



JÖNKÖPING INTERNATIONAL BUSINESS SCHOOL  
JÖNKÖPING UNIVERSITY

**Justifying Preferential Treatment –  
Preferential Policies in Theory and Reality**

Author: Åsa Bruhagen 831022-6900

Tutor: Prof. Benny Hjern

Course: Bachelor Thesis in Political Science

Jönköping April 2006

## **Bachelor's Thesis in Political Science**

**Title:** Justifying preferential treatment – preferential policies in theory and reality

**Author:** Åsa Bruhagen

**Tutor:** Prof. Benny Hjern

**Date:** April 2006

**Subject terms:** Preferential policies, Affirmative action, Positive action, Equality policies, Reverse discrimination, Equal opportunities

### **Abstract**

#### **Background and problem**

It is important for a policy aiming at overcoming discrimination to be justifiable as just or as creating justice. When a policy is implemented lacking such qualities it is argued to be unjust, which creates a problem. During the last decades there has been massive immigration to the Western countries from countries marked by war and disaster. This has created problems of integration into the “new” society, and the use of preferential policies has become increasingly topical. Whether or not the use of preferential policies is a just method is the basis of this thesis.

#### **Aim**

The aim of this thesis is to study the concept of preferential policies in an impartial perspective of fairness. By impartial it is meant to present facts speaking both for and against preferential policies as being just. The main question of this thesis is whether or not preferential treatment is a just method to create equality within the society.

#### **Method**

A research method of textual analysis has been used combined with an analysis of structure of arguments.

#### **Theoretical framework**

First, definitions of discrimination and preferential policies as such are focused upon in the third chapter. Second, the concept of social justice and its connection to preferential policies is treated. The question if preferential policies should be directed towards individuals or groups is a central question in the debate and it will demand its space in this thesis. Here the importance of merit will be discussed. The section about individuals and groups will be followed by a section discussing the importance of ethnic diversity which will be followed by a comparison of the development of preferential policies in the USA and Sweden. Last, there will be a section where an attempt to generalize between arguments is made.

#### **Conclusions and Discussion**

In this part a conclusion and a discussion will be presented. Here conclusions will be drawn from the gathered material. Finally there will be a discussion on the subject and of how the research procedure has proceeded.

## Kandidatuppsats inom Statsvetenskap

<b>Titel:</b>	Justifying preferential treatment – preferential policies in theory and reality
<b>Författare:</b>	Åsa Bruhagen
<b>Handledare:</b>	Prof. Benny Hjern
<b>Datum:</b>	April 2006
<b>Ämnesord:</b>	Positiv särbehandling, Jämställdhetspolitik, Omvänd diskriminering, Lika möjligheter

## Sammanfattning

### Bakgrund och problem

När en princip eller en politisk hållning riktar sig åt att få bukt med diskriminering är det viktigt att den är försvarlig som rättvis eller att den skapar rättvisa. När en princip introduceras som metod trots avsaknad av sådana egenskaper skapar det problem. Under de sista årtiondena har det förekommit en massiv immigration till västerländska länder från länder drabbade av krig och olycka. Detta har skapat problem vad gäller integration in i de ”nya” samhällena och användandet av positiv särbehandling har blivit högst aktuell. Om positiv särbehandling är rättvis som metod ligger till grund för denna uppsats.

### Syfte

Syftet med föreliggande uppsats är att studera begreppet positiv särbehandling ur ett oberoende rättviseperspektiv. Med oberoende menas att vikt kommer att läggas vid presentation av material som talar både för och emot positiv särbehandling. Uppsatsens huvudfråga är: Kan positiv särbehandling användas som en rättvis metod för att skapa jämlikhet i samhället?

### Metod

Tillämpningen av metoden textanalys har använts och uppsatsen har baserats på en argumentationsanalytisk variant.

### Referensram

Inledningsvis presenteras definitioner av diskriminering och positiv särbehandling i kapitel tre. Försättningsvis behandlas konceptet social rättvisa och på vilket sätt detta hör ihop med positiv särbehandling. Detta är följt av ett avsnitt om huruvida positiv särbehandling bör riktas mot individer eller grupper, något som kräver sitt eget utrymme. I detta avsnitt kommer även vikten av att använda meritssystem att diskuteras. Avsnittet om individer och grupper följs av ett avsnitt om mångfald. Därefter görs en jämförande studie om utvecklingen av positiv särbehandling i USA och Sverige. Avslutningsvis ägnas ett kapitel åt ett försök att generalisera bland argumenten för positiv särbehandling.

### Slutsats och diskussion

I denna del kommer en analys kombinerad med slutsatser att presenteras. Som avslutande kapitel kommer en diskussion att föras om hur arbetet framskridit och vilka frågor som författaren ställt sig utifrån det material som behandlats.

# Table of contents

<b>1</b>	<b>INTRODUCTION</b> .....	<b>1</b>
1.1	PROBLEM AND AIM .....	2
<b>2</b>	<b>METHODOLOGY</b> .....	<b>3</b>
2.1	METHOD .....	3
2.2	SOURCES .....	3
<b>3</b>	<b>DISCRIMINATION AND PREFERENTIAL POLICIES – DEFINITIONS</b> .....	<b>6</b>
3.1	DISCRIMINATION .....	6
3.2	PREFERENTIAL POLICIES .....	7
3.3	SUMMARY .....	8
<b>4</b>	<b>SOCIAL JUSTICE</b> .....	<b>10</b>
4.1	THE ROLE OF JUSTICE .....	10
4.2	PREFERENTIAL TREATMENT AS A MEANS OF SOCIAL JUSTICE .....	12
4.3	THE NEEDS PRINCIPLE .....	13
4.4	SUMMARY .....	14
<b>5</b>	<b>PREFERENTIAL POLICIES FOR INDIVIDUALS OR GROUPS?</b> .....	<b>15</b>
5.1	THE INDIVIDUALISTIC PROBLEM .....	15
5.2	MORALLY RELEVANT OR IRRELEVANT CHARACTERISTICS? .....	16
5.3	MORALLY RELEVANT OR IRRELEVANT CHARACTERISTICS AS A JUSTIFYING BASIS OF THE CREATION OF GROUPS .....	16
5.4	STIGMATIZING EFFECTS .....	17
5.5	ETHNIC PASSING .....	19
5.6	SUMMARY .....	19
<b>6</b>	<b>ETHNIC DIVERSITY</b> .....	<b>21</b>
6.1	THE MORAL IMPORTANCE OF DIVERSITY .....	21
6.2	DIVERSITY IN WORKING LIFE .....	22
6.3	PROPORTIONAL REPRESENTATION .....	23
6.4	SUMMARY .....	24
<b>7</b>	<b>PREFERENTIAL POLICIES IN THE USA AND SWEDEN</b> .....	<b>25</b>
7.1	THE TWO PRINCIPLES OF PREFERENTIAL POLICIES AND EQUALITY OF OPPORTUNITY .....	26
7.2	THE AFFIRMATIVE ACTION PROGRAM IN THE USA .....	27
7.3	THE POSITIVE ACTION IN SWEDEN .....	30
7.4	SUMMARY .....	33
<b>8</b>	<b>MASSEY’S SIX ARGUMENTS FOR PREFERENTIAL POLICIES</b> .....	<b>35</b>
8.1	THE WEAK ARGUMENTS .....	35
8.2	THE STRONG ARGUMENTS .....	36
8.3	SUMMARY .....	37
<b>9</b>	<b>CONCLUSION</b> .....	<b>38</b>
<b>10</b>	<b>DISCUSSION</b> .....	<b>44</b>

## BIBLIOGRAPHY

# 1 Introduction

During the last decades there has been a growing debate on the segregation of society in the Western countries. There has been massive immigration from countries marked by war and disaster, and in certain cases from old colonial countries. In many countries immigrants have had a hard time “fitting into” the new society and its culture and habits. A consequence has been that “new” citizens live isolated in areas with little or no native population. Ethnic discrimination has frequently occurred in working life, academic life, and even in daily life.

To solve these problems the concept of preferential treatment has been introduced. In some countries it has been legalized, in others introduced without receiving legitimacy to become legalized. The use of preferential policies (affirmative or positive action) to correct societal problems of discrimination has been controversial. Preferential policies have been introduced in several fields of social policies, mainly as a method to create equality of opportunity, and to create gender equality.

To study the justness of preferential policies is relevant since it has become, both in the Swedish society and in many other Western societies, increasingly evident that the principle of equality and equal opportunity has sometimes failed. Preferential policies are commonly recommended to overcome these problems. The use of preferential policies has stirred up strong feelings and created great debates on whether it is just or not. The most common argument against it has been that preferential policies are nothing but a discrimination against another group, usually the majority, instead of the minority, and that this in no way can be just. Arguments for preferential policies have been that it would increase the diversity and the equal opportunities in society, and that “the ends justify the means”. An increased ethnic diversity is often argued to be preferable since it would lead to an increased cultural mixture, which in turn would increase the understanding of other cultures and facilitate integration.

There are a number of different expressions all referring to preferential policies; affirmative action, positive action, positive discrimination, and reverse discrimination are among the most common. Preferential policies generally refer to actions taken with the purpose of helping and supporting a certain group, even though other groups may be treated less advantageous. When studying the subject it becomes clear that justifications of preferential treatment mainly come in two types. In large, the difference is that one justification is based on the need to compensate for discrimination different groups have suffered in the past (corrective justice). The other type focuses on preferential treatment as a means for reaching a future goal or ideal, e.g. equality of opportunity (distributive justice).

## **1.1 Problem and aim**

The aim of this thesis is to find out whether the use of preferential treatment is a just method to create equality within the society.

Questions that will be asked in this thesis are:

- What is Preferential Policies?
- In what ways have preferential policies been used and justified?
- Is it possible to give justice to one individual through giving justice to a group?
- Can ethnic diversity in society be increased through preferential policies?
- What is the aim of using preferential policies? Is the aim equality of opportunity or equality of results?
- What may be learnt from studying the development of preferential policies in the USA and Sweden?

By answering these questions I hope to be able to fulfil the aim of this thesis.

## 2 Methodology

Methodology is the study and knowledge of methods. There are a number of main principles of philosophical and logical nature which different methods rest upon. The relevant principle for this study is the “Theory of science”, which concerns the methodology and formation of a theory within different disciplines of science.

### 2.1 Method

There are two main categories of data – qualitative and quantitative data. The main difference between these two is that qualitative data are more sensitive and exemplifies more, while quantitative data are more precise but generalizes more. Both methods aim at validity. In general, the qualitative analysis often deals with more complex themes than the quantitative analysis.<sup>1</sup> A study using a qualitative method is not built on a theory which is tried and evaluated; it is more concerned about the whole which creates openness for what the result of the research might be.<sup>2</sup>

This study has been made using qualitative data. The aim of this thesis is somewhat problematic since it includes the concept of justice and there are a variety of ways to define what is just. To fulfil the aim comparing texts concerning the debate of preferential policies, and texts concerning the meaning of justice was considered suitable. No interviews have been made since the aim of the thesis is of a more theoretical kind. The texts used have been analyzed to see in what way the concept of preferential policy is used and in what way the authors argued for or against the concept.

The method used in particular has been “textual analysis”. Here an analysis of the content of a text is used to penetrate a certain problematic.<sup>3</sup> It may be inductive or deductive. Deductive conclusions are often drawn from general principles, while inductive conclusions are based on empirical evidence giving a general knowledge of the theory. Usually both of these are used when performing research.<sup>4</sup> The textual analysis has been used alongside with a, as mentioned above, analysis of arguments which deals with the structure of arguments put forward in a debate.<sup>5</sup>

This study has been conducted based on the questions asked in the aim. Research has taken turns in different directions trying to relate back to the aim which has not been unproblematic.

### 2.2 Sources

In a thesis it is important to be aware of factors which might affect the way the author chooses and presents her material. The question of objectivity is largely debated upon. Some argue it impossible to separate one’s personal view from knowledge, some argue it possible. However, it is generally admitted that no one possesses a total overview of society and knowledge. We

---

<sup>1</sup> Svenning, C. (2003). *Metodboken*. 5<sup>th</sup> e d. Lorentz Förlag: Eslöv. p, 69-75.

<sup>2</sup> <http://infovoice.se/fou/bok/10000002.htm>. 2006-03-08. Forskningsansats - kvalitativt eller kvantitativt perspektiv.

<sup>3</sup> Svenning, C. (2003). p, 169-172.

<sup>4</sup> Andersen, Ib. (1998). *Den uppenbara verkligheten – Val av samhällsvetenskaplig metod*. Lund: Studentlitteratur. p, 29-30.

<sup>5</sup> <http://www.hb.se/bhs/nyutb/kurswebb/b-kurser/b-metod/8.Textanal.ppt#11>. 2006-03-08. Textanalys och Samhällsvetenskap.

can only grasp a part of the reality and this part is decided from our own individual history. When looking at society from our own point of view it will appear quite different depending on the individual.<sup>6</sup>

This makes research perspective related, but it does not necessarily make the research less objective. Data may be divided into the categories: “perspective neutral” and “perspective relevant”. Perspective neutral data is data that is equally interesting independent of what position in society the researcher enjoys. Thus perspective relevant data is the opposite, data which are interesting or important from a certain perspective. The data about preferential policies may certainly be argued to be perspective relevant data. Hence the importance of objectivity comes in. The subjectivity of a researcher depends on what perspective he or she has chosen as a basis for the research process. What makes the researcher objective or not depends on whether he or she manages to look at the problems and understand them from the chosen perspective.<sup>7</sup>

What perspective researchers’ hold of the society may affect in what way research is done. A perspective may consist of three elements: assumptions of the nature of reality, values of this reality, and ideas of how this reality ought to be.<sup>8</sup>

Research could more or less seize reality. The objectivity-problem is not the only issue when performing research. The validity of the research is of great importance. The concept of validity is often divided into internal (or content) validity, and external validity. Internal validity is generally covered by the question: are all aspects of the problem covered? The external validity is more concerned about the project as a whole, whether or not there are possibilities of a generalisation from a specific study. It is sometimes argued that internal validity is easier to attain in a qualitative research. However, the external validity is supposed to be equally hard to attain in both qualitative and quantitative research.<sup>9</sup>

The problematic of using qualitative data is that the researcher tries to penetrate into a problematic by using little material. The research process may be seen as a chain of interpretations of the reality since the researcher brings with him/her both a general and a more specific basic outlook of the society. The researcher has a pre-comprehension of what he or she wants to study. This really is a tricky part of the subject studied in this thesis. What makes it even more difficult is that in general, in this case in particular, the researcher enters a research area where all people have an opinion.

There are a number of problems that may appear as a result of a qualitative analysis. Wrong groups of material may be chosen for the research which may result in validity problems. The material used may be misinterpreted and there may be a discrepancy between the level of analysis and the problem.<sup>10</sup>

One should be aware of that the subject of this study is well-disputed and a quite sensitive question. There is not anyone to be found without having an opinion of the question. When performing research one has to remember that also the authors of the sources used have an opinion of the subject in question. Some of the authors of the sources used in this thesis have

---

<sup>6</sup> Svenning, C. (2003). p, 11-20.

<sup>7</sup> Ibid. p, 11-20.

<sup>8</sup> Ibid. (2003). p, 11-20.

<sup>9</sup> Ibid. (2003). p, 64-67.

<sup>10</sup> Ibid. (2003). p, 159-164.

clearly stated their standpoint, and some have even dedicated their work to arguing for or against the matter. One excellent example of this is John Edwards, a British professor opposing the use of preferential treatment. Another is Thomas Gür who also strongly opposes the use of these methods. In most cases it is possible to realize the authors' opinion in the question simply by reading the title of their articles or works.

This research has been based on secondary sources. There are a number of sources (e.g. Rawls 1973, Edwards 1987, and a number of articles in Cahn 2002) which were printed for about 20 years ago or more, however these sources were mainly theoretical in its arguments, and some still considered classical works.

Most of the material used in this thesis is printed material. Articles used have been published in professional texts of good repute. The newspapers (Svenska Dagbladet and the Guardian) are two major newspapers in their respective country. Svenska Dagbladet claims itself to be: "Independent of political, religious, commercial, or private interests".<sup>11</sup> The Guardian takes on a liberal political approach.

When it comes to internet sources it is very difficult to know whether information is credible or not. It is crucial to know who lies behind the information since it could be a private person as well as an organization. Organizations such as the World Bank, the UN, etc. have a high degree of credibility. However, this does not mean that these web pages could not be misused for the purpose of distributing propaganda. The internet sources used in this thesis have been the homepages of the UN and the EU, the homepages of the two newspapers discussed above, and the homepages of the University of Gothenburg and the University of Borås.

---

<sup>11</sup> Quote. Auhor's translation. SvD's homepage. [http://www.svd.se/dynamiskt/omsvd/did\\_5480110.asp](http://www.svd.se/dynamiskt/omsvd/did_5480110.asp). 2006-01-04.

### 3 Discrimination and preferential policies – definitions

Preferential policies as a concept seem to rely upon the existence of a discrimination of some sort. If there is no discrimination, there is nothing to set right.

In this section different ways of defining discrimination and different classifications of discrimination will be discussed. It seems important to understand what conditions causes the implementation of preferential policies. The reader will also be provided with definitions of preferential policies and what types of preferential policies there are.

Many different expressions are used as synonyms of preferential policies. The expression “affirmative action” is American. The expression “positive action” or “positive discrimination” is used more in Europe. Another common expression is “reverse discrimination”. When all these expressions are used in this thesis they refer to preferential policies, which is also the term that will be used by the author.

#### 3.1 Discrimination

Preferential policies are meant to be used as a means to prevent or compensate for discrimination. But what is discrimination? The United Nations (UN) defines discrimination of women as follows: *“For the purposes of the present Convention, the term “discrimination against women” shall mean any distinction, exclusion or restriction made on the basis of sex which has the effect or purpose of impairing or nullifying the recognition, enjoyment or exercise by women, irrespective of their marital status, on a basis of equality of men and women, of human rights and fundamental freedoms in the political, economic, social, cultural, civil or any other field.”*<sup>12</sup> The same words are used in a definition of racial discrimination.

A more general definition of discrimination may be found in the UN Discrimination Convention. Article 1 states that:

- (a) Any distinction, exclusion or preference made on the basis of race, colour, sex, religion, political opinion, national extraction or social origin, which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation;
- (b) Such other distinction, exclusion or preference which has the effect of nullifying or impairing equality of opportunity or treatment in employment or occupation as may be determined by the Member concerned after consultation with representative employers' and workers' organisations, where such exist, and with other appropriate bodies.<sup>13</sup>

The European Union (EU) divides discrimination into two sections - direct and indirect discrimination. The definitions are as follows: “Direct discrimination occurs when a person is treated less favourably than another in a comparable situation because of their racial or ethnic origin, religion or belief, disability, age or sexual orientation. Indirect discrimination occurs

---

<sup>12</sup> <http://www.un.org/rights/HRToday/>, Human Rights in Action, Introduction I – Substantive Provisions of the Convention on the Elimination of All Forms of Discrimination against Women. 2005-10-05.

<sup>13</sup> <http://www.ohchr.org/english/law/employment.htm>. The UN Discrimination (Employment and Occupation) Convention, 1958 (No 111). Article 1. 2005-12-07.

when an apparently neutral provision, criterion or practice would disadvantage people on the grounds of racial or ethnic origin, religion or belief, disability, age or sexual orientation unless the practice can be objectively justified by a legitimate aim.”<sup>14</sup>

The discussion on discrimination is often divided between the process versus results approach. Within the process approach discrimination is discussed as an unfair special treatment that is based on prejudices. The perpetrator must have the intention of discriminating. This theory focuses upon the decision-making process that causes discriminating actions, in other words it focuses upon direct discrimination based on race, gender etc. The interest of this theory is in the individual and the purpose with the prohibition of discrimination is to guarantee the individual a fair treatment in terms of equal opportunities. This theory has been criticised for not considering the occurrence of structures of special treatment that is institutionalized.<sup>15</sup>

The basis of a prohibition of discrimination is always within the observation that a certain group is disadvantaged within society in a more systematic way. The critics have instead concentrated on the discriminating results of certain occurrences. Here justice of distribution is focused upon, and concepts like justice of groups and social engineering is not far down the road. This theory is about improving the disadvantaged group’s relative position in different ways.<sup>16</sup>

This has given rise to the disparate impact theory of discrimination, which in turn is what the term ‘indirect discrimination’ originates from. Indirect discrimination exists if a seemingly neutral regulation, criteria or action in practice especially disadvantage people in a certain group. In this way, the intention of the perpetrator lacks importance, since it is the effect on the group that is subject to discrimination that is decisive. The interest of the effect of discrimination has put more focus on sanctions like economic compensation. From here preferential policies is not far-off.<sup>17</sup>

### **3.2 Preferential policies**

In Article 1 in the UN Universal Declaration of Human Rights it is stated that “all human beings are born equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.” Article 2 recognizes the universal dignity of a life free from discrimination. “Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”<sup>18</sup>

John Edwards presents a definition of preferential policies as being:

“...the process of discriminating by laws and policies in a society’s distribution of benefits, advantages, and opportunities,

---

<sup>14</sup> [http://europa.eu.int/comm/employment\\_social/fundamental\\_rights/rights/gloss\\_en.htm](http://europa.eu.int/comm/employment_social/fundamental_rights/rights/gloss_en.htm), 2005-10-05.

<sup>15</sup> Numhauser-Henning, Ann. (2000). Perspektiv på likabehandling och diskriminering. Lund: Juristförlaget i Lund.

<sup>16</sup> Ibid.

<sup>17</sup> Ibid.

<sup>18</sup> <http://www.un.org/Overview/rights.html>. The UN’s Universal Declaration of Human Rights, Article 2. 2005-10-05.

not by reference to individual needs, or a person's entitlement, or his deserts or merit but by reference to 'irrelevant criteria', e.g. race or sex."<sup>19</sup>

Affirmative or positive action has a number of different definitions which all usually point towards the same end – they are preferential policies. Preferential policies generally refer to actions taken with the purpose of helping and supporting a certain group, even though other groups might be treated less advantageous. A common argument used to justify this action is often that preferential policies would promote ethnic and cultural diversity in society. Another strong argument, at least it has played a great role in the USA (and to a certain extent in many former colonies), is that preferential policies would be actions compensating earlier wrongs made towards a certain group in society.<sup>20</sup>

The terms “affirmative action”, “positive action”, and “positive discrimination” can all refer to a number of measures taken with the purpose of improving different minorities' or groups' participation at the labour market, and other areas in the political life and the educational sector.<sup>21</sup>

The methods of preferential treatment are many, from recruitment campaigns to imposing quotas. The term affirmative (or positive) action is often associated with imposing quotas, which has made the debate of preferential treatment more biased and prejudiced since this measurement is generally argued to ignore merits. The term could possibly be extended to concern all the areas of politics. In this case a more extended meaning of the term stands for special actions taken to improve the political involvement of different minorities.<sup>22</sup>

The politics of preferential treatment may have several different purposes, such as stopping direct and indirect discrimination, as mentioned above, and to increase the cultural diversity in society. The institutionalization can be more or less strong in terms of laws or official recommendations. The means of preferential treatment may be a special right of veto and political representation, employments, promotions, admission preference in Universities, and scholarships. The methods are several, from recruitment campaigns to special timetables and quotas. These programs target different groups in society e.g.; women, ethnic minorities, and original populations (for example the Sámi in Scandinavia and the Aborigines in Australia). The practice of these policies within the public sector might be centralized or decentralized, and it may also be practiced within the private sector<sup>23</sup>.

### **3.3 Summary**

In the struggle against discrimination different methods and policies have been discussed and tried. Preferential policies are generally used to prevent or stop discrimination. In this section definitions of discrimination such as that of the UN and the EU has been presented. The EU makes a difference between direct and indirect discrimination which basically means that

---

<sup>19</sup> Edwards, J. (1987). Positive Discrimination, Social Justice, and Social Policy; Moral Scrutiny of a Policy Practice. Quotation. p. ix.

<sup>20</sup> Demokratiutredningen. (1999). Invandrarskap och Medborgarskap. Statens Offentliga Utredningar. SOU 1999:8.

<sup>21</sup> Ibid.

<sup>22</sup> Ibid.

<sup>23</sup> Ibid.

discrimination against individuals or groups may be made deliberately, or in a more systemic way be part of institutional procedures.

Preferential policies are in general imposed to help and support certain groups, despite risking unfair treatment to other groups. Preferential policies are often associated in a negative way by imposing quotas, but there are many different types of the policy. As well as preferential policies may take on a range of different expressions, it may also have a range of purposes. The most frequently used purpose seems to be to improve targeted groups' possibility to take part in society.

In general, preferential policies belong to the field of social justice. The role of social justice and in what way preferential policies belong to this field will be examined in the next section.

## 4 Social justice

Today, what most people associate with social justice in the Western societies is probably equality of opportunity - that all men are equal and therefore deserve an equal chance at reaching whatever aim they have in life.

If, as some argue, the use of preferential policies is unjust, what permits an injustice to take place while other injustices are prohibited? What is the role of justice? This will be discussed in this section along with the question how such policies may be justified.

The section starts with one of the most important writers on the subject of social justice. John Rawls elaborates on the role of justice in society and the importance of equality of rights and opportunity. However, when it comes to justification of preferential treatment a certain classification is necessary. This is not to be found in Rawls' work therefore this thesis will pass on to Edwards' two classifications.

Justice may be classified as distributive and corrective. Distributive justice is proportional and corrective justice is not. Hence justifications of preferential treatment may be divided into two principles – the “needs” principle and the principle of rights to compensation for harm. The needs principle is used mostly in Europe while it is more common to use arguments based on the principle of rights to compensation for harm in the USA. Preferential policies of “greatest” needs imply that help is intended for those of greater need than other people with needs. Edwards argues the principle of rights to compensation for harm to be stronger in its arguments since it answers the question of why certain needs are to be met. The compensational argument emphasizes that those who have suffered from harm have a justificatory right to compensation.

This thesis will take on the view of the needs principle since this is the main principle used in Europe and as far as the author knows the only view taken in Sweden. As a consequence the principle of rights to compensation for harm will not be elaborated upon until chapter seven where a comparison between Sweden and the USA will be made.

### 4.1 *The role of justice*

In his exhaustive work “A Theory of Justice”, John Rawls begins his introductory chapter with elaborating on the role of justice. He argues that justice is the first virtue of social institutions, and that law and institutions must be reformed or abolished if they are unjust, no matter how efficient and well-arranged they are.<sup>24</sup>

“For this reason justice denies that the loss of freedom for some is made right by the greater good shared by others. It does not allow that the sacrifices imposed on a few are outweighed by the larger sum of advantages enjoyed by many. Therefore in a just society the liberties of equal citizenship are taken as settled; the rights secured by justice are not subject to political bargaining or to the calculus of social interests. The only thing that permits (...) an injustice is (...) when it is necessary to avoid an even greater injustice. Being first virtues of human activities, truth and justice

---

<sup>24</sup> Rawls, J. (1973). A Theory of Justice. Oxford: Oxford University Press paperback.

are uncompromising.”<sup>25</sup>

Rawls also presents two principles of justice:

- “Each person is to have an equal right to the most extensive basic liberty compatible with a similar liberty for others.”<sup>26</sup>
- “Social and economical inequalities are to be arranged so that they are both (a) reasonably expected to be to everyone’s advantage, and (b) attached to positions and offices open to all.”<sup>27</sup>

In other words, the two principles are the liberties of equal citizenship and equality of opportunity.<sup>28</sup>

The second principle applies to the distribution of income and wealth. The distribution of these two need not be equal, but it is important that it is to everyone’s advantage. At the same time positions of authority and offices of command must be accessible to all. Rawls presses the importance of arranging the two principles in a serial order, i.e. the first prior to the second. By doing so a departure from the equal liberty of the first principle cannot be justified or compensated for by greater social and economical advantages. Both the liberties of equal citizenship and equality of opportunity must be considered in the distribution of wealth and income.<sup>29</sup>

Rawls argues that “All social values – liberty and opportunity, income and wealth, and the bases of self-respect – are to be distributed equally unless an unequal distribution of any, or all, of these values is to everyone’s advantage.”<sup>30</sup> He concludes that injustices are nothing more than inequalities that are not to the benefit of all.

It is of importance to understand, it is argued, that one is not allowed to justify differences in income or organizational powers by having disadvantages of some outweighed by the greater advantages of others. Infringements of liberty must not be counterbalanced in this way. However, there is an indefinite number of ways in which all can be advantaged if the initial arrangement of equality is taken.<sup>31</sup>

The intuitive idea of a society based on the principles of equal liberty and equality of opportunity, is that the social order is not to establish and secure the more “attractive prospects” of those better off, unless doing so is to the advantage of those less fortunate. Rawls illustrates this idea by an example of distribution of income among different classes. Those starting out as members of an entrepreneurial class have a better prospect than those who begin in a class of unskilled workers. Rawls also argues that this is likely to be true even after removing injustices existing at present. This kind of initial inequality in life prospects can only be justified if the difference in expectation is to the advantage of the representative man who is worse off, in this case the unskilled worker. The inequality in expectation is permissible only if lowering it would make the working class even worse off.

---

<sup>25</sup> Rawls, J. (1973). Quotation. pp, 3.

<sup>26</sup> Ibid. Quotation. p, 60.

<sup>27</sup> Ibid. Quotation. p, 60.

<sup>28</sup> Ibid.

<sup>29</sup> Ibid.

<sup>30</sup> Ibid. Quotation. p, 62.

<sup>31</sup> Ibid.

So, how unjust an arrangement is depends on how excessive the higher expectations are and to what extent they depend upon the violation of the other principles of justice, principles like equality of opportunity.<sup>32</sup>

In order to provide equality of opportunity and to treat all persons equally, society must give more attention to those born in less favourable social positions. The idea is to give the bias in opportunities a push in the direction of equality.

## **4.2 Preferential treatment as a means of social justice**

The two requirements of justice which are most commonly used to justify preferential policies are the needs principle and the principle of rights to compensation for harm. The former is more commonly used as a ground for promoting preferential treatment in Europe, and the latter in the USA.<sup>33</sup>

Even though justice is to a large extent part of morality, there are practices which may not be entirely just. However, they are “justified” on grounds of utility or broad consequences. John Edwards argues that there are two broad categories in preferential treatment. These are the ethics of duty (principles of duty, obligations, and the rightness of action) and the ethics of ends (taking cognizance of the outcome when valuing the rightness of action). An often occurring statement is that preferential treatment is justified on grounds of utility. However, this is not the same thing as arguing that preferential treatment is just or that justice requires it.<sup>34</sup>

Edwards claims that social justice is “*a set of principles to guide the allocation of burdens and benefits in a consistent way when they are not distributed according to other processes such as the market, bequests, gifts, charity, or lottery.*”<sup>35</sup> The use of social justice is mainly confined to the allocation of social goods in public welfare.

### **Distributive and corrective justice**

The most common distinction that is made between types of justice is between distributive and corrective justice. Distributive justice is proportional while corrective justice is not. By corrective justice compensation is distributed by the degree of harm that has to be corrected. The amount of benefit is decided by this factor alone and refers to no other harm-doers. In distributive justice people of the same “quantity” (for example need or merit) should receive equal amounts of the benefit. Social justice is usually equated with the distributive justice, while guaranteeing of rights often involves corrective justice.<sup>36</sup>

Corrective justice then, seems to call for compensatory or restitutive justice while distributive justice seems to take on the role of ‘social justice’ or “justice as fairness”.

Edwards argues that the idea of ‘like treatment’ fall under the distributive principle. When applying this idea on both principles it is possible to overcome the dichotomy. He also argues that the Aristotelian principle lies at ground for preferential policies. People should not have equal shares, but rather they should have shares in proportion to what particular qualities that would reflect their being equals. In order to treat people as equals we must first recognize the

---

<sup>32</sup> Rawls, J. (1973).

<sup>33</sup> Edwards, J. (1987).

<sup>34</sup> Ibid.

<sup>35</sup> Ibid. Quotation. p. 37.

<sup>36</sup> Ibid.

existing inequalities and distribute accordingly. To distinguish what differences that are relevant or irrelevant is not easy, but one of the main reasons (or maybe even *the* main reason) in social policy is the distribution of burdens and benefits in need.<sup>37</sup>

### **Preferential policies or allocating on the basis of needs?**

The most common way of justifying preferential policies is that they are used on the basis of need or a “special need”. However Edwards detect a number of possible justificatory grounds for preferential policies which are: needs, compensation as restitution, utility, consequences, and as a counter to negative discrimination.<sup>38</sup>

Paradoxically, if we wish to locate resources on the basis of need, we are not positively discriminating if we use “functionally specific criteria qualities” as constitutive of need. In other words, it is not positive discrimination if benefits are allocated on the grounds of need by identifying those with low incomes, or by groups of handicapped or sick. It is, however, positive discrimination if we use qualities that are not themselves constitutive of a need, qualities like sex, ethnicity, etc. This is the difference between preferential policies and ‘simply’ allocating on the basis of needs.<sup>39</sup>

Based on this reasoning, Edwards argues that positive discrimination seems necessarily incompatible with the equality principle; it treats people differently according to morally irrelevant principles.<sup>40</sup> The difference between morally relevant and morally irrelevant characteristics will be discussed in the following chapter.

The use of preferential policies is, as mentioned above, based on two main arguments: the right to have our needs met (social rights), and the right to compensation or restitution, or contractual rights as Edwards calls it. Social rights are (except in cases of being effective social insurance policies) less self-evident and less defensible than the contractual rights. The problem is that the social rights argument does not provide an answer to why our needs ought to be met, while the contractual rights argument do.<sup>41</sup> “Whilst social rights are a necessary complement to social justice, therefore, they do not provide *in themselves* a foundation for need claims.”<sup>42</sup>

### **4.3 The needs principle**

The “needs principle” is the most common justification in European countries. The question is what kind of need that is required. Edwards calls these needs “special needs”. Preferential policies of “additional” or “greatest” needs imply that help is intended for those of greater need than other people with needs. This will have the effect that distribution of benefits will leave some needs unmet. People with “special needs” may be free from other needs, and compared to others they may not be near those in most need.<sup>43</sup>

The groups in need are usually defined in ways that are constitutive of need (elderly, handicapped, etc.) but ethnic minority is not a term that in itself constitutes a need. In this way

---

<sup>37</sup> Edwards, J. (1987).

<sup>38</sup> Ibid.

<sup>39</sup> Ibid.

<sup>40</sup> Ibid.

<sup>41</sup> Ibid.

<sup>42</sup> Ibid. Quotation. p, 65.

<sup>43</sup> Ibid.

it is impossible to discriminate in favour of the most 'needy'. Edwards argues that preferential policies must mean using 'non-justice-relevant criteria' or it will mean nothing.<sup>44</sup>

He also presents three special claims for preferential policies:

- a) that positive discrimination does not fall foul of the equality principle because all members of preferred groups have *higher* need claims (...) than people outside the groups;
- b) that positive discrimination does not contradict the equality principle because the degree of correlation between higher need claims and the group-membership is so strong as to make the use of whole-group criteria the best, least-cost, or on balance most just way of meeting needs;
- c) that positive discrimination is not about beneficiary selection but rather about giving 'more' or 'additional' resources to the most needy.<sup>45</sup>

However, Edwards argues these claims not to be very strong and mentions them as "relatively uninteresting" since it is empirically a "weak" or "empty" argument.

#### **4.4 Summary**

In this section it has been established, with the help of Rawls, that the first virtue of social institutions is the liberties of equal citizenship and opportunity. These two are also the most common aims of preferential policies. In order to treat all persons equally, a bias of opportunities may be in need of a push in the right direction. From this information we may establish preferential policies to be a means or a complement to social justice.

However, Rawls does not make the necessary divisions between different principles of social justice. Edwards argues there are two ways of justifying preferential policies – on the basis of need, and by compensation for harm.

An important distinction has been made between preferential policies based on the needs principle, and "simply" allocating on the basis of need. The problem using the needs principle is how to decide which persons or groups that is "in need". What are the necessary criteria to qualify for the use of preferential policies?

One of the main questions when dealing with preferential policies is to who or whom it should be directed. Does one allocate resources or compensate for harm to individuals or to groups? This will be discussed in the following section.

---

<sup>44</sup> Edwards, J. (1987).

<sup>45</sup> Ibid. Quotation. pp, 86.

## 5 Preferential policies for Individuals or Groups?

The issue of whether preferential policies should address individuals or groups is one of the main questions debated, and a most essential question. Allocating on the basis of need may be directed towards both individuals and groups. Compensation for harm made in the past is more difficult to direct towards groups when all individuals may not have suffered from the harm in an equivalent way.

In this section the problem of combining the individualistic approach to life (the individualistic approach of the Western societies) with the formation of groups based on characteristics which are “morally irrelevant” will be discussed. Below, the approach to the relevance of moral characteristics is divided into two sections. The first deals with the difference between morally relevant and irrelevant characteristics. The other deals with whether or not these characteristics may be used to justify the creation of groups in an individualistic society. The division of the moral issue has been made to facilitate the understanding of the reader. In the moral block it may also be argued that there should be differences made between the private and the public area. Thomson argues discrimination in private blocks to be morally “at fault”; however, all people have the right to make their own choices. It is a different case in the public block since these companies can be said to be owned by the public. This gives all citizens a right to an equal chance in these companies. Thomson’s argument will be presented later in the section of diversity since it deals with preferential treatment in hiring.

The moral issues which arise from group policies in an individualistic society may have a number of consequences such as stigmatizing effects and ethnic passing. The moral importance of merits seems high in Western countries and the use of preferential treatment problemizes the process of hiring and admission processes to Universities etc. There are different ways to view preferential policies from a merit perspective which may be essential to the public debate of preferential treatment. These important questions will also be elaborated upon in this chapter.

### 5.1 *The individualistic problem*

Carol Bacchi argues that a particular understanding of affirmative or positive action as preferential treatment has become hegemonic. She also argues that the way in which preferential policies is conceptualized has to be understood as part of a discursive contest, not as something grounded in “principles”. Most international human rights instruments are based on the commitment to equal treatment. Individuals are to be treated the same without “distinction”. The word “distinction” have come to be replaced by “discrimination” because it “seemed to convey more accurately the requirement that the distinction be of an unjustified nature or arbitrary”<sup>46</sup>. Unfortunately any policy which suggests drawing attention to groups of people is almost always treated with suspicion.<sup>47</sup>

The fact that equal treatment most often rests on an individualistic premise grounds a gender- and race-blind approach to policy. The equal treatment discourse continues to dominate and

---

<sup>46</sup> Bacchi, Carol. (2004). Policy and discourse: challenging the construction of affirmative action as preferential treatment. Quotation. p, 132.

<sup>47</sup> Ibid.

shape contemporary discussions of preferential treatment. This in spite of the fact that “different” treatment will in some situations be necessary in order to achieve equality.<sup>48</sup> Here Bacchi brings up the question; “...to what extent is it legitimate to draw attention to categories of people in a society committed to equal treatment of individuals which is premised on ignoring specific identifying characteristics such as race and gender?”<sup>49</sup>

## **5.2 Morally relevant or irrelevant characteristics?**

James W. Nickel argues that difficulties are likely to arise when a group has been discriminated against on the basis of “morally irrelevant properties”. These properties, or “morally irrelevant characteristics”, could be race, creed, sex etc. If discrimination has been recognized and is on its way to an end, the question concerns how the members of that group should be treated from that point on. Should their history of being discriminated against be ignored, having them be treated like everyone else, or should they be given special advantages?<sup>50</sup>

“...to extend special considerations to a formerly oppressed group will be to persist in the mistake of treating a morally irrelevant characteristic as if it were relevant. For if we take a morally irrelevant characteristic (...) and use it as the basis for granting special considerations or reparations, we will be treating the morally irrelevant as if it were relevant...”<sup>51</sup>

Instead of the original discrimination *against* this group, it would now be discrimination *for* them. To avoid discrimination the irrelevant characteristic must be completely ignored and no special considerations whatsoever may be extended. This argument is usually called “the Reverse discrimination argument”. Nickel presents an objection to this argument arguing that it does not hold. To extend special considerations to those who have suffered from discrimination does not necessarily mean treating a morally irrelevant characteristic as if it were relevant. The basis of the original discrimination will be for example being a woman, but the basis of the special considerations would be being a person who was discriminated against because she was a woman. In this way morally irrelevant properties could continue to be treated as morally irrelevant.<sup>52</sup>

## **5.3 Morally relevant or irrelevant characteristics as a justifying basis of the creation of groups**

It has been argued that the characteristics of those suffering from discrimination have been treated as relevant when it really is irrelevant. The reverse discrimination argument states that irrelevant characteristics must be ignored, and that no special treatment may exist. It is also argued that injustices should be prevented or rectified to individuals, not to a group, and that special advantage to “them” as a group is out of the question since, in a moral context, there is no such group. P W. Taylor argues that there is such a group. This group was created by the original unjust practice, and to deny the group’s existence is to deny a social reality which

---

<sup>48</sup> Bacchi, Carol. (2004).

<sup>49</sup> Ibid. Quotation. p, 132.

<sup>50</sup> Nickel, J W. (1972). Discrimination ad Morally Relevant Characteristics.

<sup>51</sup> Ibid. Quotation. pp, 3.

<sup>52</sup> Ibid.

cannot be morally ignored. Taylor points out that the greatest injustices of human history are those carried out systematically and directed toward whole groups of society as groups, not as individuals. He further argues that society is “morally at fault” if ignoring the group it has discriminated against.<sup>53</sup>

J W. Nickel goes further by arguing that the administrative basis for distributing a program of benefits is most likely to be some morally irrelevant characteristic, even if this would be implausible as a justifying basis. It would, however, be justifiable for reasons of administrative efficiency. Morally irrelevant characteristics could never be a justifying basis for differential treatment, thus it could be justifiable as an administrative basis for a program of differential treatment. If there has been institutionalized discrimination against persons with a certain morally irrelevant characteristic, the effect would be to make this characteristic relevant for purposes of reparations. However, Nickel does not seem to agree with Taylor since there is a risk, he argues, that the result of following Taylor’s principle would end up in wasting resources on “substantial numbers of persons who were completely unaffected by discrimination directed against a group to which they belonged.”<sup>54</sup>

A H. Goldman argues that the operation of market criteria upon hiring would still make it unjust when applying preferential policies on a group. This since hiring within the preferred group depends upon relative qualifications, and the possession of these qualifications is acquired through past opportunities. This would mean that those who benefit most from this program would be those who deserve it the least, or those who suffered the least from discrimination.<sup>55</sup>

#### **5.4 Stigmatizing effects**

There is an image connected to groups subject to “preferential treatment” describing them as “damaged” by their disadvantageous situation so that “special assistance” is needed to help them “catch up”. This makes the discriminated the problem and thus they are the ones who need to change. Those who are willing to make special provisions to help these people appear as benefactors and under which condition they came to power and maintain power stays unreflected. Preferential policies then become a kind of charity and the question becomes how much assistance is needed, and how much is permissible.<sup>56</sup>

Those groups in need for preferential treatment become marked as if in deficit in some way – as if they could not have achieved the same social level as others on their own. This characterizes the group as privileged. A consequence is that groups subject to preferential treatment resist it because of its stigmatizing effects, wanting to be “judged on merits” and not on quotas.<sup>57</sup>

The questions Bacchi brings up lead us to another interesting elaboration on the subject. Garth Massey argues that investigations show that preferential policies in university admissions have had a positive impact on careers and accomplishments of minority persons, and that the persons subject to affirmative action policies “did not feel stigmatized or harmed by the fact

---

<sup>53</sup> Nunn III, W A. (1973). Reverse Discrimination and Compensatory Justice.

<sup>54</sup> Nickel, J W. (1974). Should Reparations Be to Individuals or to Groups?.

<sup>55</sup> Goldman, A H. (1975). Reparations to individuals or groups?.

<sup>56</sup> Bacchi, Carol. (2004).

<sup>57</sup> Bacchi, Carol. (2004).

that their schools had affirmative action policies”<sup>58</sup>. Massey’s work on arguments supporting preferential policies will be more thoroughly elaborated upon later.

A common argument against preferential treatment is that individuals may not meet the same requirements as others since their merits are not as important as what group they belong to. This is a main problem and it has been discovered that those arguing for and against preferential policies argues about different types of the same thing.

Reyna (et.al) made a study of the understandings of the concept of preferential policies by the two sides of the debate. The debate on preferential policies is often characterized as a debate about a single, consensually understood type of action. This does not have to be true according to Reyna (et.al). “Several studies show that the general public is not well informed about how affirmative action policy is legally defined or practically applied”<sup>59</sup>. In the study using a student example and an example from the broader Chicago-area community, they argue that preferential policies can be seen as merit-violating versus merit-upholding manifestations. Supporters were in general more likely to think of affirmative or positive actions as merit-upholding, while opponents were more likely to think of these actions as merit-violating. Interestingly, both camps seemed to be more supportive for merit-upholding actions than merit-violating actions.<sup>60</sup>

Public opinion about what preferential policies are is often strongly influenced by how those policies are framed. Even though people may not be able to agree on what preferential policies are, they might be able to agree on what are good and bad applications of the policy. Most people seem to consider preferential-selection procedures that favour unqualified candidates are wrong. Even though the resistance of preferential policies is high people in general appear more supportive of those policies when implemented among equal or roughly comparable candidates. From this Reyna (et.al) claim to see a common theme for both sides of the debate - the importance of merit.<sup>61</sup>

Interviews made by Nick Johns seem to support the notion that people who disagree on the definition of the policies might agree on what is good or bad applications of it. From interviews he found that in general there was a support for ethnic diversity, but when it came to the methods used to reach ethnic diversity people started to backpedal. They particularly disliked the idea of numerical representation (for this the method of quotation is often used) which seemed to be a common starting point of ideas about diversity<sup>62</sup>.

Those who support preferential policies and those who oppose it are in fact supporting and opposing very different policies and programs. Both groups’ main concern seems to be the merit principles. Reyna (et.al) claims that the difference in support lies in whether or not an individual believes that preferential policies are using merit as a criterion<sup>63</sup>.

But why is the merit system so important in the Western society? John Edwards argues that there are probably two reasons. First, we tend to understand the merit system as purer than it

---

<sup>58</sup> Massey, Garth. (2004). Thinking about Affirmative Action: Arguments Supporting Preferential Policies. Quotation, p.787.

<sup>59</sup> Reyna, C (et.al). (2005). Searching for Common Ground between Supporters and Opponents of Affirmative Action. Quotation, p.668.

<sup>60</sup> Ibid. p, 667-682.

<sup>61</sup> Ibid. p, 667-682.

<sup>62</sup> Johns, Nick. (2004). Ethnic Diversity Policy: Perceptions within the NHS. p, 77.

<sup>63</sup> Reyna, (et.al). (2005). p, 667-682.

in fact is. “There is a tendency (...) to believe that on the whole merit is rewarded and that the distribution of burdens or benefits more or less accords with people’s talents and efforts.”<sup>64</sup> This requires a belief in the justice of the merit system despite the rewarding of “morally arbitrary characteristics”. Second, more fundamentally, the merit system is justified in utilitarian terms. “There is a strong belief in the ‘justness’ of functionally relevant criteria for distributing burdens and benefits.”<sup>65</sup> It is often argued that hiring by competence is the surest and best way of maximizing overall welfare.<sup>66</sup>

## **5.5 Ethnic passing**

Whether individuals are divided into groups because of morally irrelevant criteria or not, discrimination against groups could create a phenomenon called “ethnic passing”. Individuals of the overrepresented group start to identify themselves as belonging to the underrepresented group. This would be a way of changing identities in order to equalize the advantage of competition from belonging to a certain group. If belonging to a certain ethnic group is associated in a negative way; or the other way around, that belonging to a certain ethnic group is associated in a positive way, individuals would adapt their strategies of ethnic identification to such circumstances.<sup>67</sup>

Thomas Gür argues “ethnic passing” to be an international phenomenon, which characterizes differently depending on the situation. He brings up the example of San Francisco in the beginning of the 1990’s, where young white people wrote that they were African American, “Hispanics”, or Asian in their application forms to universities of good reputation like Harvard, Yale etc.<sup>68</sup>

In Malaysia and Indonesia entrepreneurs belonging to the native population have a right to governmental benefits. The purpose is to break the Chinese minority’s dominance of the economy. This preferential treatment has caused the creation of so called “Ali Baba companies”. In these companies a Muslim, “Ali”, take on the role as a front figure for compensation, while a Chinese entrepreneur, “Baba”, manage the company and becomes able to enjoy a preferential treatment he or she otherwise would be unable to do. The Ali Baba companies were created because individual “ethnic passing” was not possible in this case.<sup>69</sup>

## **5.6 Summary**

In this section the problems to combine the individualist outlook of Western society and the formation of groups based on morally irrelevant characteristics have been elucidated. Bacchi argues that individualism obstruct the use of preferential policies. The Western society emphasizes equal treatment and a gender- and race-blind policy while at the same time these are the very characteristics used by preferential policies.

---

<sup>64</sup> Edwards, J. (1987). Positive Discrimination, Social Justice, and Social Policy; Moral Scrutiny of a Policy Practice. Quotation. p. 155.

<sup>65</sup> Edwards, J. (1987).

<sup>66</sup> Ibid.

<sup>67</sup> Gür, T. (1998). Positiv särbehandling är också diskriminering.

<sup>68</sup> Ibid.

<sup>69</sup> Gür, T. (1998).

Characteristics such as gender and race are argued to be morally irrelevant and unjustifiable as a basis for allocation of needs. However, there have been suggestions that they are justifiable as an administrative basis.

The question how far these types of policies may go has also been brought up. Thomson argues that forcing preferential policies should not be implemented in the private sector when this would violate private persons' rights to make their own choice. All the moral discussions seem to conclude the difficulties with creating policies going against the ethics of individuality.

One may ask then, what makes discrimination wrong? An interesting answer is provided by Paul Woodruff: "I suggest that an act of discrimination is wrong when it is wrong not simply because it is discriminatory, but because it is part of a pattern of discrimination that is wrong. A pattern of discrimination is wrong when it makes membership in a group burdensome by unfairly reducing the respect in which the group is held."<sup>70</sup> He argues further that injustices in general are born by individuals, but discrimination is born by groups.<sup>71</sup>

There have also been a number of effects as a result of directing preferential policies at groups presented. Stigmatizing effects mean that groups subject to preferential treatment may be regarded as "damaged" and in need of "special assistance". The problem is then moved from the discriminators to the discriminated. This may cause those in object of preferential policies not to identify with "their" group wanting to be judged on merits instead of belonging to a certain group.

The importance of merit seems to be of great significance in the Western society. It may be the case that the striding parts in the debate are actually talking of different things. The general public is not well informed about the characteristics of preferential policies. However, they seem to agree on the importance of using merit as a criterion.

Ethnic passing is a situation where individuals try to converge into the same ethnic characteristics in order to profit from it, or perhaps in order to be judged on merits and not by other characteristics. This would create a false homogeneity in society instead of the existing heterogeneity. The following section will discuss the importance of ethnic diversity, or the importance of heterogeneity in society, which is a common argument for the use of preferential policies.

---

<sup>70</sup> Woodruff, P. (1976). What's Wrong with Discrimination? Quotation. p, 31.

<sup>71</sup> Ibid.

## 6 Ethnic diversity

A common argument in the preferential policies debate is the importance of ethnic diversity. There seems to be a moral importance of ethnic diversity. Many argue that ethnic diversity is a requirement of justice, others that it may be conducive to welfare. What makes this claim interesting is that it assumes an approach of the needs principle. Experimenting with ethnic diversity cannot be done at the individual level; it must be done at the group level. Consequently, ethnic diversity must be an argument of the needs principle. This makes the discussion of ethnic diversity another than that of moral characteristics. Since the needs principle is common in Europe and the importance of diversity is often mentioned in Europe, this section is important and demands its own space in this thesis.

The moral importance of diversity is of frequent occurrence in the European debate. There are a number of ways to argue for the cause which will be presented below. The target of “diversity-policies” is in most cases the labour-market. May there be any financial reasons for increasing diversity or not?

Ethnic diversity is often compared to proportional representation. However, does a lack of proportional representation constitute a lack of ethnic diversity? This question will be the basis of the last part of the section.

### 6.1 *The moral importance of diversity*

It is very common to argue diversity to be of moral importance. It may be argued as increasing overall welfare or to be a matter of justice. Diversity is often argued to be good; however, the question why it is good is discussed less often.

George Sher claims that arguing diversity to be morally important may be done in four ways:

1. Diversity is a requirement of justice.
2. Diversity is intrinsically valuable.
3. Diversity is conducive to the general welfare.
4. Diversity is conducive to some value other than well-being.<sup>72</sup>

To defend the first claim one must be able to specify the relevant conception of justice and show why all jobs are to be distributed among groups in proportion to their numbers. Sher presents two ways of doing this. Either sexual, ethnic, or racial groups are seen as morally fundamental entities with their own claims of justice, or these groups are seen only as derivatively relevant. However, it may be unlikely that these groups would have independent claims of justice.<sup>73</sup>

The fact that relatively few members of the different groups are present in well-paid, authoritative positions is often viewed as evidence that these members lack equal opportunity. Sher argues that the use of preferential policies will not make opportunities more equal when it is imposed, but rather that it might be more equal afterwards.<sup>74</sup>

---

<sup>72</sup> Sher, G. (1999). Diversity. Quotation. p, 193.

<sup>73</sup> Ibid.

<sup>74</sup> Ibid.

Arguing that diversity is intrinsically valuable is mostly arguing from ones believes, and there are not many arguments to use. Diversity have been argued to create a society of a “gorgeous mosaic”, however, these kinds of arguments does not provide a basis for any decision about social policies.<sup>75</sup>

Diversity could be argued to be conducive to welfare through making members of a group taking pride and pleasure in others members of that group’s success. Also, working closely with members of unfamiliar groups may break down barriers and disrupt stereotypes, and this will increase well-being. A problem with this argument is that in defending it, it becomes part of the utilitarian argument for preferential treatment.<sup>76</sup>

When it comes to the argument that diversity would promote some other value than well-being, the claim is that diversity would advance the academic enterprise. This due to that individuals from the preferentially treated groups would provide the academic forum with new ways of thinking and new insights due to their different background. However, there are many question-marks to this statement. Why would racial, ethnic, or female groups be able to provide more diversity to an academic forum than other groups? Why understand diversity only in groups of race, ethnicity, and gender? Why not understand diversity in groups of sexuality, religion, or political ideology? Or perhaps in terms of age or physical disabilities?<sup>77</sup>

## **6.2 Diversity in working life**

Robert Moore presents an approach of preferential treatment called: “The good management approach”. He argues that it emerged among professional personnel managers during the 1990’s. The approach has two main arguments.

First, it is argued that there are a lot of talents amongst women and minorities, and by denying these people employment or promotion one would deprive the employer of able staff and competitiveness. Second, by placing this argument in a context of a crisis, or a ‘demographic time-bomb’, this becomes a stronger version of the first argument. Since younger people are diminishing in proportion to the rest of the population, there is a “shrinking pool of young talent”, it is crucial that employers exclude no one from consideration. In this way of thinking survival becomes a question of equal opportunities.<sup>78</sup>

Thomas Gür, on the other hand, argues that ethnic diversity in companies might not be the best alternative and that ethnic entrepreneurship is not a sign of discrimination in working life. It is a sign that there are advantages for minorities to work at companies which are characterized by ethnic homogeneity. It would also be easier for an entrepreneur of a certain ethnic group to hire persons whose ability to work is easier for him or her to estimate. This is not to say that companies with a multiethnic work force would be unable to possess comparative advantages towards companies which are characterized by ethnic homogeneity. What Gür argues is that the advantage of having a multiethnic work force needs to be concretely examined.<sup>79</sup>

---

<sup>75</sup> Sher, G. (1999). Diversity.

<sup>76</sup> Ibid.

<sup>77</sup> Ibid.

<sup>78</sup> Moore, R. (1997). Positive Action in Action; Equal Opportunities and Declining Opportunities on Merseyside. p, 10.

<sup>79</sup> Gür, T. (1998).

In her article about preferential hiring, Judith Jarvis Thomson divides the question of discrimination and preferential policies in two blocks – a private and a public block. She argues that a private employer choosing to hire a person with certain characteristics rather than a person with other certain characteristics, cannot be said to violate anyone’s rights if there is no law that makes it illegal. A wholly private business has a right to choose as it pleases and violates no one’s rights in doing so. However, the grounds for choosing in one way or another may be morally bad.<sup>80</sup>

A special problem with this view arises when it comes to institutions or companies that are owned by the community. Thomson urges the reader to see what the community owns as owned jointly by its members. This would hold that every member has a right to either an equal chance at, or an equal share in, whatever the community owns. In this case the debate is about having an equal chance rather than an equal share since the benefit of what the community owns usually is indivisible or better left undivided.<sup>81</sup>

### **6.3 Proportional representation**

Celia Wolf-Devine brings up an important issue when questioning whether a low representation of a group in a certain profession necessarily means that discrimination or injustices are taking place. She also questions why proportional representation would be something to aim at. Basically the question is whether proportional representation is a requirement of justice.<sup>82</sup>

Wolf-Devine argues there to be two general categories of arguments for proportional representation: those who claim that the existence of statistical differences is evidence of discrimination or injustice, and those that are based on value of diversity. The difference of the two arguments is that the second argument does not call for appointing groups of less representation as a matter of justice, but rather because diversity or multiplicity would benefit the society as a whole.<sup>83</sup>

However, does a lack of proportional representation constitute or provide evidence of discrimination or injustice of any sort? Wolf-Devine argues that it would only if it is reasonable to believe that in a situation of no discrimination or injustices at all, there would always be proportional representation in different professions or parts of the society. This might not be the case. Is there any reason to suppose that for example members of different ethnic groups would be equally likely to want to go into a certain profession? If these groups hold different cultural values, which are common, this might mean that they do not value professions in the same way. A member of one community most likely value different sorts of character traits, and have different ideas of what sort of jobs that are most prestigious. The fact that different communities hold different values is something that most arguments for preferential policies hold true. If this was not true, bringing a wider variety of groups would not contribute to diversity.<sup>84</sup>

Wolf-Devine argues further that it is important to give thought to what sort of diversity that should be promoted and why. It is important that communities do not grow too homogenous

---

<sup>80</sup> Thomson J J. (1973). Preferential Hiring.

<sup>81</sup> Ibid.

<sup>82</sup> Wolf-Devine, C. (1993). Proportional Representation of Women and Minorities.

<sup>83</sup> Ibid.

<sup>84</sup> Wolf-Devine, C. (1993).

and ingrown, but she also argues that too much diversity would lead to the breakdown of communication between groups. Wolf-Divine claims to see no reason why proportional representation of groups officially recognized should be expected to produce a “right” sort of diversity.<sup>85</sup>

## **6.4 Summary**

This section has divided the moral importance of ethnic diversity into four categories. Sher demonstrates the weaknesses and the strengths of the arguments. He raises an important question when asking why diversity is understood simply in terms of gender, race, and ethnicity.

Proportional representation is often included when discussing diversity. In this section an interesting question has been brought up: does a lack of proportional representation necessarily mean that there exists some sort of discrimination or injustice?

Some argue, as Sher has pointed out, that diversity is conducive to welfare. An argument in this category has been presented claiming that denying the presence of discriminated groups in companies deprives the companies of competitive advantages, and that it is important to take advantage of the shrinking pool of young talent while possible.

Gür, on the other hand, is more cautious arguing that the advantage of having a multiethnic work force must be concretely examined.

Thomson presents a new line of thought arguing that there should be a difference between private and public companies when hiring. Public companies are owned by the public and therefore all people should have the same chance when applying for work in such businesses. It should reflect the composition of society. However, private companies have a right to choose as they please. Thus even though their decision may be bad from a diversity point of view, they are still in right to take the decision. It need not reflect anything else than the private owner.

The arguments of Gür and Thomson are interesting. May their arguments reflect the relation between the state and the labour-market in their countries (Thomson is American and Gür is Swedish)? The American philosophy is that the State and the labour-market should have very little to do with each other. Private and public should be separated. In Sweden the role of the State is greater. The private and the public are not separated to the same extent. This fact is interesting to consider when reading the next section since the American Federal State has used “forcing” policies in their affirmative action programs while the Swedish State have not. From this perspective it seems as if the American State has intervened more in the private block than the Swedish State has. In the following section a comparison between the developments of preferential policies in the USA and Sweden will be presented. In the comparison it will be possible to see different directions and tendencies which have been presented earlier in this thesis.

---

<sup>85</sup> Wolf-Divine, C. (1993).

## 7 Preferential policies in the USA and Sweden

Today preferential treatment is a policy globally spread. Even though it is controversial, it is in different cases recommended by the UN as a means to increase equality. This section will present the development of preferential policies in the USA and Sweden. Here the concepts discussed above will be used in a comparison between the preferential policies in the two countries. As an introduction, the different historical backgrounds will be discussed and a short section of the two principles (the needs principle and the principle of rights to compensation for harm) will be presented as mentioned earlier together with a short discussion of equality of opportunity. This is done to facilitate the reader in observing which principles the two countries base their preferential policies on and what they claim to be the aim.

Sweden and the USA are two countries with different historical background, and consequently different motives for using preferential policies. The USA was created by the European colonists. African Americans were enslaved and shipped from European colonies in Africa to America. In the middle of the 20<sup>th</sup> century the USA became the first country to write preferential policies into its constitution. Their history of oppression by the African Americans and the rise of civil rights movements forced the American administration to act. “Affirmative action” programs were implemented to create and ensure equality between citizens. Thus the affirmative actions have mainly been aimed at African Americans, leaving other minorities somewhat behind.

Sweden does not have the same history of discrimination as the USA. It has not been a colonial power nor has it been a colony, and thus the starting position for Sweden’s “positive action” has not been as ‘natural’ as in the American case. Here the debate of preferential policies has been aimed at immigrants in general. The history of immigration in Sweden does not go far back. There has not been such an obvious discrimination of groups as in the USA; instead the need for preferential policies has become increasingly clear when immigrants failed to be included in the Swedish society.

It should be noted that the politics of welfare of the American Federal State and the politics of the Swedish welfare state are, and have been, very different. A common way of describing welfare states is to divide them into having a “general” or “selective” model of welfare. The Swedish model is in an international comparison clearly generalist. It means that service and financial benefits should be able to cover all of the population in its different stages of life. This should be done using fairly homogenous rules. Given this, one might expect there would be a certain aversion towards preferential policies in Sweden since positive action may be argued to be the opposite of the principle of equal treatment, a principle which the welfare state is built upon. It also does not go very well with the idea of creating equality through homogenous systems that covers all of the population.<sup>86</sup>

On the other hand, in general, the politics of the welfare state may be argued to aim at creating equal opportunities for all its citizens through compensating for certain differences, in above all the economy.<sup>87</sup> This leads us to a discussion of the general aim of preferential policies – equality of opportunity.

---

<sup>86</sup> Åsard, E & Runblom, H. (2000). Positiv Särbehandling i Sverige och USA. p, 125-175.

<sup>87</sup> Åsard, E & Runblom, H. (2000). p, 125-175.

## **7.1 The two principles of preferential policies and equality of opportunity**

Here three concepts will be discussed. The two principles used to justify preferential policies and the principle of equality of opportunity since both Sweden and the USA have argued equality of opportunity to be the aim of their preferential policies. The needs principle will not be discussed in detail since this has already been done earlier in the thesis.

### **The needs principle**

The needs principle is based on what kind of need that is required. There may be groups of “special needs” which are greater than those of others. For the allocation of needs to not be preferential the “specific criteria qualities” should be morally relevant e.g. handicapped or sick. It is when the allocation of needs is based on morally irrelevant criteria, e.g. ethnicity or sex, that it becomes a preferential policy.<sup>88</sup>

### **The principle of rights to compensation for harm**

The principle of compensatory rights is stronger in its argument than the needs principle since it answers the question of why our needs ought to be met. Instead the concern becomes what degree of compensation or restitution justice requires. When treating compensatory rights as a material principle of justice it is easier to lead the debate into concentrating on justiciability of positive discrimination. The questions instead become how much compensation, for how long and to what end state. Clearly, this is the approach of the affirmative action debate in the USA.<sup>89</sup>

The key element in the “restitution argument” is that those who have suffered from harm and those who have had their rights denied or overridden, have a right in justice to compensation. However, Edwards addresses the argument from another direction suggesting that the right to compensation is one characteristic of people that justifies others in treating the particular group differently in the distribution of burdens and benefits.<sup>90</sup>

Of the two defences of preferential policies in the compensatory rights view, only one claims a moral relevance of the characteristics deciding who should receive compensation for the original negative discrimination. The other defence argument claims the relevant determinant for preferential policies to be ‘harm’ or ‘injury’. However, to sustain such a claim requires the determinant for the original discrimination (for example being a woman) to coincide with the morally relevant determinant or criterion of ‘harm’. This in turn can only be true if all members of the defined groups have suffered harm. If this was the case, Edwards argue the issue not to be problematical; however it would pose some practical difficulties.<sup>91</sup>

### **Equality of opportunity**

A central argument of preferential policies is that its aim is to create equality of opportunity. In principle equality of opportunity is considered to be a necessity in meritocratic and unequal societies. The more inequalities based on merits there is in a society, the more important it is to see to that the opportunities of gaining rewards are equal. When this is not true, measures

---

<sup>88</sup> Edwards, J. (1987).

<sup>89</sup> Ibid.

<sup>90</sup> Ibid.

<sup>91</sup> Ibid.

ought to be taken to ensure equality of opportunity. Measures taken will most likely consist of making regulations to meet the needs people have in order to be able to compete equally.<sup>92</sup>

To acknowledge equality of opportunity as a function of the needs principle is to create a potential ground for preferential policies. Edwards argues that equality of opportunity may be seen as a necessary component in a meritocratic system to make an unequal distribution of burdens and benefits fairer. It does not necessarily make it more just though. However, “The objective to be achieved by equality of opportunity is to rule out morally arbitrary characteristics from the determination of chances, and hence to rule out such factors as sex, ethnicity, and social background.”<sup>93</sup> It is impossible to eliminate all morally irrelevant characteristics and there are morally irrelevant characteristics which in a meritocratic society is seen as relevant (intelligence, and drive) when achieving desired jobs. In societies people do not live by justice alone. Equality of opportunity is not only concerned with making society more just, it also makes some inequalities more acceptable increasing utility and efficiency in society.<sup>94</sup>

Preferential policies are usually concerned with groups in the population, not individuals. Equality of opportunity is more commonly taken to refer to equality as between individuals. Looking at it this way, preferential policies will only cover a part of equality of opportunity; that of performance ability deficiencies which vary significantly between groups. This would mean that natural deficiencies such as mental and physical handicap would not be subject to these policies if not possessing some other characteristic that coincides with the target groups’.<sup>95</sup>

From this outset the different characters of Swedish and American preferential policies will be examined. First, the American affirmative action programs, its historical background, and reactions from it will be discussed. Second, the same will be done for the Swedish policies.

## **7.2 The affirmative action program in the USA**

The origins of affirmative action have a prehistory going back to the 1930’s in the USA and the policies of Direct Action.<sup>96</sup> With the birth of the Civil Rights Movements in the 1950’s the issue of race and equality of rights moved to the centre stage in the American politics.<sup>97</sup>

The birth of affirmative action as a policy supported by laws was implemented in the USA under the rule of Lyndon B Johnson through the Civil Rights Act in 1964.<sup>98</sup> It was in relation to this he said the famous words; “We seek not just legal equality but human ability, not just equality as a right and a theory but equality as a fact and equality as a result.”<sup>99</sup>

The concept of affirmative action came to include special treatment of certain groups. Johnson argued that equal opportunities and rights was not enough to correct the wrongs made to African Americans in the past, it took more than that. Equality had to be the result

---

<sup>92</sup> Edwards, J. (1987).

<sup>93</sup> Ibid. p, 79.

<sup>94</sup> Ibid.

<sup>95</sup> Ibid.

<sup>96</sup> Åsard, E & Runblom, H. (2000). p, 20-21.

<sup>97</sup> Gilens, M (et.al). (1998). Affirmative Action and the Politics of Realignment.

<sup>98</sup> Åsard, E & Runblom, H. (2000). p, 20-21.

<sup>99</sup> Ibid. Quotation. p, 22.

not only the aim, and the use of quotas became a recommended method for companies, federal institutions, schools and universities<sup>100</sup>.

### **Non-discrimination and the citizens' rights**

Private companies were requested to "take affirmative actions" so that the employees were treated in the same way, independently of their race, beliefs, or national origins. In 1964 discrimination of citizens and of gender was prohibited in the Civil Rights Act, but the Act did not recommend the use of any forms of quotations when employing<sup>101</sup>. This regulation constitutes the basis for much of the discrimination theory that later has been developed both in USA and in other parts of the world.<sup>102</sup> The Congress settled the principle of non-discrimination of individuals and also the citizens' rights to equal opportunities.<sup>103</sup>

### **Affirmative action by timetables and quotas**

In the beginning of the 1970's the American "soft" version (which states that discrimination on the grounds of race, colour, sex, or national origin is forbidden) of affirmative action started to evolve into a "hard" version. This version called for 'timetables' and 'quotas'. However, the government authorities insisted that the "quotas" were simply "aims" and that this was not the same, since the use of "quotas" would be impermissible.<sup>104</sup>

### **Affirmative action becomes constitutional**

In 1971 affirmative action was declared constitutional. This was a consequence of the Supreme Court's rule in a specific case (Griggs vs. Duke Power Co.) that discrimination in employment could be subject to affirmative action. This would hold true even if the discriminative act were made unintentionally. It was found that "standardized aptitude tests" given by the companies could be preventive of getting African Americans to apply for "higher-paying" departments. It became a clear sign of the fact that discrimination was in certain ways institutionalized. The Court found the requirements to be 'fair in form'; however, they could still be discriminatory in operation.<sup>105</sup>

Still, it was not until 1972 that the American public debate on affirmative action started to grow. This was partly a reaction on the Secretary of Labour's revised version of Order no.4,<sup>106</sup> and a consequence of a new development, or a "public turn", in philosophy. Philosophers started to move from doing only meta-ethics towards normative ethics. They now started to suggest political principles, constitutional arrangements, and social policies that would make justice and affirmative action a subject greatly discussed.<sup>107</sup> An Equal Employment Opportunity Commission (EEOC) was set up, and requested government contractors to provide statistics on the racial composition of their labour force. The EEOC was allowed to set numerical goals on their contractors if the minority groups were underrepresented among the workers relative to their percentage of the local population.<sup>108</sup>

---

<sup>100</sup> Åsard, E & Runblom, H. (2000). p, 20-21.

<sup>101</sup> Lindahl, Folke. (1996). Positiv Särbehandling.

<sup>102</sup> Numhauser-Henning, Ann. (2000).

<sup>103</sup> Lindahl, Folke. (1996).

<sup>104</sup> Glazer, N. (2005). Thirty Years with Affirmative Action.

<sup>105</sup> Fredrickson, G M. (2005). Still Separate and Unequal.

<sup>106</sup> Order no.4 was first promulgated in 1970, and it cast a wide net over American institutions to increase the representation of ethnic minorities within these institutions. The revised version of Order no.4 imposed a one-size-fits-all system of underutilization analyses, "goals", and timetables on all the institutions that did business with the government, including the American universities.

<sup>107</sup> Fullinwider, Robert. (2005). "Affirmative Action".

<sup>108</sup> Fredrickson, G M. (2005).

## Focus shifts from employment to university admissions

Employment was the heart of the discussion of affirmative action during the first fifteen to twenty years of its history. In its more recent years, the debate of American affirmative action has been dominated by race preference in admissions in higher education. Racial targets in schools and housing were argued to be needed, and this was to be accomplished through policies and court requirements. It was also argued that only numerical targets could demonstrate that discrimination and segregation had been overcome. However, the policies of housing turned out to be less effective and those requirements were abandoned.<sup>109</sup>

“The issue of the very small Black presence in elite institutions of higher education, colleges, and professional schools, at a time when these institutions did not discriminate in admissions on the basis of race, raised some problems quite different from that of governmentally required targets for employers who were government contractors, the main area of dispute over affirmative action.”<sup>110</sup>

Special programs were created to prepare African American youths for admissions to selective academic institutions. There was a pressure on academic institutions to increase their numbers of African American students, and a consequence of this was that sometimes students who would not ordinarily qualify for the institution in question were admitted. In the beginning few people opposed special programs created for high school students with certain less desirable social situations to improve their chances of entry into university. The question was only how far institutions could go in admitting students on less academic requirements than the minimal requirements.<sup>111</sup>

The first and one of the most well-known cases where the Supreme Court decided upon merits of admission for academic institutions was the so called Bakke case. A white applicant (Bakke) was denied a place in the program of the medical school at the University of California. The school had two admissions programs operating and 16 seats were reserved for racial minorities in its 100-person program. Because of this Bakke “lost” his place in the program. Four justices found the program in conflict with the requirements of federal anti-discrimination statute, and four justices found that the federal statute prohibited only what the Constitution prohibited. Justice Lewis F. Powell, Jr., cast the deciding vote. The problematic of the use of affirmative action was that the Constitution barred governments from using race as a classification for any purpose. However, Justice Powell rejected that argument claiming that even though affirmative action could not be justified as a means of overcoming societal discrimination; it could be used by universities to achieve educational benefits from having a diverse student body.<sup>112</sup>

The main difference between the affirmative action case in employment and in admission to universities was that the academic admissions program was voluntarily based. However, it might not have been so voluntarily in reality. Applying the term voluntary to an institution was and still is tricky. In 1990 the affirmative action debate came to concentrate almost completely on admissions to universities. It was argued that some institutions went too far and admitted too many students who would ‘flunk out’ or require too many concessions in order for them to graduate.<sup>113</sup>

---

<sup>109</sup> Glazer, N. (2005).

<sup>110</sup> Ibid. Quotation. p. 9.

<sup>111</sup> Ibid.

<sup>112</sup> Tushnet, M. (2004). Oxford Journals; International Journal of Constitutional Law.

<sup>113</sup> Glazer, N. (2005).

## **A new class-division**

In his article in *The Guardian*, Tom Harris argues that there are endless paradoxes dividing African American America. Even though African Americans have never had so much legal freedom as today in America, there are still problems remaining. Traditional African American neighbourhoods have collapsed into “drug-ridden crime strongholds”. According to statistics the life expectancy of an African American is six years shorter than that of whites, the unemployment is twice as high, and twenty-four per cent of African American families live below the poverty line while the corresponding number for the white Americans is eight per cent.<sup>114</sup>

Since the implementation of affirmative action policies many changes have occurred in the USA. A new class-division has sprung up among African Americans. Even though in recent years the USA has had African Americans at high political posts, these African Americans have middle-class African American backgrounds. There is a gulf between poor and middle-class or rich African Americans today, and the wealth of African Americans in the USA is far more concentrated in its top percents than that of the white Americans. In 1940 the illegitimacy rate among African Americans was about nineteen per cent; it is now around seventy per cent, and only around thirty to forty per cent of African American men graduate from high school.<sup>115</sup>

These problems have showed themselves difficult to grasp for the American management, the problem of poverty have given the American debate of affirmative action a new direction.

## **Broad opposition**

Affirmative action has during the years caused a broad opposition among the white public in the USA. In particular strong policies like imposing quotas for racial diversity at universities and on the labour-market have been a sensitive issue. This has created loud protests from white citizens.<sup>116</sup> However, Gilens (et.al) argues that the opposition does not in first place stem from negative views of African Americans or a lack of concern for racial equalities, but rather from a “commitment to individual effort and achievement”.<sup>117</sup>

In the American Statement of Equal Rights it is written that: “ *All persons within the jurisdiction of the United States shall have the same right in every State and Territory to make and enforce contracts, to sue, be parties, give evidence, and to the full and equal benefit of all laws and proceedings for the security of persons and property as is enjoyed by white citizens, and shall be subject to punishment, pains, penalties, taxes, licenses, and exactions of every kind, and to no other.* ”<sup>118</sup>

## **7.3 The positive action in Sweden**

After World War II the Swedish “welfare model” expanded taking increased social measures for different groups of society. Great emphasis was put on the individual’s basic conditions to be made more equal. Hence the shared values of “the Swedish welfare state” (Folkhemmet) also included immigrants. There were no special actions taken in order to forward the

---

<sup>114</sup> Harris, P. 2005-12-12. The paradox that divides black America.

<sup>115</sup> Ibid.

<sup>116</sup> Gilens, M (et.al). (1998).

<sup>117</sup> Ibid. Quotation. p, 162.

<sup>118</sup> Osin N, Porat D. (2005). Legislating Against Discrimination; An International Survey of Anti-Discrimination Norms. Quotation. p, 926.

integration of immigrants. Equality and integration were to be reached by general social solutions that included all of the population.<sup>119</sup>

### **Swedish immigration policies begin to form**

The Swedish state did not realize the necessity of taking measures to realize equality of opportunity for immigrants until the middle of the 1960's. This was when the Swedish immigration policies began to form. In 1968 the Commission of Inquiry on Immigration (Invandrarutredningen) was appointed by the Swedish Government, and the year after the Swedish Immigration Board (now called the Swedish Migration Board) was established. Guiding principles for immigration policies was formulated and its aim was concluded with the slogan: "Equality, freedom of choice, and cooperation"<sup>120</sup>. Freedom of choice meant that from now on immigrants should be able to choose for themselves to what extent they wanted to merge into a Swedish cultural identity. The part about cooperation aimed at a mutual tolerance and solidarity between immigrants and the domestic population. The immigration policies contained measures that were directed to different target groups. There were those who needed a temporary support e.g. help with integration in the new society for recently arrived immigrants, but there were also measures to support groups of immigrants' cultures and languages. This was believed to increase the chance of equal opportunities. The aim was also to promote a multiplicity of language and culture in Sweden, which was considered to be a public interest.<sup>121</sup>

### **New situation of immigration**

From the middle of the 1970's the characteristics of immigration to Sweden changed. The immigrants were mainly persons seeking asylum or relatives to those who had arrived earlier. These people were fugitives with different experiences and reasons to immigrate than the immigration as workforce that had been earlier. A debate of the aims of the Swedish immigration policies took form since these had been formed based on the immigration as workforce.<sup>122</sup>

It was now said that the aim of cultural freedom must be more clearly defined. The aim did not mean that immigrants should be able to keep their way of life and culture unchanged in the new society, but to let their cultural heritage remain. What was especially debated upon was whether or not "immigrants" and "minorities" should be treated as the same in Swedish politics. The two expressions had formerly been used as synonyms, but in 1986 it was decided that groups of immigrants should not have the same possibilities to preserve cultural differences as minorities. The conception of "minority" should be preserved for small groups of people that had lived in Sweden for "a very long time". Immigrants were not to be seen as minorities any longer. Paradoxically, the immigration policies were still compensating certain groups in society with an immigration background. This was explained by the fact that there were in certain respects needs that were especially great in these groups of society. These policies were by some perceived as preferential policies.<sup>123</sup>

In the beginning of the 1990's the immigration policies were argued to create a situation where immigration was associated with "being different". The new outline of the immigration policies was that preferential policies and the creation of groups and categories of people were

---

<sup>119</sup> Åsard, E & Runblom, H. (2000). p, 125-175.

<sup>120</sup> Ibid. Author's translation. p, 138.

<sup>121</sup> Ibid. p, 125-175.

<sup>122</sup> Ibid. p, 125-175.

<sup>123</sup> Ibid. p, 125-175.

to be avoided as much as possible. This was something the new policies did not manage to overcome. The Government also created a new concept – Ethnic diversity (Mångfald) – which was to be represented and reflected in different parts of society. However, it did not specify what kind of diversity, or how this diversity was to be created. Hence it was hard to define which the target group(s) for these new policies was.<sup>124</sup>

### **Immigrants at the labor market**

It has not been easy for immigrants to enter the Swedish labor market. From the end of the 1970's the unemployment among immigrants have been higher than among the rest of the population. During the whole of the 1980's the unemployment level were about twice as high and the immigration boom combined with the recession in the Swedish economy in the 1990's, made the unemployment rate for immigrants rise to three times as much as for the rest of the population. As a reaction of this alarming situation there were several official reports made on how to deal with this problem. In 1995 a committee set up by the State suggested that positive action should be used as a method to tackle the problem. It was said to be in the interest of the society that segregation and its negative side effects were counteracted. It was very important to specify what category of people that needed this compensation the most. Otherwise, it was discussed; there was a great risk of the suggestion being understood as unfair. The Government has carefully avoided initiating preferential policies on the labor market since it has not been met with enthusiasm. Instead the labor market has been encouraged to consider the “positive effects of multiplicity” when employing.<sup>125</sup>

### **“Forcing” or “voluntary” policies**

There have also been direct suggestions to prohibit ethnic discrimination with preferential treatment as a complement. With preferential policies as a complement it would be a way of obtaining results faster. The policies which have been suggested are preferential policies of the stronger kind, like quotation and such policies. However, after an investigation the difference between “forcing” and “voluntary” positive action were perceived as too large. The “forcing” policies used in the USA were something the Swedish investigators could not accept. The kind of rules for implementing forcing policies would cause practical- and integrity problems. On the other hand, to create rules on voluntary application of positive action was impossible in a way that would lead to complete justice, since this would carry unsolvable problems of boundary-creation with it. Even though the investigation led to a principal support of actions taken to increase the representation at workplaces, it was considered to be impossible to formulate any rules of positive action.<sup>126</sup>

### **New discrimination law**

The Swedish Government did not take the decision to create a new discrimination law until 1999. It was divided into three different laws created in a very similar way. The laws concentrate on different grounds of discrimination; ethnic discrimination, discrimination of disabled persons, and discrimination because of sex. The law against ethnic discrimination is meant to assure that no person should be discriminated against because of race, color of their skin, national or ethnic origins, or religion. These laws include the employer's behavior towards already employed people as well as when employing. The prohibition includes both direct and indirect discrimination, in other words it does not matter if the discrimination was made deliberately or not, it will still be considered as discrimination by law. By the new rules

---

<sup>124</sup> Åsard, E & Runblom, H. (2000). p, 125-175.

<sup>125</sup> Ibid. p, 125-175.

<sup>126</sup> Ibid. p, 125-175.

it is, in principal, the employer's responsibility to prove that there has not been any discrimination involved in his or her actions. The new rules also make the employers bound to investigate and resolve harassments caused by ethnic differences between employees.<sup>127</sup>

In the Swedish constitutional provisions Article 15 in the non-discrimination law states that: *'No Act of law or other statutory instrument may entail the discrimination of any citizen on grounds of race, skin colour, or ethnic origin.'*<sup>128</sup>

Article 16 states that: *'No Act of law or other statutory instrument may entail the discrimination of any citizen on grounds of sex, unless the relevant provision forms part of efforts to bring about equality between men and women or relates to compulsory military service or any corresponding compulsory national service.'*<sup>129</sup>

Interesting here is the difference in what measures that is legitimate to take. In the case of equality between sexes, it is legitimate to "discriminate" as long as it is 'part of efforts to bring about equality between men and women'. However, this act would not be legitimate in order to bring about equality of groups with different ethnic origin – or diversity.

There is also an Act against ethnic discrimination which states that: *"Ethnic discrimination occurs when a person or a group of persons is treated unfairly in relation to others or is subjected in any other way to unjust or insulting treatment because of race, colour, national or ethnic origin or religious creed."* The Act also states that an Ombudsman should be appointed, which shall strive to ensure the non-existence of ethnic discrimination in working life and in society.<sup>130</sup>

Today there is an ongoing debate in Sweden on whether these types of measures should be legitimate to use in purpose of resisting the discrimination prohibited in Article 15. In fact, a majority of a committee on discrimination appointed by the Swedish government now claims themselves ready to allow preferential treatment on the grounds of ethnicity. This standpoint is controversial and will most likely raise an intense debate in society.<sup>131</sup>

## **7.4 Summary**

This section has presented two very different approaches, both historically and philosophically, towards preferential policies. The USA and Sweden have used different justifications for preferential policies which have a remarkable resemblance with the two principles presented by Edwards.

The USA has a history of discriminating and enslaving African Americans which have shown difficult to overcome. However its history has been used to motivate citizens and to justify a use of preferential policies which have taken form in affirmative action programs. The programs have, since its start, been implemented with growing rigour, shifting from "soft" policies to "strong" or "forcing" policies. It was argued that equality of opportunity as an aim was not enough. The American preferential policies have been concentrated on results.

---

<sup>127</sup> Åsard, E & Runblom, H. (2000). p, 125-175.

<sup>128</sup> Osin, N; Porat, D. (2005). Quotation. p, 854.

<sup>129</sup> Ibid. Quotation. p, 854.

<sup>130</sup> Ibid. p, 857.

<sup>131</sup> Olsson, L. (2005-12-07). Arbetsgivare ska få rätt att särbehandla invandrare.

Affirmative action became constitutional after the disclosure of institutionalized discrimination and the EEOC was allowed to impose quotas on government contractors.

At the same time the opposition against preferential policies has grown stronger in the USA, pointing at problems such as neglecting merits when hiring or in college admissions. The importance of merit seems to have had an increasing impact on the opposition.

The affirmative action programs in the USA have been based on the principle of rights to compensation for harm. It is argued that African Americans have a right to redress for the pains they have suffered in the past. However, the effect of the strong preferential policies is now questioned since many African Americans still live by deplorable conditions in slum and poverty.

In the American case the problem with discrimination was obvious in a way unlike that of Sweden. The affirmative action was directed to a group which had been in the American society for some time, a group of which the discrimination was obvious. The Swedish approach towards preferential policies has been based on a different situation. Because of Sweden's different history the target-group for preferential policies has been another – immigrants. Immigration to Sweden is a quite recent thing. It was not until after World War II that the immigration started to increase. However, since this immigration was immigrating as workforce it was included in general policies of welfare and was not considered to be a group with special needs.

It was not until the end of the 20<sup>th</sup> century, when the characteristics of the immigration changed, that the administration in Sweden realized the problem. The integration of immigrants into the Swedish society and labour-market did not function. The debate of positive action has since then been intense. The strong preferential policies used in the USA have not been considered acceptable. However, the Swedish Government has encouraged entrepreneurs to consider “the importance of diversity” when hiring. A new discrimination law has also been created making it more difficult to discriminate on the basis of ethnicity etc.

The justification of preferential policies in Sweden has been based on very different arguments than that of the USA. The basis of need has been crucial to the argumentation and the common argument of the good of diversity has been frequently used. However, the arguments of the needs principle do not seem to have had the same cogency as the justifications used in the USA.

The following section will present six arguments for preferential policies. Garth Massey is one of few who has succeeded in generalizing among the arguments for preferential policies. His generalization will be used in trying to classify the policies of the two countries. There are three arguments considered to be weak and three considered to be strong. It is possible to place most of the arguments discussed in this thesis within these six “boxes”.

## 8 Massey's six arguments for preferential policies

Garth Massey elaborates upon arguments for preferential policies in his article. He argues that there are several compelling reasons to support preferential policies, not only the basis of race or ethnicity, but as a guide to policies addressing discrimination of all types.<sup>132</sup>

The generalization of arguments made by Massey will here be used in trying to give a clear picture of the policies used by the USA and Sweden.

Massey presents three weak arguments and three strong arguments for preferential treatment. The weak arguments, he argues, are among the most common arguments used to support preferential policies. However these arguments are weak because they do not “convincingly deflect the weight of criticism and mobilized forces allied against affirmative action”<sup>133</sup>. The strong arguments is claimed to meet the challenge of defending affirmative action.<sup>134</sup> These “boxes” are fundamental to the arguing for preferential policies. It is possible to place most arguments into the boxes.

The boxes of arguments made by Massey will be used here as a test for the arguments used in this thesis. Is it possible to place the American and the Swedish policies into different boxes and in this way arguing one type of policy to be based on “better” principles?

### 8.1 The weak arguments

The three weak arguments are:

- Payback or reparations for past wrongs. Here policies that compute and repay lost or stolen benefits to those deprived of their full value of their labour, abilities, and rights as citizens<sup>135</sup>. Even if it seems only right to pay back for past wrongs this argument is just as compelling. Since this is a group claim, reparations for past deprivations may be sought by persons which only connection with those wronged in the past is the colour of their skin. On the other hand, those who would be asked to pay could claim that it was not them or even their ancestors that committed crimes of slavery.
- Give the other guy a chance. In the sense of fair play, people that have been formerly excluded from participation in social, economic, and political life should be given a special opportunity to be involved. However, the counterarguments could be many. What is stopping them? They are free to join now are they not? Maybe they have better things to do than involving themselves in for example political life.
- A new way of doing things. The features valued in minority cultures and subcultures (and women) are frequently devaluated in dominant society. These values and styles should be respected, but also they should be respected criteria used to evaluate applicants, candidates and participants. The style of a dominant culture is perhaps sometimes less able to listen to others, find mutual respect, and reach solutions to problems than a more

---

<sup>132</sup> Massey, Garth. (2004).

<sup>133</sup> Ibid. Quotation, p.787.

<sup>134</sup> Ibid.

<sup>135</sup> This argument of payback for past wrongs is mainly an argument in the United States, referring to the oppression of blacks forcing them to slavery. This is often discussed around as “the cost of three hundred years of human bondage”.

different style of some regional or ethnic groups<sup>136</sup>. This is easily as unrealistic though. It is very difficult to sell the idea that fundamental practises and organizational cultures need preferential policies to provide an infusion of new ideas, especially to those in power who are benefiting from operating in this style.<sup>137</sup> "...it is fine for minorities to maintain their cultural styles, but in the dominant society they need to be able to speak, act, and present themselves in the way the system expects. Thousands of minorities have done this and succeeded. Affirmative action would only make them less competitive..."<sup>138</sup>

## 8.2 The strong arguments

Massey's strong arguments are:

- **Community choice.** Rationality is not always the best guide to action. The question of what is the best guide to action appears justified here. Massey argues that the "community choice argument" is not meant to replace reasoned decisions with emotional appeals, but rather to recognize the limitations of rational procedures. The rational choice approach to decision making is predicated on individuals' gains and losses. This is largely irrespective of others in the larger community in which the individual takes part. "The rational choice view is that the larger good of the community and society are built on such choices of individuals to benefit themselves."<sup>139</sup> In the logic of collective action, everyone is expected to contribute to the realization of a public good if they expect to benefit from it. However this "system's" inability to exclude those who do not contribute from benefiting makes it rational for those not contributing not to do so.  
In a society based on a free-market, discrimination is not always penalized by the "market" in goods, services, and perpetrators. In fact, the market favours the free rider. The loser is the public good of fair treatment for all. Taxes and penalties for non-compliance exist in order to prevent the "system" from free-riders. To discriminate is often a rational choice of individuals and firms because they can - it is possible to free-ride. The only way to prevent this discrimination is through preferential treatment. "Fairness" must be guaranteed by building it into laws, procedures, guidelines, and organizational practices that explicitly prohibit this kind of discrimination.
- **Rawlsian fairness.** Here Massey has used Rawls' ideas from "A Theory of Justice". Rawls believes that the average person can, most of the time come to an agreement with others about the basic principles of what is fair and reasonable. These are the principles that should guide the society. Rawls creates a theoretical experiment where persons must decide what the range of differences and what rules and principles of distribution there should be in a society, behind a "veil of ignorance". That is, you imagine yourself having no idea of your status in the society, or your own characteristics. Rawls argues that under these conditions, people can agree on principles of fairness. These principles will be just and will very often include public policies of receiving benefits that is usually referred to as preferential treatment. Massey argues that using Rawls imaginative experiment will "endorse affirmative action as a requirement" of the just society.
- **The Good society.** What kind of future do we want our children and grandchildren to face? What price are we willing to pay for the kind of future that we want? Caring about those who come after us motivates us to do more. Massey argues that the price we have to

---

<sup>136</sup> This is a common apprehension of the Western society in their international relations with other large cultures.

<sup>137</sup> Massey, Garth. Weak arguments. p, 787-789.

<sup>138</sup> Ibid. Quotation. p.789.

<sup>139</sup> Ibid. Quotation. p.790.

pay for the future we want can be seen in two ways: as what we pay in making a purchase and as the cost to us of a tax.<sup>140</sup>

“While most individuals think of their taxes as going elsewhere and benefiting the other guy, most people see a purchase as a price paid for something wanted, something of benefit, something that will make life better for them. It is not unreasonable to think of affirmative action as the price we pay to purchase the future that we want, and not as a tax that benefits only the other guy.”<sup>141</sup>

### **8.3 Summary**

This section has offered a number of ways to deal with preferential policies. The first three arguments seem to rely on “fair-play” and “promptings” of conscience to make up for wrongs made in the past, and individuals’ sense of justice. This may not be convincing when all people do not understand justice in the same way.

The last three arguments are based on rational procedures and future prospects. Undesired free-riders of the system (discriminators) are used as an argument for building “fairness” into laws etc. The Rawlsian fairness is based on the same thinking as the good society argument – for individuals to imagine themselves into a world where they or their relatives are not in the position in society as they themselves are used to.

Massey’s three weak arguments are interesting when it is possible to distinguish certain conformity with arguments based on the principle of rights to compensation for harm. The first two arguments embrace most types of arguments based on this principle. It is also interesting to note that these arguments concentrate on results more than opportunities. The third box of arguments is drawn up as based more on the needs principle. Here we may place arguments such as the diversity arguments and Moore’s “Good management approach”.

The strong arguments are based more on the needs principle. Massey’s fourth argument (Community choice) includes arguments such as Thomson’s division between private and public, and how far the administration may go before meeting resistance. The two last boxes clearly address the moral of individuals. It urges people to consider in what way they themselves want to be treated and in what way they want their inheritors to be treated. In these boxes most of the moral argumentation may be placed.

In what way do Massey’s boxes clear up the picture of American and Swedish preferential policies then? Is one type of policy better than the other? One may argue that arguments of American preferential policies tend to fit better into the box of “weak” arguments while Swedish arguments tend to fit better into the box of “strong” arguments.

Does this make the basis of the Swedish preferential policies “better” or more convincing? Not necessarily. The arguments presented by Massey as strong arguments are not necessarily “better”. This discussion will be continued in the last part of the thesis.

By this comprehensive summary of the categories of pro-preferential arguments and a test of American and Swedish preferential policies, this part of the thesis will be ended. What follows is a conclusion and a discussion of the research made.

---

<sup>140</sup> Massey, Garth. Strong arguments. p, 789-795.

<sup>141</sup> Ibid. Quotation, p.794.

## 9 Conclusion

The final part of the thesis consists of two sections – a conclusion where the material discussed above is put in relation to the questions asked in the beginning of the thesis, and a discussion bringing up interesting notes from the comparison of the USA and Sweden. The discussion will also include reflections on how the research has proceeded and suggestions for further research.

### What are preferential policies?

There are a number of different expressions all referring to preferential policies; affirmative action, positive action, positive discrimination, and reverse discrimination are probably the most common ones. Preferential policies generally refer to actions taken with the purpose of helping and supporting a certain group, even though other groups may be treated less advantageous. The aim of these methods is usually to improve the possibility to take part in society by different minorities' or other groups discriminated against. This may be done through increased participation at the labour market, in the political life, and in the educational sector.

The institutional establishment of these kinds of policies may be more or less strong in terms of laws, or simply in terms of official recommendations; and the methods are everything from recruitment campaigns to imposing quotas.

Preferential policies are usually divided into two categories – forcing and non-forcing preferential policies. Forcing policies could be imposing quotas while non-forcing policies are less definitive and based on free will, e.g. recruitment campaigns etc.

### Justifying preferential policies

It is interesting to see how Rawls argues that law and institutions must be reformed or abolished if they are unjust, no matter how efficient or well-arranged they are. At the same time he argues that the only thing that permits an injustice is when it is made in order to avoid an even greater injustice. In order to be able to treat all persons equally, the bias of opportunities must be given a push in the direction of equality.

From this it might be argued that preferential treatment in general is not preferable, however, as Rawls puts it, it might be necessary in order to avoid an even greater injustice.

Edwards argues that preferential treatment as a means of social justice is often justified on the grounds of utility. This, however, does not necessarily make preferential treatment just or something required by justice.

He also argues that there are two different ways of justifying preferential treatment. There is a distributive justice and a corrective justice

The distributive justice is based on the “needs principle”, while the corrective justice is based on some kind of restitution for wrongs made in the past. Using preferential policies for those of ‘greater’ need than others does not necessarily mean that all those with a great need will have their need met.

One could ask if this then, is just. Should not all those with a need have their need met in a just society? Naturally, all needs could never be met in a society, thus the problem becomes to define what needs are to be met, and what needs are not.

In this way the corrective justice argument is easier to handle since it explains why some groups or individuals should have their needs met. Those who have had their rights overridden have a right in justice to compensation.

When studying this subject it becomes clear that justifications of preferential treatment mainly come in two types. In large, the difference is that one justification is based on the need to compensate for discrimination different groups have suffered in the past. The other focuses more on preferential treatment as a means for reaching a future goal or ideal, like equality of opportunity. The second justification does usually not base any of its argument on discrimination that has taken place in the past. This main thread is possible to detect in most arguments for preferential policies.

### **Justice to individuals or groups?**

Bacchi brings up an interesting problem when discussing the individualistic problem. She questions to what extent it is legitimate to draw attention to categories of people in a society committed to equal treatment of individuals, premised on ignoring specific identifying characteristics such as ethnicity, race, and gender.

With this question I believe Bacchi captures the main problem when using preferential policies for groups, not individuals. From childhood most people in the Western societies learn to make no difference between people by characteristics such as race, gender, or ethnicity. We also learn not to divide people into groups but to treat all persons as individuals, and not to give in for prejudices. When societal institutions start to divide individuals into groups based on the very characteristics that we from our childhood have learnt not to take notice of, it does not make sense to us. It might not be surprising then, that people in general react with aversion towards these kinds of policies.

On the other hand, as Nickel argues, these “morally irrelevant” characteristics may not at all be relevant for the use of preferential policies. The preferential policies might simply be used since the person in question was *discriminated against because* he or she possessed a certain “morally irrelevant” characteristic, *not simply because* of possessing that characteristic.

Perhaps Nickel has a point in arguing that morally irrelevant characteristics could not be a justifying basis for preferential treatment, but that it might be justifying as an administrative basis that would lead to increased administrative efficiency.

Unfortunately, with this kind of thinking certain problems follows. It may be argued that those who benefit most from these kinds of policies are those who deserve it the least, since preferential policies usually depend upon relative qualifications. These qualifications are almost always achieved by past opportunities, which would mean that those in need of preferential policies the most will not benefit the most from it, since they will not have the qualifications to get a certain job or a place at a university anyway.

Whether it is possible to give justice to one individual through giving justice to a group really depends on what that particular individual defines as just. If looking upon it from a societal perspective there have been arguments presented claiming it to be difficult since dividing individuals into groups is not a preferable act in the first place. It has also been argued that

giving justice to individuals through giving justice to groups is justifiable in terms of administrative efficiency.

Perhaps it is not possible to give justice to an individual through giving justice to a group, but for now it may be the only way that is administratively feasible. To interview every individual of what consequences he or she has suffered from discrimination based on a certain morally irrelevant characteristic would be both time consuming and demand a lot of resources. In practice it would most likely be impossible.

This is not arguing that it is the best way, or the most just; but rather that it might be the only way that the administration in the Western societies today is able to handle the problem.

## **Ethnic diversity and preferential policies**

Wolf-Devine divide the question of proportional representation into two types:

- Statistical differences are evidence of discrimination or an injustice.
  - The value of diversity – diversity or multiplicity would benefit the society as a whole.
- She also asks the question whether a lack of proportional representation constitute or provide evidence of discrimination or injustice of any sort, and argues it to be important to consider what sort of diversity that should be promoted and why.

Sher argues that there are four different ways to argue that diversity is morally important.

- Diversity is a requirement of justice.
- Diversity is intrinsically valuable.
- Diversity is conducive to the general welfare.
- Diversity is conducive to some value other than well-being.

To defend the first claim one must be able to show why all jobs are to be distributed among groups in proportion to their numbers. To do this one might see groups of racial, ethnic, or gender as groups with their own moral claims of justice, or as derivatively relevant. However, it might be unlikely that these groups would have independent claims of justice.

Imposing preferential policies might not make opportunities more equal when imposed, but it might make opportunities more equal afterwards.

Working closely with members of unfamiliar groups might disrupt stereotypes and break down barriers. It is often argued that this would increase well-being.

Thomson's argument that there is a difference between the justification of preferential treatment in private and public businesses is interesting indeed. This also demonstrates that the problem lies not simply in justification of preferential treatment and the importance of diversity in general, but that there might be particular cases where diversity is something which may not intrude in the private sphere.

The question whether diversity may be increased through the use of preferential policies I find the easiest to answer. My answer is simply – yes. Diversity in society can be increased through the use of preferential policies. That is, if what is meant by diversity is simply that jobs, admissions of universities, etc. are to be distributed among groups in proportion to their numbers.

However, while writing this thesis I found that what is interesting is not really the original question (Can multiplicity in society be increased through the use of preferential policies?)

but rather the question: *Should multiplicity in society be increased by the use of preferential policies?* If arguing that diversity or multiplicity is a requirement of justice there are some difficulties with the distribution of different groups' special requirements of justice. This might also lead to a division of society into groups where the law is to treat individuals differently depending on what group he or she belongs to. This may not go well with the individualistic approach of the law by which the countries in the Western society profess in general.

### **What is the aim of using preferential policies?**

This is one of the trickiest questions to answer since there is no clear way of understanding the aim of preferential policies.

The aim of using preferential policies seems to be different depending on the situation. It is often said that its aim is to create equality of opportunity. The aim might be claimed to be equality of results only when a situation is critical. An example is the statement made by the American President Lyndon B Johnson in 1964. He claimed that equality as a right and a theory was not enough, he demanded equality as a fact and a *result*. The urgent need of Civil rights for African Americans at that time may have led to an aim with more emphasis on equality of results than equality of opportunity.

There is no doubt that most people, opponents or supporters of preferential policies, agree on that all people are entitled to equal rights as citizens. The problem seems to be when preferential treatment creates a "VIP-lane" past the merit system, a system which seems to lie close to our hearts in the Western society.

Reyna's (et.al) study on the understanding of the concept of preferential policies of the two sides of the debate is very interesting. Here it is claimed that people in general seems more supportive of preferential policies when implemented among equals or roughly comparable candidates. The problem arises when preferential selection-procedures favour unqualified candidates. In general there seems to be a support for ethnic diversity, however the importance of merit seems to be greater. From this perspective, perhaps there might not be such a strong aversion to preferential policies if merit was used as a criterion.

One might also argue that using merit as a criterion of preferential policies brings it closer to its aim of creating equality of opportunity, and further away from what might often become an end instead – equality of results.

To me it seems quite impossible to create an equal opportunity by using methods that does not give all the same opportunity. However, if we consider the use of preferential policies to aim at reaching an equality of results, and that this equality of results in turn creates a starting point where it is easier to reach equality of opportunity the use of preferential policies might be easier to accept.

Another way of looking at it is that the aim is perhaps a combination of both equality of opportunity and results.

However, in most cases the preferred official aim for using preferential policies seems to be equality of opportunity.

## **The USA and Sweden**

The two different principles (the “needs” principle and the principle of corrective justice) are represented as a basis of the arguments of preferential treatment in the two countries discussed in this thesis. In the USA the affirmative action programs have been based on the corrective justice principle. Considering their history of racial discrimination it makes sense.

Sweden on the other hand lacks this type of history of discrimination, which has made it difficult to argue for preferential treatment based on corrective justice. Instead this is a good example of a country which has used the “needs” principle as a basis of preferential policies.

It was also pointed out that these two countries use quite different welfare models. Usually the politics of the welfare state is divided between having a “general” or “selective” politic of welfare. Internationally compared Sweden has a clearly generalist welfare policy, while the USA does not to the same extent.

In the Swedish generalist welfare politics service and economic benefits should be able to cover all of the population in all stages of life. The idea of creating equality through homogenous systems which includes all of the population seems like the opposite of using preferential policies.

Having in mind that Sweden does not have the same history of discrimination as the USA, it might be expected that the opposition would be stronger in Sweden than in the USA.

This does not seem to be the case however, the opposition has always been quite strong in the USA, but because of its history, creating affirmative action programs and writing it into the constitution might have been easier to pull through.

## **Massey’s arguments**

The six arguments that Massey presents is interesting. Even though their main focus is upon the American variant of preferential policies, affirmative action, I believe that some of these arguments can be used also for the “needs” principle. The first of his three weak arguments (Payback or reparations for past wrongs) is clearly the base of the corrective justice principle, while the other two (“Give the other guy a chance”, and “A new way of doing things”) is more mainstream and possibly usable in a situation like that of Sweden. I will not dig deeper into those arguments since I agree with Massey that these are in fact weak arguments.

More interesting is Massey’s three strong arguments (“Community choice”, “Rawlsian fairness”, and “The good society”). Here I believe all three could be used in most situations promoting preferential policies. However, I do not think, as Massey does, that they are all strong arguments. The Rawlsian fairness argument is interesting but impossible in reality. I believe it impossible to imagine yourself in such a state that is requested. We are born and raised under certain conditions and with certain values, and these are very hard to ignore when taking decisions or actions. Even if people could agree on the principles of fairness it does not necessarily mean that they will act upon these principles.

When it comes to the good society argument I believe it to be quite a weak argument. Massey puts it forward in an interesting and skilful way but, I believe that what people are doing today, not wanting to pay the “tax” for creating a better future for their children, may actually be their way of looking after the future of their children. Perhaps for some people the most important is not that their children live in a fair and just society, but simply that their children

will live a good a life as possible in today's society. Perhaps they act in this way because they are incapable of putting "the veil of ignorance" before their eyes.

Some might say that this is to take the argument a little too far; however, it shows that Massey's arguments are not as strong as he claims them to be.

## **In sum**

To arrive at any conclusion of whether preferential policies are a just method for creating equality or not, is very difficult. While doing research this has become increasingly clear. What distinguishes the debate of the subject from other subjects is that it is so difficult to set aside one's own opinions when examining facts. What conclusion that is drawn from a research depends very much on what the reader's original opinion was.

When setting out on this quest for an answer I believed it was wrong to use preferential treatment to fight discrimination. I still do. The problem of discrimination lies in the minds of the discriminators, discriminating on the basis of "morally irrelevant" characteristics. It is the discriminators' view of society and justice that needs to be fixed. This may not be fixed entirely through using preferential policies. It may make the lives of the discriminated easier in general, but the opinions of the discriminators will not vanish because of using preferential policies. Looking at it in this way, using preferential policies would be to bypass the problem instead of dealing with it.

However, there may also be many good reasons for using preferential policies. As many advocates of preferential treatment argue, it might be a necessary action to prevent a greater injustice than that of those being affected in a negative way of preferential treatment. Even if preferential treatment is not just, it may be a necessary method to arrive at a situation where it might be possible to create equality of opportunity.

The tricky part of this, I believe, is to decide what injustice is the greatest. How do we measure the degree of injustice as such? Is it by the amount of people that is affected by the injustice? If that is the case, opponents of the use of preferential treatment could easily argue that it is more unjust to use preferential treatment than not to use it. In general preferential treatment is always directed towards minority groups. If we "discriminate" in favour of these groups at the cost of the majority groups, this would cause a greater injustice in number of people. This since the majority naturally outnumbers the minority.

Or does one decide the degree of injustice by what factors that causes the injustice? Is an injustice greater if it is based on "morally irrelevant characteristics" than if it is not? For example, is an injustice motivated of reluctance towards people with a certain ethnicity greater than that of a mentally handicapped person? If this is true it might be easier to decide when the use of preferential policies is necessary. However, who shall decide where the different characteristics are on "the scale of injustice"?

The Western societies' absolute reliance upon the system of merit is astonishing. The interesting part of it is that the merit system in itself relies on the fact that equality of opportunity exists. On the other hand, if equality of opportunity exists the use of merits seems natural in the Western society. One might say that they are both dependent on each other. Merits are rendered based on what possibilities the individual have in life. My question is: If there is no equality of opportunity, how can the merit system be fair?

## 10 Discussion

Writing this thesis has been a challenge. Finding information to suit the aim has been difficult at times but the information found has taken my reasoning of the subject to another level. The importance of an open discussion in society where what is meant by preferential policies is clearly defined has become increasingly clear to me.

Interesting with this research has been that by answering or trying to answer one question, a number of new questions have popped up demanding as much devotion and time as the original question. It has been difficult to keep the research within the bounds originally set.

During the research it has also occurred to me what difference the background of the researcher makes. A basic thing as whether or not the subject in question is interesting or relevant depends on it. Coming from a small town where most people know each other or know about each other, and a family of which there are no immigrational elements, I have had the luck (or misfortune) not to have been confronted with much discrimination of any sort so far. This has most certainly affected my attitude towards preferential policies. It may also have affected the way in which I have selected information, however, aware of this possibility information have been selected trying to use as many biases as possible.

The comparison between the USA and Sweden was interesting to do. It was surprising to see that despite its very different background both countries have a strong opposition. This makes one wonder if the USA owes its affirmative action programs to peoples' conscience and not only to peoples' good will. Also interesting was to see that the affirmative action programs are claimed not to have worked properly. There are still a low number of African Americans in elite institutions of higher educations, and twenty-four per cent of African American families are living below the poverty line. This shows that there are still problems to manage even after the affirmative action policies were implemented in the USA. Referring to the argument above it is also interesting that a new class-division have emerged among African Americans. Mane Hajdin elaborates on a relatively new direction of preferential policies - implementing preferential policies on the basis of poverty. This policy could take the form of a housing project where those residing in a slum receive benefits. However, he argues that preferential policies like these are likely to "breed" resentment: "If living in a slum qualifies for affirmative action, then people will have an incentive to move to slums and to remain there even if they could move elsewhere."<sup>142</sup>

This argument might be somewhat controversial, but it is still interesting to consider when it presents a new type of argument which has emerged mainly on the American arena. However, one cannot argue all of these problems to be due to non-functioning affirmative action programs. There is usually more than one problem in most countries' domestic politics. One cannot help but wonder though, if this is one of the reasons why the USA has not taken on the need principle as a basis of their preferential policies. In the USA the difference between public and private are (as argued earlier) more distinguished than in Sweden. There are no communes to take care of the type of poverty-problems presented by Hajdin. If there were to be housing projects in a larger scale there would be a problem as to which landlord that would want to let out his or hers apartments to people in "drug-ridden crime strongholds". The whole action would be difficult to realize for the American State.

---

<sup>142</sup> Hajdin, M. (2002). Affirmative Action, Old and New. *Journal of Social Philosophy*. Quotation. p, 92.

When considering the importance of division between private and public in the American society it is interesting to consider Thomson's argument for implementing preferential policies in public companies but not in private companies. Private companies have a right to choose as they please no matter if they are morally at fault. This also pinpoints a problem which may not be as big in Sweden where the public and the private are more intertwined. The American administration's forcing of "timetables and quotas" upon private contractors of the public institutions is an interesting way to handle the problem.

In trying to generalize in the case of the American and Swedish preferential policies George Sher presents a useful classification of arguments. He claims that there are two types of arguments – backward looking and forward looking arguments. The backward looking arguments often refer to discrimination certain groups (women, ethnic groups etc.) have suffered in the past. Here it is urged that current members of the discriminated group will be given preference in certain situations as a rectification of the effects of the discrimination taken place. The forward looking argument usually makes no reference to past discrimination, but rather concentrates at defending preferential treatment as a means of reaching a future goal, like the principle of utility or an ideal of equality.<sup>143</sup> Basically this is the same classification as Edwards did with his two principles. However, Sher's two types of arguments gives an immediate understanding of to which group of arguments the two countries belong – the USA primarily uses backward looking arguments and Sweden forward looking arguments.

When it comes to Massey's boxes I consider it, as argued above, interesting to see how the American argument mainly fall in his "weak" box, and how the Swedish arguments mainly fall into his "strong" box. Could this mean that the Swedish case has better arguments and therefore the implementation of preferential policies would be easier? I do not believe so. I do not consider Massey's strong arguments to be particularly strong and this might explain why neither Sweden nor the USA has had an easy task creating and legitimizing such policies. However, I consider his boxes very useful in trying to create a structure of arguments used in the debate of preferential policies.

This research has greatly contributed to my knowledge on the subject. At the same time it has raised many new questions of which I did not reflect upon before. When discussing whether the aim of preferential policies was equality of opportunity or equality of results, other interesting questions took form. Does the aim of these policies have to be a state of equal opportunity? Is it at all possible to have a state in society where all citizens have the same opportunity for everything?

One may also wonder if preferential policies would have a greater chance of reaching its aim of equal opportunities by using merit as a criterion than if it did not?

As already mentioned the diversity-question made me wonder whether using preferential policies to increase diversity is the right way. Also interesting would be to know what happens when changes in the needs of those groups eligible for preferential policies and those groups that are not have converged enough and preferential policies may no longer be needed. These questions may very well be used for further research.

---

<sup>143</sup> Sher, G. (1999). Diversity.

# Bibliography

## Books

Andersen, Ib. (1998). Den uppenbara verkligheten – Val av samhällsvetenskaplig metod. Lund: Studentlitteratur.

Cahn, Steven M. (2002). The affirmative action debate. 2<sup>nd</sup> e d. New York, London: Routledge;

- Taylor, P W. (1973). Reverse Discrimination and Compensatory Justice. p, 11-16.
- Nickel, J W. (1972). Discrimination and Morally Relevant Characteristics. p, 3-4.
- Nunn III, W A. (1973). Reverse Discrimination. p, 17-19.
- Nickel, J W. (1974). Should Reparations Be to Individuals or to Groups?. p, 20-26.
- Goldman, A H. (1975). Reparations to Individuals or Groups?. p, 27-29.
- Woodruff, P. (1976). What's Wrong with Discrimination?. p, 30-32.
- Thomson, J J. (1973). Preferential Hiring. p, 35-50.
- Wolf-Devine, C. (1993). Proportional Representation of Women and Minorities. p, 168-175.
- Sher, G. (1999). Diversity. p, 190-205.

Demokratiutredningen. (1999). Invandrarskap och Medborgarskap. Statens Offentliga Utredningar. SOU 1999:8. Stockholm. Elanders Gotab.

Edwards, John. (1987). Positive Discrimination, Social Justice, and Social Policy; Moral Scrutiny of a Policy Practice. London: Tavistock Publications.

Gür, Thomas. (1998). Positiv särbehandling är också diskriminering. Stockholm: Norstedts Tryckeri.

Moore, Robert. (1997). Positive Action in Action; Equal Opportunities and Declining Opportunities on Merseyside. Aldershot: Ashgate.

Numhauser-Henning, Ann. (2000). Perspektiv på likabehandling och diskriminering. Lund: Juristförlaget i Lund.

Osin, Nina; Porat, Dina. (2005). Legislating Against Discrimination; An International Survey of Anti-Discrimination Norms. Leiden: Martinus Nijhoff Publishers.

Rawls, John. (1973). A Theory of Justice. Oxford: Oxford University Press paperback.

Svenning, Conny. (2003). Metodboken. 5<sup>th</sup> e d. Lorentz Förlag: Eslöv.

Åsard, E & Runblom, H. (2000). Positiv Särbehandling i Sverige och USA. 1<sup>st</sup> e d. Stockholm: Carlsson Bokförlag.

## **Journals - Periodicals / Articles**

Bacchi, Carol. (2004). Policy and discourse: challenging the construction of affirmative action as preferential treatment. *Journal of European Public Policy*. Vol 11. (1). p, 128-146.

Fredrickson, George, M. (2005). Still Separate and Unequal. *The New York Review of Books*. Vol 52. (18).

Fullinwider, Robert. "Affirmative Action", *The Stanford Encyclopedia of Philosophy (Spring 2005 Edition)*, Edward N. Zalta (e d), URL = <http://plato.stanford.edu/archives/spr2005/entries/affirmative-action/>.

Gilens, M; Sniderman, P M; Kuklinski, H. (1998). Affirmative Action and the Politics of Realignment. *British Journal of Political Science*. Vol 28. (1). p, 159-183.

Glazer, Nathan. (2005). Thirty Years with Affirmative Action. *Du Bois Review*. Vol 2. (1). p, 5-15.

Hajdin, Mane. (2002). Affirmative Action, Old and New. *Journal of Social Philosophy*. Vol 33. (1). p, 83-96.

Johns, Nick. (2004). Ethnic Diversity Policy: Perceptions within the NHS. *Social Policy and Administration*. Vol 38. (1). p, 73-88.

Lindahl, Folke. (1996). Positiv Särbehandling. *Samhällsmagasinet EPOK*. (3). p,14-15.

Massey, Garth. (2004). Thinking about Affirmative Action: Arguments Supporting Preferential Policies. *Review of Policy Research*. Vol 21. (6). p, 783-797.

Reyna C, Tucker A, Korfmacher W, Henry P J. (2005). Searching for Common Ground between Supporters and Opponents of Affirmative Action. *Political Psychology*. Vol 26. (5). p, 667-682.

Tushnet, Mark. (2004). *Oxford Journals; International Journal of Constitutional Law*. Vol 2. (1). p, 158-173.

## **Newspapers**

Harris, Paul. The paradox that divides black America. *The Guardian Unlimited*. Sunday October 9, 2005. <http://www.guardian.co.uk/usa/story/0,,1588181.00.html>, 2005-12-12

Olsson, L. Arbetsgivare ska få rätt att särbehandla invandrare. *Svenska Dagbladet*. Thursday, November 24, 2005. 2005-12-07.

SvD's homepage. Journalistic mission.

[http://www.svd.se/dynamiskt/omsvd/did\\_5480110.asp](http://www.svd.se/dynamiskt/omsvd/did_5480110.asp). 2006-01-04.

## **Internet**

<http://www.un.org/rights/HRToday/>, Universal Declaration of Human Rights, 2005-10-05.

<http://www.un.org/rights/HRToday/>, Human Rights in Action, Introduction I – Substantive Provisions of the Convention on the Elimination of All Forms of Discrimination against Women, 2005-10-05.

[http://europa.eu.int/comm/employment\\_social/fundamental\\_rights/rights/gloss\\_en.htm](http://europa.eu.int/comm/employment_social/fundamental_rights/rights/gloss_en.htm), 2005-10-05.

<http://www.un.org/Overview/rights.html>. The UN Declaration of Human Rights, Article 2. 2005-12-07.

<http://www.ohchr.org/english/law/employment.htm>. The UN Discrimination (Employment and Occupation) Convention, 1958 (No 111). Article 1. 2005-12-07

<http://infovoice.se/fou/bok/10000002.htm>. 2006-03-08. Forskningsansats - kvalitativt eller kvantitativt perspektiv. Göteborgs Universitet.

<http://www.hb.se/bhs/nyutb/kurswebb/b-kurser/b-metod/8.Textanal.ppt#11>. 2006-03-08. Textanalys och Samhällsvetenskap. Borås Högskola.