Affirmative Action: Crash Course Government and Politics #32

Crash Course: U.S. Government and Politics
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Hi, I'm Craig and this is Crash Course Government and Politics and today, I'm gonna finish up our episodes on civil rights by talking about affirmative action. There's a few things I'm not gonna do in this episode though. First. I'm not gonna try to defend all aspects of affirmative action, I admit it's a problematic concept. Second, I'm not gonna say that affirmative action isn't necessary or that it's racism, I'm pretty sure that that debate will go on in the comments. What I am gonna do is define affirmative action, describe how the courts have dealt with it, and try to explain why it has existed and continues to exist.

(Intro music)

So let's start with the easy part and define affirmative action. Affirmative action is a government or private program designed to redress historic injustices against specific groups by making special efforts to provide members of these groups with access to educational and employment opportunities. I like this definition because it also explains why affirmative action exists - to redress historic injustices which means discrimination. Key aspects of affirmative action is that it provides special access to opportunities, usually in education and employment, to members of groups that have been discriminated against. How affirmative action gets controversial is when you look at the two ideas of access and opportunity. When you poll Americans they generally favor equality of opportunity although they usually don't like it when the government tries to promote equality of outcomes, usually by redistributing wealth, but I'm getting ahead of myself. This means that Americans generally think that other Americans should have an equal shot at success even though they don't imagine that all Americans will be equally successful. Not all of us can be Donald Trump, although not all of us want to be.

Since we tend to believe in the USA that education and jobs are the keys to success, equality of opportunity is tied up in access to these two things, and that's why they are the focus of affirmative action efforts. Here's where it gets tricky. In order to increase access to education and job opportunities for members of groups that are historically discriminated against, affirmative action programs try to ensure that they get extra special access to jobs and schools, which, to many people, is not equality of opportunity. Legal types often will use the metaphor of a thumb on the scale to describe the added benefits that affirmative action programs supposedly provide, but we could also see it as a head start in a foot race, which is the metaphor I prefer for reasons I'll explain in a bit. But first let's go to the Thought Bubble.

So while affirmative action started with LBJ ordering government agencies to pursue policies that increase the employment of minorities in their own ranks and in soliciting contracts, the first time it made a splash at the supreme court was over the issue of university education. Specifically, in the landmark case of Regents of the University of California versus Bakke in 1973, the court ruled on the issue of racial set-asides, or quotas, in admissions at the University of California Davis, Medical school. Of the 100 slots available to incoming med students, 16 were set aside for racial minorities. Bakke claimed that this meant that some people who were less qualified than he was, at least he felt so, got into Davis med school and Bakke didn't. So he sued, claiming that the quotas discriminated against him because he was white. The supreme court ruled in Bakke's favor, saying that racial quotas were not allowed since they didn't provide equal opportunity, but they also ruled that affirmative action programs were allowed if they served a compelling government interest, and were narrowly tailored to meet that interest. In other words, if they'd passed the test of strict scrutiny.

One of the more interesting things about this decision is the kind of stuff the court said constitutes a compelling government interest. They rejected the idea that righting historical wrongs was something that the government should undertake, probably because it opens up all kinds of historical cans of worms, especially the question of who decides when and if a historical wrong has been redressed. What they did say was that compelling government interest was ensuring diversity in university admissions. This is true in general, and as long as we can imagine there being universities, the state has an interest in seeing that their classes represent diverse viewpoints. Diversity benefits both the members of the minority and majority groups, at least in the minds of the court. Thanks, Thought Bubble. This is just a pretty serious video I don't know when I was gonna get that eagle punch in so I just did it there.

The early 1970's were the high tide of affirmative action in the U.S, and ever since then the courts have looked less favorably at affirmative action claims. Because they apply strict scrutiny, most affirmative action claims are struck down. This was clarified in the case of Adarand Constructors Inc. versus Peña in 1995 which dealt with racial preferences in the hiring of subcontractors on government projects. Although this case meant that the government was not supposed to give preferential treatment to minority-owned businesses, or those that employed a large number of minorities, a government report from 2005 found that at least as far as the federal agencies were concerned, the practice was still widespread.

In most of the cases it hears, the court has struck down affirmative action provisions because they fail one or another of the strict scrutiny tests, but the basic idea that universities can create programs to build and maintain a diverse student body has been upheld. Two relatively recent cases involving the University of Michigan show how complicated it can be. In the 2003 case of Gratz versus Bollinger, the court ruled that Michigan's undergraduate admissions policy, which awarded extra points to people in racial minority groups, was unconstitutional because it was not narrowly tailored to meeting the goal of student body diversity. In the same year, in the case of Grutter versus Bollinger, Bollinger just keeps showing up to the supreme court because he was the President of the University of Michigan at the time, lucky. The court ruled that the admissions policy of Michigan's law school was narrowly tailored to meet the goal of promoting diversity although it said that in 25 years such a program might not be necessary. So at the time we're making this episode, the idea that universities can take race into account in their admissions so that they can create a diverse learning environment for their students is still constitutional, but the supreme court looks very carefully at the actual policy that the university has in place, and if it looks anything like a quota, they'll strike it down. Turns out there was another place to punch the eagle. Two times!

Affirmative action remains controversial and it looks like eventually it's going to disappear but maybe not right away. In 1996, Californians passed a ballot initiative - Proposition 209 - that effectively outlawed affirmative action in public employment, public contracting, and public education, especially university admissions. After this initiative, also known as the California Civil Rights Initiative, passed over vocal and organized opposition, the graduation rate among African Americans in some California universities went up. On the other hand, the enrolment rate of African Americans at many UC schools declined, and it only returned to 1996 levels in 2010. Other states like Michigan had passed laws similar to California's Proposition 209 making it harder and harder for affirmative action programs to flourish. But as is often the case in politics, people's response to affirmative action differs depending on how you ask the question. When phrased as an anti-discrimination measure, ballot measure like Prop 209 are quite popular, but when people are asked if they want to get rid affirmative action their responses are not always so positive. Support for affirmative action remains, and I suspect that this is

because many people still recognize that some form of support for minority groups is needed in the U.S.

And this brings me back to the reason why we have affirmative action in the first place. While the courts have ruled that attempting to correct the historical injustices of slavery and Jim Crow laws are not a compelling enough interest to justify affirmative action, for many, they are. Minority groups, and in particular African Americans, have suffered from horrible treatment and legal disability from the time they began arriving as slaves in 1619. Even after the Civil Rights Act passed in 1964, full equal opportunity was still not a reality. Opinions vary on whether affirmative action is still necessary today, and your point of view depends a lot on your personal history and your politics, which as we'll see in the next few episodes, are deeply intertwined. Thanks for watching, see you next week.

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