I. On Racism
   A. What is Racism? Some Observations.
      1) Involves making race an overriding factor about a person.
         e.g.: “Jones is just as good of a programmer as Smith but he is race-x so I will not hire him”.
      2) Involves believing that all persons of a certain race are inferior to persons of other races in some way.
         e.g.: “Those people are animals, but we, on the other hand, are civilized”. This example treats another race as inferior in terms of their sophistication and moral character.
      2) Involves making false judgments about people of a certain race.
         e.g.: “They’re just not as intelligent as we are”. “They’re all criminals and cannot be trusted”.
      3) Involves making negative value judgments about the worth of another race.
         e.g.: “They’re just not as good of people as we are”.
      4) Involves power and oppression.
         e.g.: “Because they’re not good people, are animals, less intelligent, criminals, untrustworthy, and so on, they must be denied rights, jobs, social goods…”

   B. The Principle of Equality: this principle is used to arrive at a condemnation of racial discrimination, including so-called “reverse discrimination”.
      1) The Principle of Equality: It is unjust to treat people differently in ways that deny to some of them significant social benefits unless we can show that there is a real difference between them that is relevant to the differential treatment.
         a) to treat a person unjustly is to favor another person over her on the basis of irrelevant characteristics; hence there must be valid reason for differential treatment. “Jones and Smith are equally talented, but Smith is race-x and I hate those people, so I’ll hire Jones”.
         b) denying someone social benefits is a consequence of harmful social policy, harmful business or educational practices, creating hostile working or learning environments etc.
         c) showing a real difference to justify differential treatment is to be distinguished from treating people differently because you merely believe that there is a difference; proof may even have to be scientific for particular cases.
         d) showing a real difference that would justify differential treatment of one group over another must involve showing innate or naturally occurring differences between groups, not differences created from socialization. E.g.: Past discrimination has disadvantaged some groups, creating differences that might be used for differential treatment; but to use the effects of disadvantage as a difference to justify differential treatment of those people would be fundamentally unfair, for it would be inflicting a social harm on a group of people because of differences that society itself created. This difference would not be a “real difference”.
         e) A difference that we find between groups to justify differential treatment must be relevant. E.g.: Is strength relevant to firefighting or policework? Is being an African American a relevant feature for being a professor of African-American studies? Or a being a woman for being a professor of Women’s Studies?

      2) The Principle of Equality and Preferential Treatment: The principle of equality is stating that we can treat one group of people differently from another if we can show that the difference between them justifying the differential treatment is natural or innate. Suppose we give some minority applicants to a university a “plus factor” as a way to compensate for past
discrimination. This would be a case of treating one person differently from another. Is the difference between the minority and white applicants that is used to justify the differential treatment an *innate* difference? Clearly not, since the difference between the two is supposed to be that minorities have been discriminated against in the past while whites have not. Hence, this form of affirmative action would be rendered unacceptable by the principle of equality. Most people who oppose race-conscious admissions policies would appeal to the principle of equality as a way to justify their position. However, what they don’t realize is that universities also use region of the country or state and relation to alumni as plus factors as well. The principle of equality would also deem such plus factors unacceptable, although opponents of preferential treatment programs simply ignore this.

2) Problems with the principle of equality.

   a) differences are average: even if we could single out an innate feature to justify differential treatment, at best that feature will be present in a majority of the population, not every member. Hence we’d be discriminating against a person on the basis of a characteristic that she doesn’t have, but the rest of her group does. (E.g. women in firefighting; women in combat: It has been said that women should not ever be combat troops and firefighters because they lack the physical strength necessary to do these jobs well. But surely there are women who are stronger than men (and more aggressive and courageous to boot), and who would for these reasons make better firefighters or combat troops than those men. Can it be permissible to exclude all women from these jobs simply because they belong to a group which, on average, are not as strong as men, even though there are plenty who are stronger than men and would make better firefighters and combat troops? Why should their membership in a group matter and not their individual characteristics?)

   i) Consider cases where this is permissible: e.g. age-requirements on voting, driving. What is the difference? These are not *permanent* restrictions--age changes, moving closer and closer to meeting the requirements by day; sex and race requirements, on the other hand, will never be met by a person if he or she does not at present meet them. Moreover, suppose we developed an intelligence test for voting, instead of an age requirement; this would cause social revolt (imagine finding out that you could not participate in our democracy because a standardized test deemed you incompetent). So setting an age requirement for voting instead of an intelligence requirement can be justified on utilitarian grounds. No such justification can be given for excluding women from being firefighters: there is an ability test, so why not let them take it?

   b) a mistaken application (not a problem with the principle per se but with its application): it cannot be used to justify preferential treatment of women or minorities. Some argue that the difference between minorities and women on the one hand, and white men on the other, is that the former have been disadvantaged due to past and present discrimination, hence preferential treatment is justified. But this, of course, is not a *real* or *innate* difference, which means that the principle of equality cannot justify preferential treatment using past and present discrimination as the difference.

   c) the equality-inequality dilemma: suppose it is true (as many people think) that women are naturally better child-care providers than men; the principle of equality would seem to justify the claim that women ought to stay home and take care of the kids, for this would be an innate, relevant difference which would justify their differential treatment. However, this itself would undermine their plight for equality by undermining their professional and academic
advancement. In other words, the equality principle would actually undermine equality by perpetuating inequality.

C. Affirmative Action: At its most general, affirmative action is a program that advocates doing something more than merely halting discrimination. Okay, but what is this “something more”? When asked to explain what businesses and colleges do when they implement affirmative action programs, most people will respond by saying that they implement quotas. Quotas, however, have been illegal for 25 years. Private businesses and universities are free to implement certain affirmative action programs, and the government requires their implementation for businesses with whom they have substantial dealings.

1) Kinds of affirmative action
   a) Enlarging an application pool and hiring or making admissions decisions on the basis of merit. This is merely the practice of encouraging underrepresented members of the population to apply, and then giving no preferences or differential treatment in the hiring or admissions process. Rather, in this form of affirmative action, applicants are hired and admitted on the basis of merit by using the same criteria for all.
   b) Giving preferences to underrepresented members of the population who appear to have qualifications equal to applicants who are not underrepresented.
   c) Giving preferences to a less qualified applicant, who is still perfectly qualified.
   d) Setting general goals, not fixed quotas. Unlike quotas, a business is not required to reach its goals. Given this difference, setting goals need not involve preferential treatment. A business may decide to fall short of its goals rather than giving racial or gender preferences. An example of the practice of setting goals: Federal contractors and businesses with over 50 employees who receive federal funds are sometimes required to set goals which would make the racial and gender make-up of their workforce more closely reflect their application pool. So, for example, if a government contractor has 25% African-American applicants but 10% African American employees, this business might be required--if it wants to work for the government--to take some steps to make its workforce mirror its application pool.
   e) Setting quotas (fixed numbers) to actually attain. This may involve, at times, filling slots with less qualified people to reach the quota. Again, this is illegal.

***NOTE: It is not legal to hire or admit an applicant who is unqualified***

2) Important Legislation
   a) The Civil Rights Act: perhaps the most significant piece of civil rights legislation is the Civil Rights Act of 1964 which prohibits discrimination in employment by private employers, employment agencies and unions. The courts have held, though, that in order to achieve minority participation in previously segregated areas of public life, Congress may require or authorize preferential treatment for those who have been disadvantaged by state-sponsored racial discrimination.
   b) Equal Employment Opportunity Act: requires all businesses that have substantial dealings with the Federal Government to implement affirmative action programs which essentially motivate businesses to have their workforce mirror the racial and gender breakdown of their application pool (so long, of course, as every applicant hired is qualified for the job).
c) The IVX Amendment: the so-called “equal protection clause” of this amendment prohibits states from discriminating on the basis of race or gender unless doing so is strictly necessary to promote a compelling state interest.

d) Bakke vs. Regents of the University of California (1978): Because of gross underrepresentation of minorities in their student body, the UC-Davis medical school adopted a “two-track” admissions policy. On one track, Whites and minorities who showed no signs of being affected by past discrimination competed against each other for a relatively large number of admissions slots. In another track, minorities who were likely disadvantaged by past discrimination competed against each other for 16 slots. For this group, there was no arbitrary GPA cut-off point, but the interview process was identical. All students admitted were qualified to do work in medical school and had to face exactly the same standards once entering.

i) The Court’s Ruling: The Supreme Court ruled 5-4 that the UC-Davis medical school’s use of quotas--i.e a “fixed number”, in this case the number “16”--was unacceptable. Among other things, they argued that such a practice imposed a disadvantage on people who bear no responsibility for the harms the minority applicants incurred due to past discrimination.

On the other hand, the court recognized that the state does have a compelling interest in having universities with a diverse student body and so the pursuit of such a student body was consistent with the 14th amendment. They also asserted the right for a university to have freedom in selecting its own student population. However, they argued that racial and gender diversity is just one factor among many that go into the creation of a heterogeneous student body, and so race must be used along with numerous other criteria. Since quotas are not necessary to achieve a diverse student body, they cannot be used, but admissions committees could use race as a “plus factor”, just as they use region of the country or state as plus factors.

ii) The Dissenting Judgment: those 4 justices who did not vote with the court’s majority reasoned that UC-Davis’ goal of remedying the effects of past discrimination was sufficiently important to justify their race-conscious admissions policy. The admissions policy was not simply a policy of admitting less qualified applicants, but was a policy that compensated applicants who clearly felt the effects of past, state-sponsored discrimination. Unlike discrimination against racial minorities, no pervasive injury was inflicted upon whites who were not admitted; they, unlike minorities, were not treated as second-class citizens wherever they went, and had other educational opportunities open to them. Moreover, once admitted, they were held to the same standards--had the same degree requirements, the same professors and were graded by the same measures.

e) The Michigan Case: this is the big affirmative action case presently being heard by the Supreme Court. Since the Bakke ruling, universities have used race as one factor among many for admissions, many of which are non-academic. Such factors include grades, test scores, alumni status, athletic prowess, region of the country, extra curriculars and relationship to a benefactor. The University of Michigan assigns 110 points for an applicant’s academic record and then accounts for various “plus factors” such as 20 points for socio-economic background, 20 points for minority status and 16 points for region of the country. Michigan uses these plus factors as ways to diversify their student body, a practice which was found to be constitutional by the Bakke case. This practice of using race as one of the many factors as a means to diversify a student body is now coming under fire. Michigan contends that its admissions policy is consistent with the Bakke ruling, which it certainly seems to be.

Many people oppose the practice of using race as a plus factor, since it doesn’t have anything to do with the academic merit of an applicant. Others point out that plus factors which account
for alumni status, relationship to a benefactor, region of the country or state, and athletic prowess have nothing to do with academic merit either, yet these are not the targets of conservatives. Indeed, preferences for the relatives of alumni have often been considered to be plus factors for white applicants, since whites are the only ones with long histories of attending universities. Such opposition to minority preferences, and not other preferences, seem to many to be a double standard, especially if the opposition to minority preferences is based on the claim that such preferences have nothing to do with academic merit, since the same is true of the other preferences that would remain. Moreover, even if we eradicated all non-academic criteria, it is not at all clear that we would be admitting students on the basis of merit. The remaining criteria would basically account for GPA and test scores. Consider test scores. A student from a wealthy family is given every privelage and opportunity: he has computers, books, is sent to pricey SAT prep courses, has tutors if he needs them, is sent to stimulating summer camps and programs, and will not have to work while he’s in school. His school has good teachers, a large, well-stocked library, computers, clubs and organizations, enough books for all the students, classes that are not overcrowded, and a safe learning environment. If such a student gets a 1300 on the SAT we shouldn’t be surprised. Consider what a student from the ghetto has: he will have no computers at home, few books, if any, will not be able to afford quality SAT prep classes or tutors, and will not be able to afford summer camp or any other stimulating activities outside of school. Most likely, he’ll have to work while he’s in school to help support his family. His school will have few good teachers, will have overcrowded classrooms, few computers, not enough books to go around, a poor library, few clubs and organizations, and will not provide a safe learning environment. It is a true achievement if such a student gets an 1100 on his SATs. But if we’ve eradicated non-academic preferences for minority status or socio-economic background, and just admit students on the basis of test scores and grades, the wealthy student who received a 1300 on his SATS will surely be admitted. But how is this admitting students on the basis of merit? Isn’t it just as meritious for a student who has nothing to get an 1100 on his SATs as it is for a student who has everything to get a 1300?

3) Consequentialist arguments for and against affirmative action
   i) for: here the ends justify the means.
      -we benefit from contributions of people who have a variety of perspectives, and we are a diverse society which will thrive if economic, educational, and legal equality between races and sexes is ever reached; the best way to achieve this end, is to take active steps to make sure that groups who have been disadvantaged economically, educationally and legally from past discrimination are compensated.
      -The resources which one is given as a child are relevant to her status as an adult: discrimination against groups has led to lower income, and this leads to lesser educational opportunities, which leads to lower paying jobs, and less educational opportunities for the next generation, and lower paying jobs for them and so on. Affirmative action would break this cycle by giving people who are caught within it economic or educational opportunities that they would not ordinarily have. Moreover, these programs have actually worked: race sensitive policies in college admissions have allowed minorities to enter institutions which they ordinarily couldn’t; when they do enter such institutions, they excell and become just as likely as white students to earn professional degrees.

   ii) against: here the consequences of affirmative action are worse than the consequences of not implimenting it.
the programs have benefitted middle-class minorities but not the lower class at which they’re aimed. These programs ‘psychologically handi-cap’ minorities by making them dependent upon racial preferences rather than their own hard work. Increased racial tension caused by white backlash.

4) Non-consequentialist Arguments: for and against

a) For: some people argue for affirmative action on the grounds that it is a way to provide justice, or a way of compensating for past wrongs done to members of certain groups. People have been harmed in the past due to discrimination and we now need to compensate for that by benefitting them.

i) Criticisms: a valid use of the notion of compensatory justice would only benefit those who were harmed and would only demand compensation from those who have caused harm. But affirmative action at times benefits members of a racial minority who have not been harmed at all, and it also causes harm to people who bear no responsibility for past discrimination.

ii) Responses to Criticism: first, it is state and federal governments who compensate for past discrimination by requiring affirmative action programs in businesses that they contract out. So, although other citizens may be harmed when state and governments pay restitution to those whom they harmed, it is still the governments who are working to compensate. Moreover, those who lose out are not badly harmed--they have other opportunities and are not demeaned by their loss. As such, the harm caused to innocent people by this government policy should no more lead to an abolishment of that policy than should harm caused to innocent people by other government policies.

Reverse Discrimination as Unjustified
Lisa Newton

I. On Justice and the Moral Ideal of Equality

A. Justice: this notion is the foundation of political association amongst citizens. When people join together to form a community, they regulate their relationships with one another by establishing law. Justice is the notion that this law is to regard citizens equally.

B. The Moral Ideal Of Equality: According to Newton, this ideal is distinct from the notion of justice but emerges from it. The moral ideal of equality is that all people--and not just some favored class-- are to be included in citizenship and that, once included, the law is to regard them equally. It is the notion that the circle of citizenship extended to one class of people should be extended to all. Newton argues that the moral ideal is parasitic on the notion of justice since the equality specified by the ideal is the possession of equal rights as well as equal access to public goods and offices, which is nothing more than the equality of citizenship embodied by the notion of justice. In other words, you first need the notion of justice or the equality amongst citizens in order to say that such equality ought to be extended to all.

C. The Difference Between Justice and the Moral Ideal: So, justice is the notion that a body of laws regulating the relationship of a group of people is to be applied equally to everyone who is governed by those laws. Justice demands, for example, that if both African Americans and Whites have the right to vote, then that right ought to be protected as much for one group as it is for another. The moral ideal of equality, on the other hand, would demand that if Whites have the right to vote but African Americans do not, then such a right ought to be extended to African Americans as well, and, once it is so extended, it ought to be protected for the one group as much
as it is for the other. **The distinction between the justice and the moral ideal of equality will be significant for Newton’s argument**

D. Injustice: If justice is equal treatment of citizens before the law, then injustice is unequal treatment of citizens before the law. To use our example, if African Americans have been granted the right to vote by the federal government, but were prevented from voting by officials from local districts (as often happened), then citizens regarded as equal before the law are not being treated with due equality.

II. Justice, Equality and Discrimination

A) Discrimination and Injustice: Clearly, then, with the passage of the Civil Rights Act of 1964--the act prohibiting discrimination in the private work place--if a White shop owner refuses to hire African-American employees, he has undermined the equality before the law guaranteed by this legislation. The Civil Rights Act granted the African American a legal right not to be discriminated against, and if he is discriminated against, then the equality before the law is being undermined. Thus, justice is destroyed if one discriminates.

B) Reverse Discrimination and Injustice: But why should things be any different if the employers or schools favor women or minority applicants over whites? Here, just as in the above case, equal treatment of citizens before the law--justice-- is being undermined. If it unjust for White men to discriminate against Blacks and women because they have been granted the right to not be discriminated against, how could it be just to discriminate against White men? Aren’t they too granted the same right before the law?

1) Reverse Discrimination and the Sacrifice of Justice for Equality: Newton recognizes that those who favor preferential treatment usually cite the ideal of equality to justify the unequal treatment before the law (i.e. the injustice) that reverse discrimination is guilty of. Proponents of preferential treatment argue that privileges may be granted to minorities and women to ensure that they have an equal opportunity to the goods that citizenship has to offer--goods that were previously extended to only one group. This looks to be nothing other than the moral ideal--the ideal of extending rights and opportunities to all groups. Newton counters by arguing that, on the contrary, if you undermine justice by granting privileges to one group over another, you are thereby undermining the moral ideal of equality, since that ideal is nothing other than to extend equality before the law to all people. That is, if reverse discrimination does not treat people equally before the law, then the ideal of equality has been violated because this ideal seeks to extend such equality of treatment to all people. How, then, can proponents of preferential treatment use the ideal of equality to justify the unequal treatment before the law that reverse discrimination entails?

III. Strengthening the Case

A. Who Deserves Compensation?
Newton points out that, besides blacks, American Indians, Chicanos, Appalachian Mountain whites, Puerto Ricans, Jews, Cajuns and Orientals have been discriminated against. To whom are we supposed to grant restitution? All of them? It seems that if we need to compensate for those who have been discriminated against, each one of these groups has a right to be compensated. And if we discriminate against WASPS to favor these groups, why can’t WASPS clamour for their own favoring? And don’t they deserve it--if, that is, those who have been discriminated against deserve compensation? Newton concludes that if one group is treated with preference, all
groups can rightfully claim to be so treated, and all that is left are self-interested groups pushing and shoving for their own privileges.

B. When Does this Compensation End?
Newton the argues that it would be in principle impossible to gauge when those against whom we have discriminated have been compensated. She argues that compensation by law is certainly possible, but only when citizens who have been granted rights have had those rights infringed or violated. The problem is, she explains, when Blacks were discriminated against during the civil rights movement and before, none of their rights had been violated because, at the time, such discrimination was legal. So, since no legal rights of Blacks were violated, the law simply cannot recognize requests for restitution. (This is strange, since even a brief glance at the history of the civil rights movement shows that Blacks were systematically discriminated against after the law had granted them rights).

Fullinwider on Racism
A. A mistaken view on preferential treatment
-W.B. Reynolds, head of the Office of Civil Rights under Reagan, said that those in opposition to preferential treatment favor the equality of opportunity while those in favor of it believe in the equality of results--i.e. discarding equal opportunity in employment and education to place minorities and women on equal footing with whites. According to Reynolds, those who oppose preferential treatment believe in individual rights and a race and gender-blind society, while those who support it believe in dividing up social benefits by race and gender.
**Put like this, affirmative action looks like a discriminatory, anti-egalitarian and thus anti-American program. But if this really is affirmative action, why have federal judges created and sustained affirmative action programs on the grounds that they prevent discrimination and secure equality of opportunity?---->Because we cannot stop discriminating without these programs.

B. Why it is so difficult to stop discriminating
-When courts first started trying civil rights cases in the 1960’s, they found that even though companies removed discriminatory practices on paper, minorities and women were still being excluded from jobs. The problem was that ordinary business practices perpetuated discrimination. Some businesses with all white, male workforces would advertise job openings by word of mouth, the consequence being that only whites would hear about job opportunities. Others would require job applicants to obtain a letter of recommendation from someone inside the company, which again excluded minorities from being hired. And even if minorities or women were hired, they would be the first to be let go given “last hired, first fired” policies. Hence, practices that were not overtly discriminatory still functioned to keep women and minorities out of the workplace. ***So, in order to truly stop discriminating, ordinary business practices had to be overhauled***
------->enter affirmative action: federal courts required companies under contract by the government (not private companies) to make a plan that establishes a system for monitoring the workplace and operations which:
(1) changes procedures and operations which may have a discriminatory impact and
(2) predicts what the workforce would look like if discriminatory practices were eradicated to give the company some idea what success would look like.
-This is the heart of affirmative action.
C. A Defense of Quotas
-But sometimes more needs to be done. Discrimination permeates our society so thoroughly that we are blind to the practices that perpetuate it and the practices that make it difficult for those who were once the targets of discrimination to recover. Accordingly, the courts found that some businesses were completely incapable of identifying or were unwilling to change practices that discriminate, and reasoned that these businesses need to be dealt with by using stronger measures to secure equal opportunity. One quick way of dealing with such companies was by the imposition of quotas: to demand that federally contracted businesses that have failed or are unwilling to erase discriminatory practices give opportunities to people from the groups against whom they have discriminated and against whom they continue to discriminate. Hence, contrary to the claims of Mr. Reynold, even quotas are ways of securing the equality of opportunity.

D. The core of the debate on affirmative action
-So, Fullinwider concludes, the issue of affirmative action does not hinge on the fact that some people want equal opportunity and others want social benefits distributed by group--as Reagan’s civil rights chief says--but that some people think that discrimination is a shallow and transparent phenomenon, and others think that it is a deep and opaque phenomenon.

-Those who think that discrimination is shallow and transparent think that it is easy to spot and is not entrenched in the way our society functions; all that needs to happen is that businesses and colleges take their blatantly racist and sexist policies off the books, and the problem is solved. This, as we have seen, is simply not the case.

-Those who think that discrimination is deep and opaque think that discrimination is so entrenched in the way our society functions--is so much a part of the roles that people play, how they look at the world and how the world looks at them--that it requires effort to see and positive effort (i.e. literally, affirmative action) to stamp out.

E. The Opacity of Discrimination and Unavoidable Unfairness
-If we were transported to a world of giants, we would be viewed by them as inferior in may ways because we would have difficulty performing tasks in an oversized world. The giants would look at us as inferior and defective members of their society. But what the giants do not realize is that the problem is not with us, but with placing us in a world built for Giants.

-The Giants see their world as the only world.

-Similarly, we used to think that people in wheelchairs couldn’t do much--they couldn’t go certain places, enter certain buildings and work certain jobs; we soon realized that their limitations were a result of their involvement in a world built for people without wheelchairs--our world excluded them.

-We saw our world as the only possible way the world might be and didn’t realize that if we changed our world, people in wheelchairs could do lots of the things we could do.

-Likewise, our society has been built by and for white men to the exclusion and detriment of everyone else, and the disadvantages that this caused for women and minorities had for a long time been attributed not to the structure of the white male world, but to the intrinsic inferiority of women and minorities.

-What we have not yet realized is that the failure is not a result of the inferiority of women and minorities, but is a result of their living in a world that was built to exclude them.

-What is needed, then, is to literally change that world, and affirmative action is the only way to do this.

F. Unavoidable Unfairness
Are racial and gender preferences unfair to White men? --> yes. But here’s the choice: we could either (1) outlaw affirmative action and have businesses avoid making necessary changes in policy and workforce, thereby perpetuating unfair discrimination against women and minorities, or (2) impose the necessary changes in policy and workforce in response to discrimination against women and minorities, and unfairly discriminate against White men on occasion. Conservatives have favored the former option—to stop forcing businesses, government and universities to eradicate racist and sexist practices and to perpetuate the unfair discrimination against women and minorities. But why is that a better option? Is unfairness acceptable to conservatives so long as it is perpetrated against women and minorities and not against white men? (Who are the conservatives? Of the roughly 72 women and minorities in congress, only 10% of them are Republicans, 90% are Democrats; those who favor unfairness towards minorities and women rather than unfairness towards White men are overwhelmingly White men).