1. **Defining Affirmative Action**

*Affirmative Action:* policies that give preference to members of disadvantaged or marginalised socially-salient groups on the basis of their membership in that group.

Examples: Quota System, Points-Based System

Other name: ‘Preferential hiring’ (Judith Jarvis Thomson, ‘Preferential Hiring’ *Philosophy and Public Affairs* Vol 2(4), 1973)

*Affirmative Action in the law:*

* France: Copé-Zimmermann law (2011): 40 percent of board members in stock exchange-listed or state-owned companies must be women.
* United States: Grutterv. Bollinger (2003): Affirmative action by universities is legal. (But not quotas or points-based systems.)
* United Kingdom: Affirmative action usually seen as violating the 2010 Equality Act provisions against discrimination (affirmative action referred to as ‘positive discrimination’).

*Is affirmative action discrimination?*

Discrimination: X discriminates against Y when

(1) X treats Y differently from Z,

(2) the difference in treatment is believed to be disadvantageous to Y,

(3) the difference is because Y and Z are from different socially-salient groups.

(Kasper Lippert-Rasmussen '(The Badness of Discrimination', Ethical Theory and Moral Practice, 9 (2006): 167-85))

Preferential hiring (e.g., for racial minorities) seems to satisfy these conditions. But:

(a) Political philosophers often think affirmative action is good.

(b) Affirmative action seems to be a form of discrimination

(c) Most political philosophers think discrimination is typically wrong.

1. **Defending Affirmative Action – without Equality of Opportunity**

*The Compensation View:* Affirmative Action is justified as a compensation for past injustices (See JJ Thomson 1973 and George Sher ‘Diversity’, *Philosophy and Public Affairs*,28(2), 1999)

*Problem 1.* Some beneficiaries of affirmative action may never have suffered from injustice or discrimination.

Thomson’s reply: “it is absurd to suppose that the young blacks and women now of an age to apply for jobs have not been wronged” (p.381)

*Problem 2.* Some of those disadvantaged by affirmative action may never have perpetuated injustice or discrimination.

Thomson’s reply 1: they may nonetheless have benefited from past injustice and discrimination.

Thomson’s reply 2: this is a necessary evil.

*Problem 3.*Why should compensation take the form of affirmative action, rather than, say, financial compensation? (Elizabeth Anderson *The Imperative of Integration* Princeton University Press, 2010, chapter 7)

*The Diversity View:* affirmative action brings greater diversity in institutions

Iris Marion Young: “Because of their different experiences, cultures, values, and interactive styles, people from different groups often bring unique perspectives to a collective endeavour… [T]he primary purpose of affirmative action is to mitigate the influence of current … blindnesses of institutions” (*Justice and the Politics of Difference*, Princeton University Press 1990 p.198).

*Problem 1* (Anderson, 2010): Not all institutions need epistemic diversity.

e.g. routinised jobs such as car-manufacturing assembly-line technicians

e.g. undifferentiated service jobs such as delivering parcels

*Problem 2* (Sher): The diversity argument doesn’t explain why affirmative action policies focus on socially-salient groups like race or gender.

Why not also use affirmative action to make sure that we have “suitable numbers of religious fundamentalists, … ex-military officers, conservatives, Marxists, Mormons [etc.] These groups, too, have characteristic concerns, types of experience, and outlooks on the world. Thus … why not also give  them preference”? (Sher 1999, p.99)

1. **Defending Affirmative Action – with Luck Egalitarianism**

Last lecture: Luck egalitarianism allows some forms of discrimination. So, even if affirmative action is discriminatory, luck egalitarianism might possibly allow it.

Shlomi Segall (‘What is so bad about discrimination?’ *Utilitas* 24(1), 2012)): Luck egalitarianism supports affirmative action:

* Affirmative action gives preference in hiring to groups that are unfairly disadvantaged.
* Hence, it removes unlucky or undeserved disadvantage and creates more equal opportunities for welfare.
* By contrast, many other forms of discrimination make opportunities for welfare less equal.

*Problem 1.*Luck egalitarianism is a controversial ideal, which may be in tension with individual liberty. (see lecture 2)

*Problem 2.*Even if luck egalitarianism supports affirmative action, it may also support seemingly unjust forms of discrimination. (see lecture 3)

*Problem 3.*Luck egalitarianism’s justification for affirmative action is highly contingent (depends on many contested empirical questions)

1. **Defending Affirmative Action – with Meritocracy**

Common view: meritocracy is in tension with affirmative action (Segall 2012):

* Meritocracy requires selecting candidates only on the basis of their qualifications.
* Affirmative action says that the social group to which the candidate belongs can also be used as a hiring criterion.
* So: meritocracy seems to reject affirmative action as discriminatory.

If we want to justify affirmative action, how can we respond to this problem?

*Solution 1:* Affirmative action violates meritocracy now to realise meritocracy in the future

How? *The Role Model Argument:*

People hired through affirmative action serve as role models who encourage potentially qualified candidates from underrepresented groups to apply for jobs in the future.

*Problem:*appointing applicants as role models can have damaging consequences for those applicants

* It could encourage the belief that they are relatively less qualified
* It could increase the burden on those appointed

(See Anita L. Allen ‘On Being a Role Model’ *Berkeley Women’s Law Journal* (1990))

*Solution 2:* best qualified candidates here and now. No tension between meritocracy and affirmative action.

The Argument (Anderson 2010):

* Our judgments about qualifications – and the evidence about qualifications – are biased against women and BAME (Black and Minority Ethnic) groups
* To correct for this bias, we should adjust our judgments.
* Affirmative action achieves this by giving preference to disadvantaged or marginalised socially salient groups.

“affirmative action … is an application of Aristotle’s point that to do the right thing in the face of a contrary inclination, we must drag ourselves in the opposite direction, as an archer must aim against the wind to hit the bull’s eye”  (Anderson 2010, p.148)

*Two advantages of this argument:*

1. Does not send message that those selected through affirmative action are less qualified.
2. It suggests that affirmative action is not discriminatory.

*Two problems with this argument:*

1. Rests on (somewhat) disputed evidence about implicit bias.
2. How desirable is meritocracy?

(See Iris Marion Young, 1990, chapter 7)

For more on the evidence for implicit bias see:

Bertrand, M. & Mullainathan, S. (2004) Are Emily and Greg more employable than Lakisha and Jamal? The American Economic Review, 94(4) pp.991-1013

Daniel Kelly and Erica Roedder, 'Racial Cognition and the Ethics of Implicit Bias', *Philosophy Compass*, 3, no. 3 (2012): 522-40