



OPINION: Why affirmative action should be prohibited at public colleges, even though the Harvard decision was right

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Many people were likely surprised when the long-awaited decision in the Harvard Asian-discrimination case came down and Federal judge Allison Burroughs ruled in favor of Harvard. It appeared the smart money, after the shroud was removed from the Harvard admissions process, would be on Harvard losing, a seeming perpetrator of discrimination against Asian-Americans.

Thankfully, the smart money was not so perceptive after all, because diversity may well have value, past discrimination may call for rectification, and allowing maximum freedom is the best way to deal with values-laden problems that have no clear solutions.

The first thing to remember is that Harvard is a private institution, not public.

Basically, private institutions should be free to have affirmative action, but it should be prohibited at public institutions.

A public institution — a government institution — must be held much more strictly to “objective” admissions than private.

Not only am I against government mandated affirmative action for public colleges, I am against those institutions choosing affirmative action. Of course, since public colleges are government institutions, what they might choose is de facto a government mandate from a state citizen perspective.

Unlike private schools, everyone is forced to fund governments and their institutions — indeed, government is the only entity that can legally jail or execute you — and that makes a public institution denying someone a benefit far more dangerous than when a private institution does. Unequal treatment by government is inescapable.

But why should a private school get to take race or ethnicity into consideration when admitting students?

First there is basic freedom — we should be very hesitant to allow government, with its monopoly on force, to tell private actors how they must run themselves. More to the immediate question at hand, as concerning as decisions based on race are, there is reason to believe,

including substantial research largely at the collegiate level, that diversity has educational and other benefits for students.

In light of competing goods — treating everyone without regards to race and the benefits of diversity—we need to allow space for numerous approaches to balancing the two, both to see which mixes end up producing the best overall outcomes, and because all people are individuals who value not just these goods, but academic achievement, creativity, social networking, and many other factors that go into evaluating applicants — and assembling classes — differently.

There is also a strong argument that African Americans continue to suffer from centuries of grossly unjust treatment in the United States, and the right thing for institutions to do is to take that into account — it may have depressed their SAT scores, or kept them from an AP Biology course — when evaluating African-American applicants.

Again, we do not want government doing this — government treating people differently based on their race was the central problem to begin with — but we otherwise want to leave as much room as possible for efforts to ameliorate past wrongs.

All that said, it is very easy to sympathize with Asian Americans, who do, as a broad group (and it is always problematic to discuss broad groups) work very hard academically and “play by the rules.” And it may well be that they are being treated unfairly.

But we should want, as much as possible, the power of persuasion, not the power of government, to be what moves people and institutions away from what may be morally problematic, towards what may be morally better.

Bottom-up recognition of many questionable admissions policies may be manifesting itself in increasing attention to legacy admissions, athlete preferences, and, of course, seemingly just buying a student’s way into a college.

What is the right or wrong thing to do is often very difficult to discern, with many different goods competing against each other. In light of this, we should want as much freedom to weigh things differently, and make different decisions, as possible. The Harvard ruling does that.

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