



To What Extent Can Affirmative Action Be Considered Ethical in the Gratz v. Bollinger Case

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Abstract. This essay intends to examine whether affirmative action in the Gratz v. Bollinger case (2003) can be justified as ethical under Jeremy Bentham's utilitarian perspective. This essay offers an exhaustive case review of this lawsuit and evaluates the economic and educational effects of the University of Michigan's practice of affirmative action in a relevant five-year period from 1995 to 2000. Related literature and empirical data are offered along with a discussion on the Supreme court's decision on this lawsuit.

Keywords: Affirmative action in higher education · ethics · Gratz v. Bollinger · utilitarianism

1 Introduction

With the ongoing Harvard admission lawsuit being a heated challenge towards affirmative action in higher education, the notion of affirmative action has once again gained enough public spotlight. In short, affirmative action refers to sets of practices proposed by government agencies, employers, or college admissions offices for advocating nondiscrimination towards minorities, with a focus on enhancing the economic growth of minorities in their education, employment, and business ownership [1]. While some might argue that practices of affirmative action in higher education are greatly beneficial and ethical for those who are underrepresented to gain the access to open opportunities, some might allege that utilization of affirmative actions in college admission deprives the educational opportunities of the nonminority groups, generating the seemingly unethical reverse-discrimination effect. Thus, to examine the ethics of affirmative action, this essay focuses specifically on the previous Gratz v. Bollinger lawsuit to investigate to what extent affirmative action can be considered ethical in the Gratz v. Bollinger case.

In the Gratz v. Bollinger case, petitioners Gratz and Hamacher filed a class action suit against the University of Michigan, alleging that the university's use of racial preferences in undergraduate admissions has violated the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S. C. § 1981 [2]. As a result, on June 23, 2003, the court determined in a 6–3 decision that the University of Michigan's Office of Undergraduate Admission (OUA) did discriminate against

nonminority applicants, thus its use of racial preferences in undergraduate admissions remains unconstitutional.

This essay intends to offer a philosophical perspective in deconstructing the notion of “Ethics of affirmative action” based on a thorough analysis of the *Gratz v Bollinger* case and related data. In this essay, the notion of “ethical” will be defined with reference to Jeremy Bentham’s utilitarianism perspective, and related literature and data will be discussed and analyzed under this philosophical perspective to consider whether affirmative action is ethical in *Gratz v. Bollinger* case. Further discussions on the Supreme Court’s decision will be provided, and potential limitations and future discussions will also be addressed.

2 Case Review: *Gratz v. Bollinger* (2003)

Petitioners Gratz and Hamacher, with a shared background of Michigan residents and Caucasians, applied to and got rejected from the University of Michigan’s College of Literature, Science, and the Arts (LSA) respectively in 1995 and 1997. Though Gratz was informed to be well qualified and Hamacher was told to be within the qualified scale by the LSA, both were denied in early admission rounds. In 1997, the two petitioners filed a class action in the United States District Court for the Eastern District of Michigan, concerning that use of racial preferences in the University’s admissions violates the Equal Protection Clause of the Fourteenth Amendment, Title VI of the Civil Rights Act of 1964, and 42 U.S. C. § 1981. In fact, for each academic year, the University of Michigan’s OUA evaluates undergraduate applications using a written guideline and a point-grade system, in which 100 points are needed out of the 150-point scale to guarantee admissions. During all relevant periods, the University of Michigan’s OUA awards applicants from the underrepresented minorities – as determined by the university, African Americans, Native Americans, and Hispanics– with an extra 20 points, and the OUA virtually admits every qualified applicant from these minority groups [2]. On June 23, 2003, the supreme court decided Gratz’s case in a 6–3 decision, with Chief Justice William H. Rehnquist representing the majority opinion that the OUA’s affirmative action policies made race a decisive factor in undergraduate admissions and were not narrowly tailored to achieve educational diversity as the respondent Bollinger proposed since almost every applicant from the “underrepresented minorities” was admitted [3].

3 Jeremy Bentham’s Utilitarianism, the First Course

To begin with, Jeremy Bentham’s moral theory suggests that the object of social action is to maximize the greatest happiness of the greatest number in society – in other words, the general societal utilities– and actions should be judged right or wrong to the extent they boost or reduce societal utility and human well-being [4]. To interpret Bentham’s utilitarianism in *Gratz v. Bollinger* case, the author contends that if the university’s practices of affirmative action in undergraduate admissions generate an upward growth in the statewide social welfare during the relevant period from 1995 to 2000, then the university’s use of affirmative action in this case can be considered as ethical since it did enhance general societal utilities. In the following discussion, the author will

evaluate the notion of “general societal utilities” in two ways: 1. The author will review the statewide and national economic effects of this affirmative action by analyzing the state’s economic index and related literature. 2. The author will examine the educational benefits of diversity - a critical element in the constitutional defense of affirmative action in higher education in the *Gratz v. Bollinger* case – by discussing extracts from the book *Defending Diversity* written by faculties from the University of Michigan.

Given that the University of Michigan, a state university, aims at educating students as the workforce for the state’s development, it is assumed that the state’s economic index during the relevant period from 1995 to 2000 could be a sufficient indicator to reflect direct or indirect economic effect under the affirmative action practiced by University of Michigan’s OUA. As Fig. 1 shows, from 1995 to 2000, the general Michigan State employment demonstrated a steady, upward increase, with an increase in employment from 4,567,643 in January 1995 to 4,950,193 in December 2000, indicating the growing local labor force [5]. Figure 2 reflects the growth of the statewide labor force participation rate, with an increase from 66.4 in January 1995 to 68.5 in December 2000, which indicates that the percentage of all people of working age who are employed or are actively seeking jobs is increasing, implying the increasingly robust job market and workforce [6]. As John Engler, governor of Michigan, suggests in the *State of Michigan: 2000 Economic Report of the Governor*, Michigan State had a more diverse economy with more workforce entering high-tech jobs, with the highest percentage of highly skilled technical workers in the nation during the 1990s [7]. The increasing diversifying workforce in high-tech jobs implies the benefits of the states’ mature higher education system, with the practices of affirmative action by the University of Michigan’s OUA, to enable the workforce with better capacity and advanced ability in technology. Also, as general employment and labor force participation increase, positive social welfare is achieved along with a diversifying statewide workforce to promote overall societal economic growth.

Similar results are also verified and suggested by Professor Harry J. Holzer in his journal article *The economic impact of affirmative action in the US*. Holzer, after reviewing several lawsuits on affirmative actions in higher education (e.g., *Gratz v. Bollinger* case, *Grutter v. Bollinger* case, etc.) and related empirical data, argues that affirmative action applied in higher education could generate positive labor market effects among states [8]. With the influence of affirmative action favoring minorities in higher education, the distribution of employment between white males – the ethnicity group that is believed to have racial dominance in society – and minorities changes accordingly, thus it seems important to examine the general job performance of those who benefit from such shift in ethnical distribution of workforce. To analyze the employee credentials and performance of employees with different demographic backgrounds within relevant periods, Holzer introduces his study published in 1999 on the job performance of minorities hired under affirmative action. By using the difference-in-differences method, Holzer concludes that while there is evidence that minorities hired under affirmative action have lower educational background, there is no evidence of weaker job performance among most of these candidates [9]. Thus, Holzer implies that affirmative action would reduce the educational and employment gaps that U.S. minorities have suffered from for a long time.

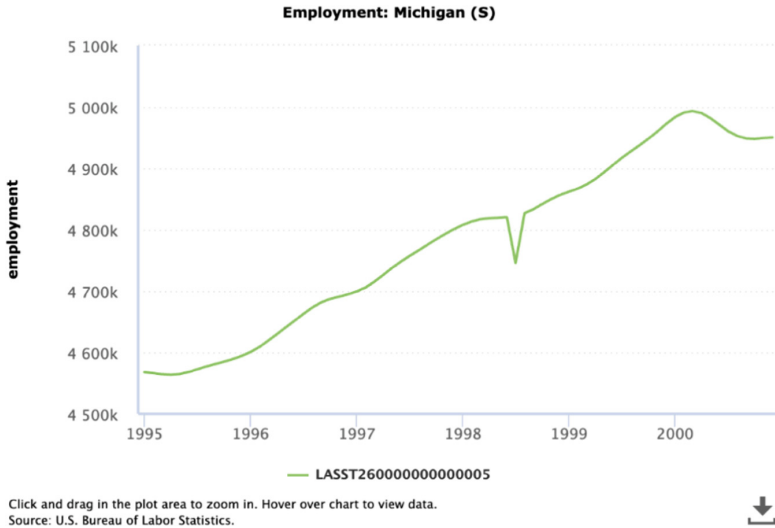


Fig. 1. Michigan State employment from 1995 to 2000 [5]



Fig. 2. Michigan State Labor Force Participation Rate from 1995 to 2000 [6]

Apart from the positive economic effects generated by the practices of affirmative action, Professor Patricia Gurin at the University of Michigan offers a strong defense for the University of Michigan’s OUA’s use of affirmative action by interviewing a large student body at the University of Michigan and measuring the campuswide “diversity” level: the students’ learning outcomes, interactions among the student body, and the cultivations of “democracy”. Gurin’s studies validate that the University of Michigan’s practices

of affirmative action in fact generate long-term, nationwide efficiency and educational benefits of diversity [10]. Gurin suggests that engagement in learning with diverse peers has great benefits for students in their late adolescence, guiding them to become better citizens and leaders of democracy. Thus, under the University of Michigan's efforts in diversifying the student body through affirmative action, students with distinct, most of the students with segregated precollege backgrounds are able to develop mature identity formation, cognitive growth, and preparation of citizenship through interactions with peers of different ethnicities. To offer an authentic learning experience of students at the University of Michigan, Gurin records interviews with several students on how the university's diversity has cultivated their growth despite their homogeneous backgrounds: as an example, one of the students – an Asian American male from California – mentions that the university's diverse environment and active student body have made him realize that here people with different ethnicities do not just co-exist but really get together. Gurin suggests that the university's practices of affirmative action enhance social and cultural diversity and guarantee the students a rigorous, diverse learning environment, in which students frequently engage with others who share distinct cultural backgrounds and learn to become better citizens with open minds and rounded perspectives [10].

To conclude this section, it seems that the University of Michigan's practices of affirmative action do increase overall social welfare both from an economic perspective and an educational perspective. Statistics in the relevant period from 1995 to 2000 and Holzer's findings indicate that utilization of affirmative action in the statewide, or even nationwide, higher education will boost the overall economic welfare in society as well as lessen the rigid employment gaps, thus validating the "ethics" of affirmative action in Jeremy Bentham's thinking since happiness among the greatest number of citizens is generated. Similarly, Gurin's arguments and investigations suggest that the University of Michigan's utilization of affirmative action enables a diverse environment for the students to engage more in their learning process and learn to become global, democratic citizens, thus defending the university's educational rationale and verifying the societal positive externalities as a result of the affirmative action.

4 Supreme Court's Decision, the Second Course

While it seems that under Jeremy Bentham's utilitarianism perspective, University of Michigan's OUA's practice of affirmative actions can be justified as ethical as it did result in an overall upward economic growth, the Supreme Court, in a 6–3 decision, addresses the practice of affirmative action in this lawsuit as unconstitutional. Justice O'Connor's view could very much explain the court's decision: she intends that the University of Michigan's "mechanical" procedure of grade point system in undergraduate admissions does not fully consider aspects of each application, thus failing to really contribute to the student body diversity on campus [2]. Connor's view implies that any applicant to the university deserves an equal, well-rounded moral evaluation of their applications that reflects their intrinsic values.

5 Conclusion

In conclusion, with reference to Jeremy Bentham's utilitarianism perspective on defining "ethics", this essay offers a thorough case review of the *Gratz v. Bollinger* case (2003) and justifies the practices of affirmative action in the *Gratz v. Bollinger* case to be ethical through verifying Michigan state's economic development during the relevant period from 1995 to 2000 and discussing related literature to validate increasing educational benefits and social welfare resulted from the university's utilization of affirmative action. A discussion on the court's decision is provided afterward.

Limitations in this study include: 1. While potential inflation rate and economic expansion in the relevant period from 1995 to 2000 are not considered when analyzing the economic index of employment and labor force participation rate, the state's economic report offers an authentic conclusion of the state's economic performance during the 1990s, which is sufficient to validate the state's economic growth during the relevant period. 2. Further clarification on Jeremy Bentham's utilitarianism is needed since this essay only takes reference from a partial perspective on utilitarianism. 3. More economic indicators such as GDP per capita and Human Index Rate can be included and discussed when examining the state's economic development to enhance the accuracy of the conclusion.

For further discussions, the deployment of affirmative action in higher education can also be explored with a case comparison between the *Gratz v. Bollinger* case and *Grutter v. Bollinger* case, with these two cases focusing accordingly on the University of Michigan's practices of affirmative actions in undergraduate admissions as well as law school admissions. As an implication, an analysis of these previous cases of affirmative action in higher education could shed light on the recent Harvard admission lawsuit.

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