able SEs ought to be selected because they are the most qualified.

I believe this objection confuses two different types of consequences or ends: (1) the end of a job, (2) the end of a pattern theory of justice. An example of the latter would be a theory of justice that says that a just society is one in which 50% of all electrical engineers are women. In order to achieve this goal, the SEs coerce private businesses who employ electrical engineers to make their work forces 50% female by the end of the decade. This can only be achieved by discriminating against more qualified male engineers for a few years. Now, if one thinks that such a society is just, then the end of arriving at such a society justifies the means.

Contrast this notion of ends with the end of a job. Again, take the job of electrical engineer. In order to be a good one, you must exhibit certain professional and personal virtues. If you are an outstanding member of the profession, you exhibit these virtues in a greater degree than your peers. If I want to hire an electrical engineer, I look for one who exhibits these virtues and will work for a wage that I can afford. So, even though I am judging consequentially, it is within the context of the job's own intelligible point. The consequences appealed to by defenders of patterned theories of justice are instead philosophical perspectives of what a just society ought to look like and are carried out coercively on citizens by SEs.<sup>11</sup>

In light of this, our case against NODHT can be put this way: If the justification of hiring the most able SEs is that the intelligible point of that profession is to create a certain pattern of justice in society, and not to hire the most able SEs would impede the prompt achieving of that goal, then the most able SEs ought to get the job. But if the intelligible point of a particular profession, such as being a virtuous electrical engineer, is impeded because of a pattern theory of justice promoted by the state and carried out by the SEs, then either the patterned theory of justice is flawed (and the profession of SE is bogus) or we don't know the intelligible point of the profession under question. It is unlikely that the latter is the case.

### **A Final Point**

Louis P. Pojman has made the point that those who defend the NODHT argument confuse desert with entitlement. Perhaps this is

why NODHT proponents have not considered the question of who will receive the social positions of SE and on what criteria will they be distributed. In order to see Pojman's point, he asks us to "reflect that just because I do not deserve the money that I have been given as a gift (for instance) does not mean that I am not entitled to what I get with that money. If you and I both get a gift of \$100 and I bury mine in the sand for five years while you invest yours wisely and double its value at the end of five years, I cannot complain that you should split the increase 50/50 since neither of us deserved the original gift."<sup>12</sup> That is to say, just because someone may not deserve all her talents, it does not follow that she is not entitled to them as well as what results from the responsible and conscious use of them. After all, suppose a person chooses to develop what incipient talents she has through dedication and hard work. That is not an accident.<sup>13</sup>

Furthermore, according to the NODHT defender, my mental and physical faculties are the result of "chance." Does that mean that "since I do not deserve my two good eyes or my two good kidneys, the social engineers may take one of each from me to give to those needing an eye or a kidney—even if they have damaged their organs by their own voluntary actions?"<sup>14</sup> But, of course, if the SEs get their positions on the basis of merit, then the NODHT defender implicitly accepts the moral force of merit as the *prima facie* just basis of awarding people scarce positions in society. However, if the SEs get their positions on another basis, then the NODHT defender is not doing what is truly just, since his entire social engineering scheme will not be functioning at the highest level of efficiency even though it is within society's power to make it so. In any event, it seems that the NODHT defender cannot escape the moral force of merit as the *prima facie* just basis of awarding people scarce positions in society.

### Notes

1. See, for example, the articles, citations, and bibliographies of four anthologies: Francis J. Beckwith and Todd Jones (eds.), *Affirmative Action: Social Justice or Reverse Discrimination?* (Buffalo, N.Y.: Prometheus, 1997); Norman E. Bowie (ed.), *Equal Opportunity* (Boulder: Westview, 1988); Steven M. Cahn (ed.), *Affirmative Action and the University: A Philosophical Inquiry* (Philadelphia: Temple University Press, 1993); and Marshall Cohen, Thomas Nagel, and Thomas Scanlon (eds.), *Equality and Preferential Treatment* (Princeton: Princeton University Press, 1976).
2. See Richard Wasserstrom, "A Defense of Preferential Treatment," in Francis J. Beckwith (ed.), *Do the Right Thing: A Philosophical Dialogue on the Moral*

- and Social Issues of Our Time* (Belmont, Cal.: Wadsworth, 1996), pp. 326-29. It should be noted that Wasserstrom argues first that there may be good, forward-looking, or consequentialist, reasons for favoring preferential treatment programs. He uses NODHT partially to respond to the objection that such programs do not give the most qualified what they deserve. It is clear that Wasserstrom is correct that the most qualified do not *deserve* the job to which they applied, if desert is understood in the strong sense (i.e., one is *entitled* to the job), since, for example, there could be numerous candidates for one position who have roughly the same qualifications. However, the moral question in preferential treatment is whether one is justified in awarding the less qualified person a position because it happens to move society closer to an a priori pattern of a "just" distribution of goods. Although the most qualified person does not deserve the position (in the strong sense), it seems to make some sense to say that in terms of weighing the candidates' merits in comparison to each other, the most qualified deserves the position (in the weak sense).
3. See John Rawls, *A Theory of Justice* (Cambridge, Mass.: Harvard University Press, 1971), p. 104; and Michael Kinsley, "Equal Lack of Opportunity," *Harper's*, June 1983.
  4. See, for example, Louis P. Pojman, "The Moral Status of Affirmative Action," *Public Affairs Quarterly* 6 (1992): 181-206; and Michael Sandel, *Liberalism and the Limits of Justice* (New York: Cambridge University Press, 1982), pp. 135-47.
  5. Pojman, "Moral Status," p. 183.
  6. *Ibid.*
  7. Kinsley, "Equal Lack of Opportunity," as quoted in Pojman, "Moral Status," p. 196.
  8. Rawls, *A Theory of Justice*, p. 104.
  9. This argument was raised to me in personal correspondence from Tracy B. Strong (University of California, San Diego).
  10. This objection was raised by an anonymous reader.
  11. Although outside the scope of this paper, it should be noted that some opponents of affirmative action appeal to the bad consequences of preferences for society's members, including those the preferences are intended to help. See Francis J. Beckwith and James H. Harris, *Race-Based Affirmative Action: A Debate* (Wynnewood, Penn.: Crossroads, 1997), pp. 38-42; Frederick Lynch, "Casualties and More Casualties: Surviving Affirmative Action (More or Less)," in Beckwith and Jones (eds.), *Affirmative Action: Social Justice or Reverse Discrimination?*, pp. 90-98; and Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (New York: St. Martin's Press, 1990), pp. 111-25.
  12. Pojman, "Moral Status," p. 197.
  13. I owe this point to an anonymous reader.
  14. Pojman, "Moral Status," p. 197.

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