



## Government is the affirmative action problem, private action is the solution

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African-Americans have been horribly mistreated in America. The nation's ideals have been right — liberty and equality under the law for all — but with centuries of slavery and Jim Crow, the country fell devastatingly short of living up to them for most of its history. A huge, lasting impact of this is African-Americans are often stuck behind a moon-sized 8-ball financially — the average African-American family has accumulated a tiny fraction of the wealth of the average white family — which carries all sorts of chronic problems with it.

In light of this, the least we could do is give African-Americans a small leg up in college admissions. But such affirmative action has long been highly controversial and is now in the crosshairs of the Trump administration. And not without justification.

The root problem is government. While the reasons for giving African-Americans a helping hand are undeniably good, to have government extend that hand violates the very bedrock principle we trampled with slavery and Jim Crow: equal treatment under the law. Even with spotless intentions, it sets up a zero-sum game in which the government picks winners and losers, in this case on the especially repugnant basis of race.

But again, government was instrumental in creating the mightily unjust situation we have now. How can we possibly right that wrong without another, counterbalancing wrong?

The answer, alas, is we cannot. Indeed, setting aside principle for a moment, how could we ever make true, proportionate amends for slavery and Jim Crow? That said, there is a fair amount that can be done in higher education without violating the color-blind, equal treatment requirement that we must not break again. But it can only be done with private schools.

A public college or university is a governmental entity. Therefore, when it gives an admissions advantage to an African-American, it cannot help but violate the principle of equality under the law. Of course, such schools also violate that principle when they give enrollment advantages to legacies, or left-handed trombonists, or anyone else. To be consistent with essential American principle, such schools must be open enrollment, not picking and choosing among citizens for any reason.

Private colleges are fundamentally different because they are, well, private. They can make their own rules without imposing them on everyone or forcing anyone to fund them. It is in these schools that affirmative action can, and should be, wholeheartedly embraced. These colleges should be clear about their policies — they should state openly that they practice affirmative action — but they are under no obligation to be color blind.

What about government aid that would go to students attending these schools? Is that not just an indirect violation of equality under the law?

No. These funds would follow the decisions of free individuals to institutions fully able to set their own policies. But the compulsion to support a color-conscious system could be reduced further by basing aid in non-refundable tax-credits, deductions, and loans that students must repay — no Public Service Loan Forgiveness or other back-door transformations of loans into grants. Then, the people choosing the schools would, ultimately, be doing so with their own money.

Even better, private individuals can right now donate to groups that give scholarships to African-Americans, such as the UNCF, making the aid truly private and, as an added benefit, helping to move us further away from government aid programs that fuel skyrocketing inflation.

Ultimately, the problem with affirmative action is not affirmative action. African-Americans have been victimized by the government, and assistance to overcome the crippling legacy of that is utterly warranted.

But if government undertakes such action, the bedrock principle we never should have violated to begin with — equal treatment under the law — will again be trampled. Justice must, therefore, come from the voluntary actions of free people.

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