

Rawls's Theory of Justice and Affirmative Action in Science

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Rival applied ethicists have constructed arguments for and against affirmative action independently of Rawls's theory of justice. Those arguments do not resolve the dispute about affirmative action. I reformulate them with the use of Rawls's theory of justice and conclude that the reformulated arguments do not resolve the dispute about affirmative action either. Therefore, Rawls's theory of justice is not useful in resolving the dispute about affirmative action. This point applies to affirmative action in science, contrary to what some writers suggest.

Keywords: affirmative action, contractors, rationality, Rawls's theory of justice, science

INTRODUCTION

Science should promote the interest of all human beings. It should not promote only the interest of a particular group of human beings, nor should it demote the interest of a particular group of human beings. In this sense, egalitarian value is good, and it should influence scientific inquiry. By contrast, sexist value is bad, and it should not influence scientific inquiry.

That being said, it is controversial whether some values are good or bad, and thus whether they should influence scientific inquiry. In 2023, for example, the Korea Research Foundation allocated about four million U.S. dollars of its research fund for female scientists and engineers. The aim of the research fund is to increase the number of female scientists and engineers. Male scientists and engineers are ineligible to apply for it. This practice is a form of affirmative action in science and engineering.

Several questions arise. Is it (morally) right or wrong for the public funding agency to allocate a research fund only for female scientists and engineers? What makes some practices in science and engineering good and others bad? How do we distinguish between good and bad values? Is there a philosophical theory that would be useful in determining whether affirmative action in science and engineering is right or wrong?

These questions are asked and answered by philosophers of science, ethicists, and political philosophers. Janet Kourany (2022: 242) claims that affirmative action in science is needed to rectify past discrimination against women. Frank Cabrera (2022: 817) claims that John Rawls's (1971/1999) theory of justice can be used to distinguish between good and bad values, and thus between those values that should influence scientific inquiry and those values that

should not. These two philosophers' views lead us to the following question: is Rawls's theory of justice useful for determining whether affirmative action in science is right or wrong?

This paper aims to show that Rawls's theory of justice does not help to determine whether affirmative action in science is right or wrong. In Section 2, I expound on Rawls's theory of justice and on Cabrera's suggestion that Rawls's theory of justice can be used to solve the problem of what values should and should not influence scientific inquiry. In Section 3, I introduce the key arguments that rival applied ethicists have constructed for and against affirmative action without using Rawls's theory of justice, and then reformulate them with the use of Rawls's theory of justice. In Section 4, I argue that reformulating applied ethicists' key arguments in terms of Rawls's theory of justice does not help to resolve the dispute about affirmative action. In Section 5, I argue that the same holds for affirmative action in science. In Section 6, I reply to Rawlsians' possible defense that Rawls's theory of justice is no worse off than utilitarianism.

This paper does not aim to determine whether affirmative action in science is right or wrong, but rather to determine whether Rawls's theory of justice is useful in resolving the dispute about affirmative action in science. Keep in mind that the target of this paper is not affirmative action in science but rather Rawls's theory of justice.

RAWLS'S THEORY OF JUSTICE

In this section, I explicate Rawls's (1971/1999) theory of justice and Cabrera's suggestion on how it can be used.

Rawls's theory of justice holds that a social principle is just if and only if contractors would unanimously approve of it behind the veil of ignorance, and that a social principle is unjust if and only if contractors would unanimously disapprove of it behind the veil of ignorance. On this proposal, the target of evaluation is a social principle, and the outcome of evaluation is that a social practice is just or unjust. For example, the social principle that high offices should be open to all is just because contractors would approve of it behind the veil of ignorance, while the negation of that social principle is unjust because contractors would disapprove of it behind the veil of ignorance.

Contractors are hypothetical agents. They are self-interested and behind the veil of ignorance, which means that they have the aim to maximise their own interest, and that they are ignorant of their race, gender, socioeconomic status, intelligence, sexual orientation, religion, etc. However, they do know about the world and human psychology, i.e., in general, human beings pursue pleasure, health, equality, freedom, etc. Contractors are at a bargaining table to design the basic structure of the society in which they will live. Once they approve of a certain social principle, the veil of ignorance is lifted, and they live in a society which operates under that social principle; once they disapprove of a certain social principle, the veil of ignorance is lifted, and they live in a society which operates without that social principle.

Rawls's theory of justice can be used not only to evaluate a social principle but also to evaluate laws, policies and actions. The outcome of evaluation can be that they are right or wrong. On Rawls's theory of justice, for example, a policy which treats heterosexuals and homosexuals equally is right because contractors would approve of it behind the veil of ignorance, whereas a policy that discriminates against homosexuals is wrong because contractors would disapprove of it behind the veil of ignorance. Contractors would disapprove of it because they might turn out to be homosexuals once the veil of ignorance is lifted.

In line with this observation, Cabrera claims that Rawls's theory of justice can solve the problem of what values should and should not influence decisions in science. He writes that 'the Rawlsian framework can help us solve the new demarcation problem' (Cabrera 2022: 817). The new demarcation problem is the problem of distinguishing between those values that should influence scientific inquiry and those values that should not. On Cabrera's account, good values are the ones that would be accepted by contractors, and bad values are the ones that would be rejected by contractors, and this suggestion can help us to distinguish between those values that should influence scientific inquiry and those values that should not.

REFORMULATING APPLIED ETHICISTS' ARGUMENTS

In the literature, rival applied ethicists have constructed arguments for and against affirmative action independently of Rawls's theory of justice. In this section, I summarise what I take to be their key arguments and then reformulate them in terms of Rawls's theory of justice.

Consider applied ethicists' opposing arguments about whether it is right or wrong to compensate blacks for past discrimination against them. Albert Mosley argues that whites should compensate blacks, writing that 'the harmdoer is to make restitution to the harmed so as to put the harmed in the position the harmed most likely would have occupied had the harm not occurred' (Mosley 2008: 224–225). Louis Pojman objects that it is not young black males but their ancestors who were wronged, and thus that young black males do not deserve compensation, writing that 'compensation is normally individual and specific' (Pojman 2008: 238).

Under the framework of Rawls's theory of justice, proponents would say that contractors would approve of compensation for blacks behind the veil of ignorance on the grounds that they might turn out to be blacks after the veil of ignorance is lifted, and that the compensation might advantage them. By contrast, opponents would say that contractors would disapprove of compensation for blacks for fear that they might turn out to be whites after the veil of ignorance is lifted, and that the compensation might disadvantage them.

Let me turn to applied ethicists' opposing arguments about whether proportional representation is right or wrong. Mosley argues that it is only fair to assume that blacks would be proportionally represented, had it not been for past discrimination (Mosley 2008: 227). Pojman objects that we do not know whether blacks would be underrepresented, proportionally represented, or overrepresented, and that nothing follows from ignorance. He writes that 'ignorance doesn't favor equal group representation any more than it favors unequal group representation' (Pojman 2008: 240).

Under the framework of Rawls's theory of justice, proponents would say that contractors would approve of proportional representation on the grounds that contractors might turn out to be blacks after the veil of ignorance is lifted, and that they might benefit from affirmative action designed to achieve proportional representation. By contrast, opponents would say that contractors would disapprove of proportional representation for fear that they might turn out to be whites after the veil of ignorance is lifted, and that they might fall victims to affirmative action designed to achieve proportional representation.

Let me turn to applied ethicists' opposing arguments about whether reverse discrimination is right or wrong. Pojman (2008: 235) argues that affirmative action is reverse discrimination against young white males, who did not participate in the discrimination against blacks. Using affirmative action to achieve proportional representation is to do a wrong to correct

a wrong. Mosley (2008: 226) objects that young white males' families are rich while young black males' families are poor due to past discrimination against blacks.

Under the framework of Rawls's theory of justice, proponents would say that contractors would approve of reverse discrimination on the grounds that they might turn out to be blacks after the veil of ignorance is lifted, and that they might benefit from reverse discrimination against whites. By contrast, opponents would say that contractors would disapprove of reverse discrimination for fear that they might turn out to be whites after the veil of ignorance is lifted, and that reverse discrimination against whites might disadvantage them.

Let me turn to applied ethicists' opposing arguments about whether a quota helps or hurts the pursuit of excellence. Pojman argues that a society is better off when the best qualified people fill the important positions. He writes that 'filling the most important positions with the best qualified is the best way to ensure efficiency in job-related areas and in society in general' (Pojman 2008: 237). James Rachels (1997) argues that quotas are necessary to ensure that the best qualified candidates are hired in a job market. Without quotas, black candidates, although more competitive than white candidates, would continue to face discrimination in the job market.

This point needs to be fleshed out. An institute, be it a governmental agency or a private company, can purposefully discriminate against blacks in its hiring practices. As a result, there might be no black employee in that institute. When criticised for discriminating against blacks in the hiring process, the institute can reply that it hired the best qualified applicants, that they just happened to be whites, and that no black applicant was better qualified than the worst hired white applicant. Rachels's point is that without a quota, black applicants who are better qualified than white applicants will keep failing to get jobs in the institute.

Under the framework of Rawls's theory of justice, proponents would say that contractors would approve of a quota designed to hire the best qualified applicants on the grounds that contractors might turn out to be blacks after the veil of ignorance is lifted, and that they might benefit from a quota designed to hire the best qualified applicants. By contrast, opponents would say that contractors would disapprove of a quota designed to hire the best qualified applicants on the grounds that they might turn out to be whites after the veil of ignorance is lifted, and that they might fall victims to the quota designed to hire the best qualified applicants.

Finally, let me turn to applied ethicists' opposing arguments about whether black role models are needed for black children. Proponents argue that without black role models, black children will not be motivated to make efforts to take high offices. Pojman (2008: 236) replies that black children do not need black role models but role models who might be blacks or whites, and that his role models were Mahatma Gandhi and Martin Luther King Jr.

Under the framework of Rawls's theory of justice, proponents would say that contractors would approve of affirmative action designed to produce black role models on the grounds that they might turn out to be blacks after the veil of ignorance is lifted, and that they might benefit from affirmative action designed to produce black role models. By contrast, opponents would say that contractors would disapprove of affirmative action designed to produce black role models for fear that they might turn out to be whites after the veil of ignorance is lifted, and that affirmative action designed to produce black role models might disadvantage them.

To sum up this section, proponents would say that contractors would approve of affirmative action, while opponents would say that contractors would disapprove of affirmative action.

PERSISTENCE OF THE DISPUTE

In this section, I argue that Rawls's theory of justice is not useful in resolving the dispute about affirmative action.

In Section 3 above, I reframed applied ethicists' opposing arguments for and against affirmative action in terms of Rawls's theory of justice. The reformulated arguments do not resolve the dispute about affirmative action. They rather deepen the disagreements between proponents and opponents of affirmative action. It follows that Rawls's theory of justice is not useful in resolving the dispute about affirmative action.

In response to this gloomy conclusion, Rawlsians might put forward the following suggestion. Contractors are rational agents, and thus they would either unanimously approve or disapprove of affirmative action. Therefore, Rawls's theory of justice is useful in resolving the dispute about affirmative action.

Unfortunately, it is not clear whether rational agents would approve or disapprove of affirmative action behind the veil of ignorance. Proponents would say that since contractors are rational agents, they would be persuaded by applied ethicists' arguments for affirmative action, such as Mosley's arguments and Rachels's argument. In response, opponents would say that since contractors are rational agents, they would be persuaded by applied ethicists' arguments against affirmative action, such as Pojman's arguments. In short, proponents and opponents would draw the opposite conclusions from the same premise that contractors are rational agents, and the dispute between them would persist. Thus, Rawls's idea that contractors are rational agents does not help at all to resolve the dispute about affirmative action.

Rawlsians might now suggest that contractors are not selfish agents, and that they have the aim to promote common good. Thus, when faced with the uncertainty of whether they are whites or blacks, they do not think about whether affirmative action would advantage or disadvantage them in case they turn out to be whites or blacks, but they rather think about whether affirmative action would promote or demote common good. In other words, they do not ask themselves, 'Will affirmative action advantage or disadvantage me in case I turn out to be a white or a black?' They rather ask themselves, 'Does affirmative action promote or demote common good?' Since contractors have the aim to promote common good, they would reach an agreement about affirmative action.

This possible suggestion is a hybrid view of Rawls's theory of justice and utilitarianism. On this hybrid view, an affirmative action is right if and only if contractors who have the aim to increase common good would approve of it, and that an affirmative action is wrong if and only if contractors who have the aim to increase common good would disapprove of it. This proposal enshrines the Rawlsian idea that an action is right or wrong, depending on whether contractors would approve or disapprove of it, and the utilitarian idea that morality is tied to happiness.

In my view, the hybrid view would also deepen the disagreements between proponents and opponents over affirmative action. Proponents would argue that contractors who have the aim to increase common good would approve of affirmative action, appealing to applied ethicists' arguments for affirmative action. By contrast, opponents would argue that contractors who have the aim to increase common good would disapprove of affirmative action, appealing to applied ethicists' arguments against affirmative action. In the interest of saving space, however, I do not flesh out proponents' arguments and opponents' arguments in terms of the hybrid view.

AFFIRMATIVE ACTION IN SCIENCE

In this section, I argue that Rawls's theory of justice is not useful in determining whether affirmative action in science is right or wrong.

What are we to make of allocating a research fund for female scientists? Under the framework of Rawls's theory of justice, proponents would say that contractors would approve of the scientific practice on the grounds that contractors might turn out to be female scientists after the veil of ignorance is lifted, and that they might want to apply for the research fund. Opponents would object that contractors would disapprove of the scientific practice for fear that they might turn out to be male scientists after the veil of ignorance is lifted, and that they might not be eligible to apply for the research fund.

It is of no use for Rawlsians to say that contractors are rational agents. Proponents would suggest that contractors are rational agents, and thus that they would approve of the scientific practice. When challenged to justify this suggestion, proponents would appeal to applied ethicists' arguments for affirmative action, such as Mosley's arguments and Rachels's argument. Opponents would object that contractors are rational agents, and thus that they would disapprove of the scientific practice. When challenged to justify this objection, opponents would appeal to applied ethicists' arguments, such as Pojman's arguments. As a result, the dispute about the practice would persist.

Let me turn to the call for the use of the criteria, such as race and gender, in evaluating applicants in science. Some scientists argue that using the criteria is needed so that outstanding applicants will not be excluded from science. For example, H. Holden Thorp writes 'that students chosen for admission based on a range of criteria, including race, ethnicity, and socioeconomic background, fared better than those chosen solely on the basis of standardized test scores and high school grades' (Thorp 2022: 473). David Resnik supports 'using race, ethnicity, and gender as factor[s] in decision-making' in science (Resnik 2005: 91).

What should we make of using the criteria favourable to underrepresented groups in science under the framework of Rawls's theory of justice? Proponents would say that contractors would approve of using the criteria on the grounds that they might turn out to be members of underrepresented groups after the veil of ignorance is lifted, and that they might benefit from the implementation of the criteria. Opponents would object that contractors would disapprove of the use of the criteria for fear that they might turn out to be members of overrepresented groups after the veil of ignorance is lifted, and that the implementation of the criteria might disadvantage them.

Let me now turn to Kourany's call for affirmative action in science. In the past, science discovered many facts favourable to men, but unfavourable to women. For example, social science discovered facts about men's 'leadership styles and abilities but no facts about such characteristics in women' (Kourany 2022: 230). Past discrimination against women in science 'calls for an *epistemic* affirmative action program for science, one in which research serving the previously privileged would continue while research serving the others would be given extra advantages' (Kourany 2022: 242). Kourany's suggestion is that there can be research aimed at discovering facts favourable to men, but research aimed at discovering facts favourable to women should get extra advantages.

How can epistemic affirmative action be achieved? In my view, it can be achieved through monetary affirmative action. Specifically, some research funds can be set aside for the purpose of discovering facts favourable to women. In addition, senior scientists might use the criterion of gender, in addition to the criterion of qualification, when they evaluate young scientists.

As a result, more young female scientists might be hired and conduct research aimed at discovering facts favourable to women.

An interesting question is whether it is right to set aside a research fund for discovering facts favourable to women, and whether it is right to use the criterion of gender in evaluating young scientists. There can be an exchange between proponents and opponents over these two issues under the framework of Rawls's theory of justice. The exchange can be easily inferred from the exchange between proponents and opponents over the research fund that only female scientists are eligible to apply for, and from the exchange between proponents and opponents over the use of the criteria, such as race and gender. The new exchanges would boil down to the dispiriting conclusion that Rawls's theory of justice is not useful to determine whether affirmative action in science is right or wrong.

This conclusion goes against Cabrera's (2022) optimistic outlook on Rawls's theory of justice. According to him, Rawls's theory of justice can be useful to distinguish between good and bad values. For example, egalitarian value is good, and thus it should influence scientific inquiry, because contractors would approve of it behind the veil of ignorance. By contrast, sexist value is bad, and thus it should not influence scientific inquiry, because contractors would disapprove of it behind the veil of ignorance (Cabrera 2022: 816).

My response to Cabrera's optimistic outlook on Rawls's theory of justice is to point out that it is clear that egalitarian value is a good one while sexist value is a bad one, even before we are exposed to Rawls's theory of justice. We do not need Rawls's theory of justice to tell us that egalitarian value is a good one while sexist value is a bad one, because it is already clear to us that they are.

Unlike egalitarian and sexist values, it is not clear whether affirmative action in science is good or bad. As noted earlier, proponents would say that contractors would approve of affirmative action in science, while opponents would say that contractors would disapprove of it. The use of Rawls's theory of justice does not decrease the difficulty of determining whether affirmative action in science is right or wrong. Therefore, Rawls's theory of justice cannot solve the problem of what values should and should not influence scientific inquiry, contrary to Cabrera's assertion.

To sum up this section, Rawls's theory of justice can be said to be useful in solving the problem of what values are good and bad in science, not when it tells us whether egalitarian and sexist values are good or bad but rather when it tells us whether affirmative action is good or bad.

UTILITARIANISM

In this section, I comment on Rawlsians' possible reply to my objection that Rawls's theory of justice is not useful in resolving the dispute about affirmative action.

Rawlsians might argue that Rawls's theory of justice is no worse off than utilitarianism vis-à-vis the issue of whether affirmative action is right or wrong. Utilitarianism asserts that affirmative action is right insofar as it maximises happiness, and wrong insofar as it maximises unhappiness. However, we cannot determine whether it maximises happiness or unhappiness. Therefore, utilitarianism does not help to resolve the dispute about it.

Admittedly, utilitarianism cannot resolve the dispute about affirmative action any more than Rawls's theory of justice can. However, the limitations of the two philosophical theories are different in kind. Under the framework of utilitarianism, if we had all the relevant factual information about affirmative action, we could tell whether affirmation is right or wrong.

Under the framework of Rawls's theory of justice, however, even if we had all the relevant factual information about affirmative action, we could not tell whether affirmation is right or wrong, for we would still disagree about whether contractors would approve or disapprove of affirmative action. To put it differently, the dispute about affirmative action would survive all the relevant factual information under the Rawlsian framework, but not under the utilitarian framework.

Moreover, the aim of this paper is not to show that utilitarianism is more useful than Rawls's theory of justice in resolving the dispute about affirmative action, but to refute Cabrera's contention that 'the Rawlsian framework can help us solve the new demarcation problem' (Cabrera 2022: 817), i.e. that Rawls's theory of justice is useful in distinguishing between values that should influence scientific inquiry and those that should not.

I admit, though, that Rawlsians' point about Rawls's theory of justice and utilitarianism raises an interesting philosophical issue of what the use of a philosophical theory of right and wrong actions is, and the related philosophical issue of why it is difficult to determine whether affirmative action is right or wrong. Unfortunately, exploring these two issues requires that we tread upon the territory of metaethics, which is beyond the scope of this paper. Suffice it to say here that moral realists and emotivists would provide rival views on those issues.

CONCLUSIONS

Rival applied ethicists have constructed opposing arguments to show that affirmative action is right or wrong independently of Rawls's theory of justice. Their arguments can be reformulated using Rawls's theory of justice. Reformulating them does not reduce the difficulty of resolving the dispute about affirmative action. Therefore, Rawls's theory of justice is not useful in determining whether affirmative action is right or wrong.

Rival applied ethicists have engaged in hot debates over whether other controversial actions, such as abortion, euthanasia and same-sex marriage, are right or wrong. I believe that Rawls's theory of justice does not help at all resolving the disputes over them any more than it helps resolving the dispute over affirmative action. However, separate papers are required to defend this conclusion. I sum up this paper with the following slogan: 'Veil of ignorance doesn't help'.

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References

1. Cabrera, F. 2022. 'A Rawlsian Solution to the New Demarcation Problem', *Canadian Journal of Philosophy* 52(8): 810–827.
2. Kourany, J. 2022. 'The New Worries about Science', *Canadian Journal of Philosophy* 52(3): 227–245.
3. Mosley, A. 2008. 'Affirmative Action: Pro', in *Taking Sides: Clashing Views on Moral Issues*, ed. S. Satris. Dubuque, Iowa: McGraw-Hill Companies, 235–243.
4. Pojman, L. 2008. 'The Case against Affirmative Action', in *Taking Sides: Clashing Views on Moral Issues*, ed. S. Satris. Dubuque, Iowa: McGraw-Hill Companies, 235–243.

5. Rachels, J. 1997. *Can Ethics Provide Answers?: And Other Essays in Moral Philosophy*. Lanham: Rowman & Littlefield Publisher.
6. Rawls, J. 1971/1999. *A Theory of Justice*. Cambridge: Harvard University Press.
7. Resnik, D. 2005. 'Affirmative Action in Science and Engineering', *Science & Education* 14(1): 75–93.
8. Thorp, H. 2022. 'Science Needs Affirmative Action', *Science* 375(6580): 473.

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J. Rawlso teisingumo teorija ir patvirtinančioji veikla moksle

Santrauka

Konkuruojantys taikomosios etikos specialistai, nepriklausomai nuo J. Rawlso teisingumo teorijos, pateikė argumentų už ir prieš patvirtinančiąją veiklą. Šie argumentai neišsprendžia ginčo dėl patvirtinančiosios veiklos. Aš juos performuluoju remdamasis J. Rawlso teisingumo teorija ir darau išvadą, kad taip performuluoti argumentai taip pat neišsprendžia ginčo dėl patvirtinančiosios veiklos. Todėl J. Rawlso teisingumo teorija nėra naudinga sprendžiant ginčą dėl patvirtinančiosios veiklos. Tai galioja ir patvirtinančiosios veiklos moksle atveju, priešingai nei teigia kai kurie autoriai.

Raktažodžiai: patvirtintas veiksmas, kontraktininkai, racionalumas, J. Rawlso teisingumo teorija, mokslas