Discrimination, Affirmative Action, and Equal Opportunity

Contributors include
Gary Becker, Thomas Sowell,
and Kurt Vonnegut, Jr.

Co-edited by W.E. Block
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The Fraser Institute

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An Economic and Social Perspective

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THE FRASER INSTITUTE
1982

Canadian Cataloguing in Publication Data

Main entry under title:

Discrimination, affirmative action and equal opportunity

Bibliography: p.
Includes index.
ISBN 0-88975-039-4

1. Minorities - Employment - Addresses, essays, lectures. 2. Women - Employment - Addresses, essays, lectures. 3. Discrimination in employment - Addresses, essays, lectures. 4. Affirmative action programs - Addresses, essays, lectures. I. Becker, Gary S., 1930- II. Sowell, Thomas, 1930- III. Vonnegut, Kurt, 1922- IV. Block, Walter, 1941- V. Walker, Michael, 1945- VI. Fraser Institute (Vancouver, B.C.)
HD4903.D58 331.13'3 C81-091321-6

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Preface

This Fraser Institute study arose from the judgement that much of the recent "equal rights" legislation (equal pay for equal work, affirmative action programs, anti-discrimination initiatives), while launched in many cases with the best of intentions, will nevertheless create a set of unforeseen consequences which will harm the very minority groups they were designed to help.

Canadian involvement in this field started off slowly with a Federal Cabinet decision calling for an affirmative action program in May 1975, with the establishment of an affirmative action secretariat in November 1975, and with the Federal Contracts Program of February 1976 (this mandated that employees with Federal Service Contracts of $200,000 per year or more, and with 50 or more employees, be asked to set up affirmative action programs on a "voluntary" basis). Canada's association with affirmative action gained momentum with the Unemployment Insurance Commission Bill (C-27) in August 1977, the Canadian Human Rights Act (C-25) of March 1978 (this prohibited discrimination on the basis of age, sex, race, religion, marital status, colour, criminal conviction for which a pardon was received, and national origin), and Employment and Immigration Canada's Affirmative Action Strategy Program of July 1978.

More recently, a Government of Canada throne speech in April 1980 addressed itself to this topic, and a decision was made in August 1980, by several ministries, including the Treasury Board and the Secretary of State, to prohibit discrimination in the public sector.

In the United States, "equal rights" legislation has a much longer and more intensive history, stretching from the Equal Pay Act of 1963 and the Civil Rights Act of 1964 all the way to a 1981, 5 to 4 Supreme Court decision concerning "comparable worth." In the latter—a bitterly fought equal pay for equal work case—a group of female jail guards in Oregon were given the right to sue to obtain earnings parity with male guards, even though their jobs were *not* the same.

A central thrust of this book is that there is little truth in a basic presupposition of affirmative action: that in the absence of discrimination the various minorities—racial, sexual, ethnic—would have achieved earnings levels indistinguishable from the majority.

A common feature of the studies in this volume is a concern that an incorrect assessment of the factors producing inequality will lead to heavyhanded, though ineffective, government actions. Several of the studies point to a resource almost entirely disregarded by those in the forefront of the fight against prejudice: the market test of profit and loss, which tends to eliminate from the private sector (through bankruptcy) those who indulge in discriminatory practices. In the public sector (where a profit and loss system is by definition inoperable), there may be a greater need for vigilance. Government efforts therefore ought to be directed primarily toward ensuring that discrimination does not occur in the public sector.

In pursuing this theme, the authors of the studies in this book have come to a variety of conclusions about how existing and developing institutions can best be altered if society is to avoid the pitfalls of affirmative action which have, increasingly in recent years, made themselves known. The introduction to the book provides a summary of the issues and a survey of the following chapters. In the remainder of this preface, some of the more important conclusions, findings, and recommendations are highlighted.

Looking at the broad sweep of all the contributions to the book, several themes, conclusions, and public policy recommendations stand out.

The importance of differences

- There is no support for the contention that in the absence of discrimination the various racial groupings (and sexes) would be alike in their income, wealth, job selection, or indeed, in any other economic or sociological variable. Accordingly, the existence of inequality in wages, disporportionate representation in professional and managerial positions, and other numerical inequalities

do not necessarily provide evidence of discrimination (Chapters 1 and 3).

- Minority groups differ in age, geographical location, and cultural aims, in many cases by wide margins. When these disparities are taken into account, the earnings "gap" between minorities and the remainder of the population is much less significant (Chapter 1).
- The occupational distribution in professions and industries, which cannot be accounted for on the basis of employer discrimination, is a crucially important determinant of earnings differentials between males and females, blacks and whites (Chapters 2 and 6).

Available evidence

- In the few fields where reliable and independent estimates of productivity and earnings are available (sports and academia), research shows that "blacks are not as discriminated against as they are purported to be in other areas of economic life" (Chapter 2).
- Important evidence can be derived from a study of the XYZ Corporation—a large "Fortune 500" company which has an internal labour market with complete freedom of lateral movement, informs *all* employees of *all* openings within the company, and fills top positions by promoting from below, without regard to formal education. Moreover, XYZ has an aggressive internal policy of non-discriminatory staffing. Analysis by consultants hired to find evidence of discrimination shows the imbalance in sexual representation in supervisory roles, which nevertheless arises, is due to differing aspirations, not to employer discrimination (Chapter 6).

Sociological aspects

- A prime determinant of the male–female earnings "gap" is the asymmetrical effects of marriage on earnings (it increases male earnings, reduces female earnings). Dramatic proof of this contention may be found in the fact that when the earnings of never-married men and women are compared the female–male income ratio is a startling 99.2 percent (Chapter 3).
- Early childhood sex-role socialization can account for occupational segregation and differing interests, abilities, and aspirations (Chapters 3 and 6).

Affirmative action is harmful

- Government policies such as affirmative action do more harm than good. And while they hurt all segments of society, with the possible exception of the bureaucrats who thereby gain employment, their destructive impact is especially focused on the very minorities who are, paradoxically, the intended beneficiaries (Chapter 5).
- Equality of opportunity (i.e., more widespread information and advertising of employment openings to minority groups) has had, on the whole, beneficial effects; but forced equality of retrospective results (numerical "goals" and "quotas") has not. Too often the two concepts have been confused (Chapters 1 and 5).
- "Affirmative action" programs harm highly competent minority persons, by making it appear that their accomplishments are not due to their own efforts, but to government "largesse"; they harm unqualified minority persons by placing them in positions which expose their incompetence; they harm minority persons excluded from affirmative action, by increasing their frustration and lowering their motivation to attain job qualifications on their own; as well, affirmative action exacerbates racial and other inter-minority group animosity (Chapter 5).

Importance of economics

- Laws which control rents, set minimum wage floors, compel equal pay for equal work, enforce union wage levels, all retard market forces which tend to reduce discrimination. Allowing such legislation to expire will not magically eradicate discriminatory behaviour in one fell swoop, but will enhance this tendency of free markets (Chapters 2 and 4).
- Although widely discussed in the sociological and psychological literature, motives, desires, and "tastes" for discrimination are highly amenable to economic analysis (Chapter 4).
- Minority or powerless groups have the most to fear from the *political* sphere, not the economic. In the history of man's injustice to man, the most disgraceful instances of prejudice, bad will, and animosity have been associated with the actions of governments (Introduction and Chapter 7).

Moral implications

- Discrimination, per se, is morally neutral. It may be used for purposes which are good, bad, or indifferent. All of life requires

that choices be continually made, and choice implies discrimination between alternative ends (Introduction and Chapter 2).

- Many affirmative action programs are morally questionable. They are created as compensation to individuals who are members of groups which may have been victims of discrimination in the past. But even if this is true, the *individuals* who are "compensated" may never have suffered personally in the past (Chapter 5).

What is needed for intelligent public policy is careful analysis, a measured and dispassionate outlook, well-documented research, convincing evidence, and a willingness to look at the world as it really is, and not only as we might like to see it. The Fraser Institute is pleased to publish and support the work of these scholars on a topic of vital concern to the public interest. However, owing to the independence of the authors, the views expressed by them may or may not conform severally or collectively with those of the members of the Institute.

Introduction

WALTER BLOCK AND MICHAEL A. WALKER

Respectively Senior Economist and Director,
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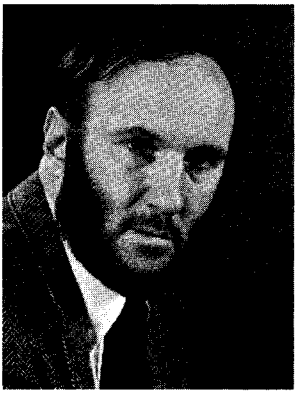

WALTER BLOCK

Walter Block is Senior Economist at The Fraser Institute. Born in Brooklyn, New York, in 1941, Dr. Block received his B.A. from Brooklyn College in 1964 and his Ph.D. from Columbia University in 1972. He has taught Micro-economics, Industrial Organization, Urban Economics, and Political Economy at Stony Brook, State University of New York; the City College of New York, New York University; Baruch College, City University of New York; and Rutgers University, New Jersey; and has worked in various research capacities for the National Bureau of Economic Research, the Tax Foundation, and *Business Week* magazine.

Dr. Block was Editor of *Zoning: Its Costs and Relevance for the 1980s* published by The Fraser Institute. He was also an editor and contributor to *Rent Control: Myths and Realities*, the latest book in the Institute's on-going Housing and Land Economics Series. In addition, he has published numerous articles on economic theory in *Growth & Change*, *Theory and Decision*, *The American Economist*, *The Journal of Libertarian Studies*, *Real Estate Weekly*, *The International Journal for Housing Science*, and *Inquiry*. A former Cato Institute Fellow, Earhart Fellow, and New York State Regents Fellowship winner, he is the author of *Defending the Undefendable*, published by Fleet Press, New York, in 1976.

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Dr. Walker was editor of, and a contributor to, twelve of The Fraser Institute's previous books: *Rent Control—A Popular Paradox* (1975); *The Illusion of Wage and Price Control* (1976); *How Much Tax Do You Really Pay?* (1976); *Which Way Ahead? Canada after Wage and Price Control* (1977); *Public Property? The Habitat Debate Continued* (1977, with Lawrence B. Smith); *Oil in the Seventies: Essays on Energy Policy* (1977, with G. Campbell Watkins); *Unemployment Insurance: Global Evidence of Its Effects on Unemployment* (1978, with Herbert G. Grubel); *Canadian Confederation at the Crossroads: The Search for a Federal-Provincial Balance* (1979); *Tax Facts* (1979, with Sally C. Pipes); *Unions and the Public Interest* (1980); *Rent Control: Myths & Realities* (1981); *Reaction: The National Energy Program* (1981, with G. Campbell Watkins).

Dr. Walker is a regular economic commentator on national television and radio, and, in addition, addresses university students and a large number of service and professional organizations on Canadian public policy issues.

Introduction

WALTER BLOCK AND MICHAEL A. WALKER

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THE PLIGHT OF THE MINORITY

Nothing abuses a person's sense of natural justice more than unequal treatment of equals. In recent times, the existence of discrimination has increasingly concerned citizens and lawmakers. This concern has been expressed in the drive for "equal pay for equal work" legislation, in the demand for affirmative action programs, and by the feminist movement.

Legislators have responded by establishing civil rights tribunals, issuing equal pay for equal work directives, and by engaging in a widespread program of affirmative action. In some cases, the latter has involved the establishment of quotas to ensure that people of different sexes, races, and ethnic backgrounds are proportionately represented in employment and educational situations.

Evidence on discrimination

The issues associated with discrimination and the legislative attempts to deal with it are highly emotional and, as a consequence, it is often difficult to discuss the subject dispassionately. However, there is mounting evidence, discussed elsewhere in this book, that the attempts to eradicate discrimination are producing unforeseen negative consequences. In some instances, the problems were inherently difficult to anticipate. In the vast majority of cases, however, they were perfectly predictable. The reason they were not foreseen is that analytical perspective was often lost in the haste to "right the wrongs" seemingly committed in the past.

This introduction will provide an analytical perspective on discrimination and the programs proposed to end it. As well, it serves as an overview of the results presented in the rest of the book.

WHAT'S WRONG WITH DISCRIMINATION?

What is discrimination?

In the 1980s the term "discrimination" has acquired an unambiguously negative meaning. It conjures up the image of racial and/or sexual prejudice. Strictly speaking, however, the term is neutral in application. Discriminatory behaviour may have consequences which are benign, malevolent, or innocuous.

While it may appear pedantic to draw fine distinctions of this sort, it is of the utmost importance to do so. First of all, it must be recognized that discrimination is a natural part of everday behaviour. We all like some foods and dislike others; most are attracted to beauty and repelled by ugliness; everyone finds interaction with some people more or less comfortable. The act of preferring one thing, one person, or one situation over another is an act of discrimination against all the non-preferred things, persons, or situations.

Discrimination defines individuality

Secondly, these acts of discrimination or preference are of more than superficial interest, since in a fundamental way, they define the limits of individuality. While we may speculate about "what makes some people tick," in the final analysis we assess people as individuals by the choices they make, or fail to make, and the actions which follow from those choices. Moreover, individuality and the right of human beings to make choices are a fundamental characteristic of free societies and, presumably, ought to be preserved to the greatest extent possible.

So, to answer the question posed at the outset, discrimination is nothing more than the expression of a preference. And in that neutral sense, without assessing the consequences of the behaviour, the right to discriminate is a desirable feature of free societies.

Majorities vs. minorities

Individual acts of preference may sometimes result in a majority preference which by its existence excludes or inconveniences some minority. For example, the majority of people are right-handed and, hence, most languages are written from left to right—a convention which, while convenient for right-handers, means ink stained hands or cramped styles for those who are left-handed. Also school chil-

dren are often observed to form a clique at the expense of some outcast children who differ in some physical or behavioural way from the rest of the group.

By the same token, the expression of preferences by a minority group may sometimes exclude the majority. Many segregated neighbourhoods, clubs, and societies are instances where a group of people conspire to express their individuality by blatantly rejecting the majority. This is particularly true of religious societies and associations which also typically have a strict internal hierarchy so as to discriminate new from long-standing members. Examples include the Masons, the Knights of Columbus, Hell's Angels, the Shriners, Rotarians, Black Panthers.

Discriminatory enactments

Sometimes the majority may cause laws to be passed which institutionalize discrimination. Such enactments need not be limited to, or even purposefully aimed at, any particular racial, sexual, or ethnic categories. When the majority votes for a military draft, for example, minorities who are opposed—specific racial, sexual, or ethnic characteristics notwithstanding—are forced to go along. Pacifists are perhaps singled out in this case, but the law is neutral with regard to other characteristics.

Other examples of majority rules suppressing minority interests abound. Most central Canadians support tariff and trade barriers which protect inefficient industrial jobs in Ontario and Quebec; but people in the less well-populated Atlantic and Prairie provinces are forced to purchase high-cost manufactured goods, and suffer as a result. A majority of citizens in North America have voted for building codes; but this interferes with the rights of owners to do with their property as they please (even if they adhere to the proscriptions against nuisance).

Majority discrimination

The untoward aspects of discrimination that people are familiar with—and which give discrimination such a bad name—are usually of this majority rule variety.

There is no doubt that the majority can use the system of laws to exploit and disadvantage minorities. This is—or at least certainly has been—a problem. It was the law which restricted black minorities to separate and vastly inferior restroom facilities in the southern U.S. from the post Civil War period until midway in the twentieth century. Legislation prohibited minorities who wanted to engage in

"intermarriage"—and these laws continued until about the same period. European Jews too have had a long history of being legally restricted from entering certain professions and even industries.

Does this mean that minorities are doomed to their fate at the hands of the majority? It does indeed, if the majority is able to harness the power of the political process in its quest to subjugate the minority. Given this disadvantage, the minority is in a singularly unenviable position—in jobs, in schools, in restaurants, and indeed, with regard to almost every aspect of existence that makes life worth living. For this reason, all societies which have some form of majority rule must be constantly vigilant to ensure that the inherent power of the majority is not used legislatively to limit the freedom of minorities.

Minorities doomed?

But what about activities outside the sphere of legislation? A majority which is predisposed to discriminate will surely do so whether discriminatory treatment is codified in laws or not. Thus, whether inside the system of laws or outside it, minorities seem doomed to shabby treatment at the hands of the majority.

There is, however, a great difference between the forms of discrimination possible when the laws of the land conspire against minorities and when they do not. The difference is the coercive power of the state. If the law says blacks must ride in the back of the bus, or that minority group members may not intermarry, or that Jews must live in certain areas, the state has the power to ensure that these minorities comply.

On the other hand, discriminatory behaviour not enshrined in law cannot be physically enforced since the use of compulsion by private citizens is not normally condoned. This is not to say that individuals have not used or do not continue to use force against minorities—indeed there are daily instances of it. However, anti-racial or other minority violence not condoned by law is regarded as criminal behaviour.

Criminal activity aside, how much discrimination can or will exist if there is no law against such behaviour and no law reinforcing it? Basically, this will depend on how strongly people feel—that is, how strong are their preferences for discrimination.

THE ECONOMIC PERSPECTIVE

Discrimination—a form of choice

Except in rare instances, people's preferences are not absolute. Rather, they are malleable over a fairly wide range. Under different circumstances, different choices would be made. One of the circumstances that has a substantial effect on choices is the cost or benefit of making that choice. In general terms, the higher the cost (the lower the benefit), the less likely the choice will be made.

Individuals who prefer imported beer and would like to discriminate against the domestic variety may cease to do so when the price differential between the two products rises high enough. A rich aunt, whose maladroit social behaviour makes her unacceptable as a bridge partner, may be accepted by some nieces and nephews if the cost of excluding her were reciprocal exclusion from her will. Similarly, those inclined to discriminate among individuals according to race, sex, or colour may cease to do so if the cost is high. Conversely, if the cost is low or non-existent, then even people with only the slightest tendency to do so will be inclined to discriminate.

As we shall see below, sexual, racial, or ethnic discriminators must pay for their preference just like those who discriminate against domestic beer. Discrimination has a price. It will be demonstrated that the existence of this price tends to limit the amount of discrimination and to reduce the financial and other costs that minority groups would otherwise suffer.

In the market, discrimination costs money

How, and in what way, must discriminatory practice be paid for? Suppose employers were smitten with a sudden prejudice against redheads and either lowered their salaries or refused to hire them. The initial effect would be greater unemployment and lower wages for this newly created downtrodden group and, potentially, lower profits for the employers. Having rejected redheads as employees, the employers would have to hire more brunettes, blonds, and black-haired employees to take their places. In at least some instances—perhaps many—the replacements would be less effective in their jobs than the redheads, with the consequence that employer profits would be reduced.

Since there is no reason to believe that the productivity of people with red hair is different from that of other folk, forces would soon be brought to bear which would move the situation for redheads back toward the one that prevailed before the sudden onset of dis-

crimination. For with a pool of under-employed and underpaid redheads, there would be great profits to be made by employing them! Colourblind employers (those who have no preference for or against people with any particular hair colour) would begin to hire redheads, and so would employers for whom the foregone profits represent too high a cost for them to indulge their preference for discrimination.[1]

These employers will not necessarily be motivated by benevolence. If all employees originally earned $400 per week and redhead wages were reduced to $300 by the onset of discrimination, the colourblind firm will not offer the redhead $400. Why should it? All it need do is offer $305 or any small increment above the lower salary to which the redhaired person has been reduced. The unfortunate redhead will have little choice but to accept, and the employer can garner huge benefits. (If it is worthwhile to hire the redhead at $400, it will be immensely profitable to employ an equally productive redheaded worker at $305.)

The ceaseless quest for profits

In their turn, other employers will also seek to hire the low-paid redheaded employees. True, they will have to offer more than the prevailing $305. Their sense of propriety may be offended by offering high wages to people they see as despicable redheads. They will, nevertheless, be comforted by the thought that it is better for them to earn extra revenues from employing additional redheads (even at the unconscionably high wages of $310, for example) than to leave them to the tender mercies of their current employer, even if the latter is earning a larger profit by employing them for $305. (It is better, in other words, for "me" to take $90 than for "you" to receive $95 in pure profit.)

Such thoughts will strike all other potential and actual employers. It will set up a process of raiding and counter-raiding, which will bid up redhead wages at each step. Where will it end? There is only one ultimate destination: the $400 earned by other equally productive employees.[2] Of course the wage and employment situation may not reach this theoretical configuration, but it will always tend toward it. Unwittingly, profit seekers will gradually reduce all gaps between the wages of redheads and others of equal profitability. (This is achieved, as we have seen, by "exploiting" these gaps; by hiring and offering higher wages to the undervalued redhead.) There is, therefore, a tendency for the self-interested action of profit seekers to ensure that persons who are subject to discrimination will not suffer financially from this affliction.

Prejudice not profitable

In the quest for profits, those employers who indulge their hair colour preferences will obviously pay for this choice. The price of their prejudice is the profit they must forego. Some employers may be willing to pay this price, and their discriminatory behaviour will thus not be eliminated. However, the existence of other employers more sensitive to the cost of discriminating means that redheads will not have to suffer the degree of unemployment or low wages that would otherwise be the consequence. The key to the redheads' escape from the full force of prejudice is their ability to offer other employers a profit possibility in the form of lower wages.

The dollar vote or the political vote?

Coercive discrimination imposed by law provides no such escape route. The majority doesn't have to bear the costs of its actions, as it would in the private sector. And this naturally short circuits the normal financial incentive escape path for the minority.

From the point of view of a disadvantaged minority, the cherished majority rule feature of democracy becomes a tyranny, making the law conspire against that minority. The marketplace, on the other hand, at least provides the minority group member with the possibility that the situation will improve or not worsen so radically in the first place.[3] In the case of discriminatory laws, the minority must first seek to *become* the majority, or at least to convince the majority to vote appropriately. In the case of economic undertakings, only one or a few persons need to be convinced, and their own selfish financial interest gives them incentive to help the minority.

The back of the bus

Let us take the institution of "riding in the back of the bus" as a further illustration. This was a particularly vicious phenomenon, not so much because blacks rode in the rear (many people, after all, voluntarily choose this locale) but because they were forced to do so by law.[4] The stigma attached to this practice was psychologically debilitating and was particularly resented by black people.

If this had occurred not through force of law but simply because the bus company had decided to discriminate, a process of amelioration would have been set in motion. Other potential suppliers of bus services, seeing that blacks would willingly pay a higher price to be able to sit at the front of the bus, would have offered blacks their choice of seats! Such a competitor could have charged blacks higher fares than they paid for "rear only" service and still have been able to

attract customers. But this option was closed off since state law prohibited then, and still prohibits now, the creation of alternative and competitive bus companies.[5] Blacks instead had to wait and suffer through many years of this practice before the social climate became such that it could be ended through the political process.

COMPETITION—THE GREAT EQUALIZER

Discrimination in employment

While, clearly, the search for profit will cause some employers to set aside their taste for discrimination, it is nevertheless true that others will be willing to incur the cost. However, the extent to which the most discriminatory employers can continue this behaviour will be largely determined by factors beyond their control, namely, by the competitive pressures exerted by other employers.

If, in general terms, the employer faces no competitors—for instance, a public utility or a government agency—the normal economic inhibitions against discrimination fail. In the case of public utilities, profits are regulated and costs permitted by the regulatory body are passed along to the consumer. Since there are no competing suppliers, there is no comparative basis upon which to assess the cost effectiveness of the utility and, consequently, the economic costs of discrimination are not easily identified. As a result, bureaucrats within a utility may indulge their tastes for discrimination without bearing the consequences.

The potential for the breakdown of natural consequence is particularly significant in the case of government departments and agencies where no profit accounting is even attempted. The decision of a government manager to make personnel selections according to racial, sexual, or ethnic criteria does not "cost" the bureaucrat anything. The fact that less productive employees are hired because of their colour or sex does lead to a lower overall productivity performance in the department or agency, but the associated costs are not identified—and are not borne by the discriminator in question.

Anti-Jewish discrimination

An early attempt[6] to measure the impact of discriminatory behaviour in the case of regulated monopoly and other non-competitive industries discovered that Jews were much more likely to find employment in competitive industry. The study focused on MBA grad-

uates from Harvard University and discovered that the number of Jews actually employed in the regulated monopoly sectors of the economy was less than half the number that would be expected if there were no religious discrimination on the part of employers.

Discriminators in these non-competitive situations are not provided with an incentive to change their behaviour. There is thus no reason to suppose that they will. On the other hand, in a very competitive environment, even the most diehard discriminators may have to reconsider their behaviour, because the desire to discriminate places the employer at a competitive disadvantage.

In a competitive industry, employers must constantly seek out ways to better other companies. Every avenue of cost reduction and sales promotion must be explored. Failure to respond to the continuous challenge of the market would mean eventual displacement by a more cost effective firm. Evidently, an employer who decided to hire on the basis of criteria other than those related to an employee's ability to contribute to the firm's profitability would not be able to persist for long in this behaviour, for the employer's willingness to operate under the competitive disadvantage of discrimination would confer an advantage on his or her competitors. So, even if some employers were willing to pay the price of discrimination, it is likely that the competitive process would eventually reduce their numbers or even weed them out.

A two-edged sword

The pursuit of profit works both ways on discriminatory practices, however, and some discrimination takes place precisely because the economic process operates to reward those who put profits first. An important instance of this is to be found in the case of consumer discrimination. Here the producers of a particular product or service do not themselves discriminate; it is rather the consumers of the product or service who do.

For example, consider restaurateurs who become aware that their patrons do not wish to be served by individuals of particular racial or ethnic backgrounds. These restaurateurs—while not wishing to discriminate themselves—will, nevertheless, discriminate in their hiring practices in order to please their customers and best satisfy the market they face. Of course, the discriminatory hiring practices means that the restaurateurs must charge higher prices for meals—a cost which is borne by the discriminatory patrons.

In this case, the employers' pursuit of profit leads to discrimination—but only on behalf of his customers. He himself is

"colourblind." It is his customers who express a preference, for which they are willing to pay in the form of higher prices. Similar consumer discrimination can be observed in restaurants where patrons do not wish to dine with people of different racial or ethnic extraction. For the most part, this happens naturally in homogeneous ethnic neighbourhoods. However, to the extent that restaurateurs actually prohibit people of a certain extraction, they are again only catering to the desires of their customers—as reflected in the higher price such meals command when served in homogeneous surroundings.

HOW MUCH DISCRIMINATION?

The starting point in any analysis of discrimination must be that, in general, people attempt to discriminate in every aspect of their lives. We have discerned, however, that the extent to which they actually will discriminate depends on how much it costs. As employers or consumers, people must pay for their preferences, and this tends to limit the amount of discrimination. In the case of employers, the extent of discrimination will, for the most part, be determined by the force of competition. In competitive industries, the decision to discriminate may cost employers dearly, and for that reason the more competitive the industry, the less likely one is to discover discriminatory hiring practices.

However, not all industries are competitive (public utilities and government agencies in particular), and the discriminatory tendencies of consumers may persist even in the face of higher prices. The question naturally arises, then, as to how much discrimination exists and how much will continue to exist. A related, and perhaps more important question, is the extent to which the minority group in question suffers from the existence of discrimination.

In practice, it has proved difficult to measure the extent of discrimination. Most attempts at estimation have proved inadequate or erroneous. Several authors in this book have examined the issue of measurement, and a theme running through their analysis is that, contrary to popular perception, inequality does not necessarily imply discrimination. Unfortunately, however, most empirical attempts to gauge discrimination or its effects are based, directly or indirectly, on the notion that differences in wages, incomes, or promotions constitute *prima facie* evidence of this practice.

The standard approach

The standard approach is to first identify an inequality, such as a

wage differential. The next step consists of identifying factors other than discrimination which may have caused this phenomenon, such as educational level, age, or occupation. Having attributed some of the differential to each of these factors, the researcher then typically attributes the remaining or residual difference to discrimination. Quite apart from the fact that this procedure places a heavy demand on the researcher to identify all conceivable contributors to the observed differential, many unmeasurable factors may be involved. This is certainly the conclusion which emerges from the study of Carl Hoffmann and John Reed in this volume, in which attitudes and aspirations proved to be the most significant variables in determining employee promotion experience.

The statistical weakness of the various measures of discrimination and the lack of persuasive evidence have, however, largely been ignored in the public debate about discrimination. Public opinion and the attitude of legislators has largely taken such research at face value. Research has been based on anecdotal evidence and emotional reference to earlier periods when discriminatory practices were enshrined in law. As a consequence, there is an increasingly strong lobby in legislatures which urges us to "do something" about discrimination. This has resulted in the establishment of affirmative action programs. Unfortunately, as is evident in several analyses in this book, many affirmative action programs seek retribution for perceived past discrimination and ignore present day realities. Further, there is the fact that much of the "evidence" on the discrimination that lawmakers are trying to eliminate is misinterpreted. This often means that affirmative action programs lead to unforeseen consequences and to injustice.

THE *WEBER* AND *BAKKE* CASES IN PERSPECTIVE

Equality of opportunity vs. equality of results

Thomas Sowell begins Part 1 of this book with a definitive legal and economic analysis of affirmative action. He builds his argument around the famous *Bakke* and *Weber* cases involving the U.S. Supreme Court decisions to strike down and then support racial quotas.

In the opening historical review section of this study a distinction is made between affirmative action programs of the early 1960s in the United States (including the Civil Rights Act of 1964) and the very different policies of the 1970s, misleadingly called by the same name. In the former case, the emphasis was on equality of prospective opportunity. This meant, in effect, only that information about

new employment would be spread so as to include minority members who might otherwise have been excluded. It was required of the employer only that he not intentionally and purposefully discriminate; the employer was specifically *not* responsible for societal patterns reflected in the work force, *not* forced to attain any numerical "goals" or "quotas," and no burden of proof of non-discrimination was laid at his door. In the words of Senator Williams of Delaware, a supporter of the Civil Rights Act in the legislative debates preceding passage of this legislation, an employer with an all-white work force could continue to hire "only the best qualified persons even if they were all white."

In the latter interpretation of affirmative action, which became entrenched through a gradual series of administrative decisions, the employer was made responsible not merely for allowing minority individuals into the pool of applicants, but for their actual success in obtaining the positions for which they had applied. In this new view, if for *any reason* there were "fewer minority members in a particular job classification than would reasonably be expected by their availability," there was a presumption of employer guilt.

Inequality and discrimination

This explanation of minority statistical under-representation in terms of employer choice rests on an erroneous implicit assumption: that in the absence of discrimination, no ethnic group would differ substantially from any other.

As Professor Sowell indicates, however, nothing could be further from the truth. In fact, ethnic groups differ widely with respect to several characteristics, *each* of which is sufficient to account for income and status differentials, even in the absence of any discrimination whatsoever:

- Age: There is an average age differential of 10-20 years between ethnic groups at opposite ends of the income distribution. Over half of all Jewish Americans are 45 or older, for example, while only 12 percent of Puerto Rican Americans have attained this age level. Given these conditions, there is little likelihood that the over-representation of Jews in adult jobs, especially those requiring long years of training, can be attributed to discrimination.
- Education: As the lowest income groups have only recently begun to finish high school or attend college on a large scale, older group members generally lack the education qualifications while younger members lack the experience.

- Geography: Income differentials are greater between California and Arkansas or between Alaska and Mississippi than between whites and blacks. Blacks in Mississippi earn less than half of that attained by blacks in New York. Ethnic groups, moreover, have widely varying geographical dispersions.
- Historical differences: Long before they ever set foot on American soil, and ever since as well, Germans have been over-represented in beer production, Jews in the clothing industry, and the Irish in politics and in the priesthood. The fortunes of these different industries, and not discrimination, can thus account for further income differentials.
- Marriage age: Almost half of Mexican American women marry in their teens while only 10 percent of Japanese women do so. "It requires little imagination to see how that must affect opportunities for college attendance and/or lucrative careers, quite apart from employer discrimination."
- Culture: There are two ways to separate the effects of culture on income from those of race and discrimination: compare people of the same colour but different culture; and compare people of the same culture but different colour. Professor Sowell accomplishes both these tasks. First, by considering the more accomplished black West Indians who have a cultural background quite different from other black Americans from whom they are physically indistinguishable; and secondly, by citing a study which shows that blacks and whites with the same reading (or non-reading) habits "were earning the same incomes, regardless of race."
- Labour force participation: "As of 1971, single women in their thirties who had worked continuously since leaving high school earned slightly *more* than single men of the same age. . . ." This was the case despite the fact that women as a group earned less than half as much as men as a group. Clearly, a person who re-enters the labour force after years of absence will likely earn less than someone working continuously.

The effects of affirmative action

One might think that, despite its faults, affirmative action would at least lead unequivocally to greater job opportunities for minority group members. This, however, is not the case.

Professor Sowell cites the academic world, where a publish-or-perish philosophy rules, and where many more young professors are

hired and then fired than are given lifetime tenure. But in an era of affirmative action, prestigious universities come to fear the possible repercussions of dismissing any minority group faculty member. They are led to *lower* their demand for untested and, hence, "risky" minority academics who might not prove worthy of tenure, *raise* their demand for highly qualified "safer" minority individuals, and to *shift* such people out of the faculty and into the administration where "up-or-out" policies do not prevail. Firability thus becomes a criteria of hirability. In making it more troublesome to fire a "risky" minority person, affirmative action perversely makes it more difficult for him to be *hired* in the first place!

Judicial misunderstandings

With regard to the Supreme Court decisions on the *Bakke* and *Weber* cases, let it suffice to say at this point that if the various justices were enrolled in Professor Sowell's freshman course in economics, a preponderance of "Fs" would be handed out, for their analysis—legal, economic, and historical—shows little understanding of the causes of minority group income differentials, such as age, education, and location. The Sowell essay, then, is not only important for all those who would understand equal opportunity legislation; it should be required reading for all present and aspiring Supreme Court justices or others who may have to adjudicate discrimination proceedings.

UNECONOMIC DISCRIMINATION

Prejudice and differentials

In Part 2 Walter Williams begins his essay by criticizing what might be termed the "orthodox" view: black–white income differentials are attributed to a "taste" for racial discrimination, especially marked at the higher educational-supervisory employment levels.

A difficulty in this thesis is that it only seems to hold true for males, not females. Black females actually outperformed their white college graduate sisters by an astounding 25 percent differential in 1970. Does this prove "racial discrimination against white female college graduates?" Williams plaintively asks.

Hardly. The underlying causes of statistical income differentials have less to do with discrimination and more to do with:

- Occupational distribution: Williams finds that black and white female professionals are more similar in their distribution along the occupational structure (they tend to have the same kinds of jobs)

than are males. This phenomenon, not discrimination, accounts for the fact that black females earn as much as white females, if not more, while black males tend to lag behind their male counterparts.

- Urbanization: Black female professionals tend to be found in urban locations to a greater degree than white professional females. But urban pay, in general, outstrips rural pay. This "could very well account for the [25 percent] income differential. Particularly when we note that teachers and nurses—the most important female employment category—earn higher salaries in metropolitan areas than in non-metropolitan areas."
- Investment in human capital: Black and white female professionals have more similar patterns of investment in human capital than do black and white male professionals. "For example, at higher educational levels the difference between black/white male professionals who have completed 16+ years of education is over three times that of the difference between their female counterparts." It is this divergence, and not racial discrimination, which is the best explanation of the deviation in male, not female, incomes across racial categories.

Fooling the employer

Nor can discrimination be inferred from certain "practical experiments" which try to highlight it. Suppose, for example, that employers were sent two groups of applicants for jobs (one white, one black) whose members had identical qualifications and differed solely in their race. Suppose, further, that whites were preferred to a degree far greater than that consistent with random sampling errors. Would this imply discrimination?

It would not, says Professor Williams, in a rather ingenious and courageous interpretation. "The reason is that while the *experimenter* may have reliable information on the productivity of a particular employee, there is no reason to believe that the employer is similarly blessed. Even if the applicants have identical credentials by race, there is no reason why employers will *perceive* these credentials as equally creditable."

Is the employer duty-bound to invest in enough information so that such biased employment results do not occur? No, and for two reasons:

1. The rational employer will engage in employee search only up to the point where the (declining) extra benefits of more searching

just equal the (increasing) additional costs of searching. But the assessment of benefits and costs is ultimately a subjective phenomenon which varies from person to person.

2. Race and sex are easily and cheaply identifiable characteristics. If they are correlated with worker reliability, productivity, quality of education, and other attributes which are more difficult and expensive to discover, they may be used as proxy variables. This technique "is consistent with preferences that are malevolent, benevolent, or indifferent" toward a particular race or sex.

Sports

There is one industry where precise quantitative data assessing individual productivity is now available—sports. There is a plethora of data on batting averages, yards gained, field goal percentages, and so on. But this is, not coincidentally, precisely a field in which "blacks are not as discriminated against as they are purported to be in other areas of economic life." (This was not always the case though. Many readers will remember the times when blacks were completely prohibited from participating in professional sports.)

Analysts who focus on racial and sexual discrimination as an explanation of income differentials are simply barking up the wrong tree. In wailing about prejudice, they fail to see the most important cause of injustice in this area: artificial market entry barriers imposed by government.

Barriers to entry

Although erected, in many cases, by people with the highest of motives and the most benevolent of intentions, institutions such as the Davis-Bacon Act and the National Labor Relations Act (encouraging unionism), minimum wage laws, licensing of trucks and taxi cabs, have had a disastrous effect on minorities. In a section that deserves to be emblazoned in the hearts and minds of all well-meaning bureaucrats and politicians, Williams convincingly demonstrates that these governmental interventions into the economy: (1) directly diminish the economic welfare of minority peoples, and (2) encourage and render more harmful and costly the bias toward discrimination which exists in society.

For example, requiring that local prevailing union wage levels be paid on all federal government construction freezes out non-union contractors, and their lesser paid employees, who might otherwise have been able to under-bid. This harms minority workers who are over-represented in the non-union sector. The minimum wage laws

strip away the compensating differentials (employment advantages) that otherwise could be enjoyed by black youths. This tactic is responsible for shamefully high unemployment rates for black teenagers and "was used by racist unions in South Africa to drive out black construction workers who were competing for jobs."

Taxi medallions, which cost thousands of dollars, effectively preclude blacks from ownership. In licence-restricted Philadelphia, for instance, less than 2 percent of taxis are owned by blacks. But in Washington, D.C., the one major North American city which places no artificial barriers to entry (the cost of a licence is only $100), approximately 80 percent of the taxi cabs are owned by blacks.

The inevitable policy implication for governments: *less* intervention into the economy is needed, not *more*.

Blacks and education

There are great difficulties faced by blacks, native peoples, Spanish-speaking persons, and other minorities in attaining educational skills. The problems are extreme, as shown by the example of several black high schools in Philadelphia where "no more than 5 percent of the student body could read at the national norm."

Walter Williams forthrightly denounces the viability of affirmative action for university admissions. These policies may allow compliant colleges to acquire additional federal funding and thus benefit *them*, "but they are *not* consistent with the long-run interests of minority members themselves." Why not?

Applying pressure

Although most high school graduates can succeed in many of the 3,000 U.S. and Canadian colleges, there are very few of any race or socioeconomic status who can do well at MIT, Harvard, University of Toronto, or McGill. If unqualified black students are nevertheless placed in such high pressure situations, only disaster can result. And this can take several forms:

- enhanced feelings of inferiority
- reinforcement of racial stereotypes
- outbreaks of aggression due to frustration
- deterioration in the quality of education
- informal pressures to assign grades on the basis of skin colour
- substandard courses designed for black students.

One example of the extreme dangers of affirmative action took place at the Harvard University Medical School, which accepted

lowered performance standards for blacks. "*On the day after this story was reported in the media, white patients began to refuse to be examined by black medical students.*" Although there are very serious and important hazards in allowing a few not fully qualified black doctors to practice, "the real tragedy is that it lowers the market value of medical degrees held by *competent* black doctors."

Vouchers

Williams proposed educational vouchers as an alternative. He argues that public financing of education does not necessarily imply public *production*, and that private schools can more flexibly tailor education to individual needs. With the fiscal reins firmly in the hands of the parent, consumer sovereignty can be registered in education on an *individual* basis as in most areas of endeavour. And to the objection that vouchers would lead to increased educational segregation, Williams replies, "it is difficult to conceive how schools could become more racially homogeneous" than under present conditions.

Our author attributes the slight gains blacks have made in university employment to the breakdown in blatant racial discrimination attendent upon the Civil Rights Act of 1964 and *not* to later affirmative action policies. He supports Thomas Sowell's finding that black academics with solid reputations (five or more publications in professional journals) earn *more* than whites, while those with less prestige earn less than their equally undistinguished white colleagues. It would appear, then, that if any gains can be attributed to affirmative action, it "helped those blacks who needed help the least."

House building

With regard to black employment in the construction industry, another focal point for affirmative action, the gains have been meager at best, according to several studies of electricians, plumbers, and other skilled trades. "The primary achievement of affirmative action thus far," concludes Williams, "has been to split the traditional coalition between Jews and blacks and to give the false impression that those hard-won achievements by blacks come through gifts, not merit."

ECONOMIC INTERVENTION, DISCRIMINATION, AND UNFORESEEN CONSEQUENCES

Walter Block starts off by asking whether it is the free market system or government intervention into the economy that is primarily res-

ponsible for the plight of minority peoples. The answer given is the latter. Taking minimum wage legislation as his first example, Block shows how it has increased unemployment rates for all low productivity employees, but especially for black teenagers, a group that has been a particular victim of discrimination.

Equal pay?

Block then considers a "sacred cow" of the affirmative action movement: equal pay for equal work legislation. He argues that if most people discriminate against a certain group, the demand for their services will decline, and the wages they can command will fall. But this lower wage will make them more attractive employees. People who hire them will earn extra profits. Those who spurn them will thus lose the competitive struggle to the advantage of their less prejudiced colleagues. This, it can be seen, acts as a strong deterrent to discrimination.

Forcing employers to pay equally for "equal work" ruins this one advantage of the economically downtrodden. While it might be thought an advantage to be "equally paid," it is no such thing if it results in the loss of a job. Is the "despised" person really better off equally paid—with no job at all—or *employed* at perhaps a slightly lower wage? A quota requiring proportional employment can be expected to reduce unemployment effects, but as the other contributions to this volume show, such affirmative action type policies have strong and negative unintended consequences.

Arbitrariness

Ill-conceived anti-discrimination laws also threaten to play havoc in several other fields. Insurance companies, moneylenders, and pension plans all perform a public service by *discriminating* between the reliable and the unreliable, between the healthy and the sick, and so on—encouraging the former and discouraging the latter. If they are prohibited by law from doing so, a large part of the contribution they make to society will be lost. Another difficulty, as shown by cases of height discrimination in the Tall Girl Shops Ltd. and in the Toronto police force, is that anti-discrimination statutes are, by their very nature, arbitrary and subjective. In the former case, for example, the Alberta Human Rights Commission found discrimination against short *employees* to be illegal but sanctioned it when practised against short *customers*. To further confound and confuse the issue, the same governments that were eloquent in their opposition to discrimination—in their human rights endeavours—often enact

legislation which has the *opposite* effect in other areas. Rent control is a case in point. In fact, if not by intention, such controls lead to artificially tight rental housing markets. Here, landlords no longer need to pay a premium for their discriminatory tasks—and are, hence, less deterred from exercising them.

PAYING FOR DISCRIMINATION

Professor Gary Becker is well known in professional economic circles for blazing new frontiers. He was among the first, for example, to apply the basic tools of economic analysis to education, human capital, time allocation, marriage and divorce, crime and punishment, and fertility. Although a relatively young man, he must be considered the "grandfather" of economic research into questions of racial and sexual discrimination because of his pathbreaking, and now classic, book, *The Economics of Discrimination* (University of Chicago Press, 1957).

It is hardly an exaggeration to say that a book on race relations from an economic perspective cannot be complete without a contribution from Professor Gary Becker, the first to apply the tools of modern economic analysis to this field of study. Back in the 1950s, when he began studying the economics of discrimination, the subject was dominated by sociologists and other theoreticians. They made some signal progress but were uninterested in econometrics and statistical evidence, and were thus disinclined to bring these methods to bear in their work.

In the present paper, Becker develops the economic "model," or theory of discrimination that we relied on in the earlier pages of this introduction. Rejecting alternative philosophical and psychological outlooks, he defines a "taste for discrimination" in terms of the measuring rod of money: the discriminator must act as if he will either pay something, or forego income, in order "to be associated with some persons instead of others." If an employer, employee, or consumer merely "dislikes" members of a certain group, call them "redheads," but is unwilling to pay *higher* salaries for equally productive workers in his own group, or accept lower wages from otherwise similar non-redheaded bosses, or pay *more* for identical goods produced by non-redheads, he does not really have a taste for discrimination in the economic sense.

Two countries

Professor Becker simplifies matters by assuming an "international trade" model, with one area occupied solely by, say, "redheads,"

the other by "non-redheads." Each "country" consists of two equally productive factors—labour and capital—which are perfect substitutes for each other. In the absence of discrimination, the wages and profits as well as product prices would be the same whether owned by the larger, non-redheaded group or the smaller redheaded group.

But when redheads practise discrimination against non-redheads in these otherwise perfectly competitive societies, *both* lose out. Although many historians and pundits have claimed that discrimination benefits the capitalists of the dominant group, Professor Becker's study thus contradicts this allegation. He finds that while both groups suffer from discrimination, owners of capital from the dominant group are particularly significant losers.

Discrimination typology

When an employer is confronted with a market wage rate of π he acts *as if* he must really pay $\pi(1 + d)$ where d is a coefficient measuring his intensity of discrimination. This coefficient can vary from nil continuously upwards (or downwards in the case of nepotism). For example, if a redhead with a productivity level of $5.00 is being paid only $4.00 per hour, an ordinary non-discriminatory employer would happily step in, offer a wage slightly higher than that presently earned (say, $4.10), and pocket the 90 cents per hour differential as pure profit. For an employer with a discrimination coefficient of $1.00 per hour or more against redheads, however, there will be no such golden profit opportunity. True, the employee is still worth $5.00 and earns only $4.00. But the employer translates a monetary salary of $4.00 into a real or total figure of $5.00 or more, such is his revulsion at hiring a redhead. Thus, there is no opening of a profit gap of $1.00 for him. It is in this way that the market functions as a *deterrent* to discrimination; the employer who indulges in this taste will be at a competitive disadvantage *vis à vis* his colleagues who forebear. They, not he, will be able to hire cheaper but equally productive employees.

AFFIRMATIVE ACTION REVISITED

Part 3 of this book is devoted to the sociological perspective. Lance Roberts leads off with a thorough critique of equal opportunity programs.

He begins by pointing to their basic undemocratic impetus: although the general public has been indifferent or even hostile to affirmative action, this legislation has been enacted by the "New

Class," a "rapidly expanding body of bureaucrats, technocrats, lawyers, and intellectuals all of whom are well educated and intent upon using the public rather than the private sector as a tool to shape social policy."

Not limited to prohibiting discrimination in the present, the extreme programs seek to compensate members of groups which suffered from discriminatory practices in the past. But this immediately leads to implementation problems: precisely which people, at present, are members of such groups?

Identification is highly problematical. For one thing, "no clear cut, generally accepted definition of an Indian (or of other minority groups) exists." In Canada, the situation is highly convoluted and complex, for there are treaty, non-treaty, and Metis statutes for the native peoples as well as female (but not male) out-marriage disenfranchisement.

Subjective identification

As well, identification is by its very nature subjective and personal. Suppose a blue-eyed, blond, fair skinned person claimed affirmative action benefits as a black or an Oriental. It would be very difficult to deny this without becoming embroiled in despicable disputes that were better handled in Nazi Germany, or in the antebellum slave states in the U.S. But this is by no means merely a theoretical curiosity. For as Roberts informs us: "A former naval academy classmate of U.S. President Jimmy Carter recently changed his name from Robert Earl Lee to the Spanish-sounding Roberto Eduardo Leon and is now eligible—as a minority—for preferential affirmative action treatment" in the U.S., where surnames are used as a means of minority group identification.

Punishing the innocent

Another difficulty is that the philosophy of extreme affirmative action is in direct conflict with our most cherished notions of justice and fair play. Ordinarily, and in any other context, when a crime is committed and the perpetrator is apprehended, there is no question but that the criminal himself must be punished, not anyone else; and if any compensation is to be made, it should be to the victim and not to any third party. Even if we assume that discrimination is a crime, akin to murder or theft, and that *ex post facto* law is legitimate (and there are grave flaws in each of these proposals), affirmative action policies still are not justified, for punitive action is directed not at perpetrators, who may have long since died, but at innocent parties,

many of whose ancestors were not even in the country in which the original discrimination is alleged to have taken place. And the (presumed) beneficiaries are not the victims of discrimination but rather people who share some "collective characteristics" with them, such as race, sex, or national origin.

Perhaps these problems could be overlooked somewhat if at least affirmative action created great benefits for modern society. The truth, alas, is the exact opposite.

Ruining the talented

Affirmative action programs are disastrous for the competent minority person who would have "made it" in the absence of any preferential treatment. Preferential treatment is destructive of the person's self-image, for he will never know for sure whether he owes his promotion or acceptance to his own merits or to the fact that he happens to be a member of a minority group. His peers may not fully appreciate his accomplishments for similar reasons. And perhaps most importantly, his abilities will be open to suspicion in the eyes of his customers, as we have seen in the case of the Harvard University Medical School.

Pushing down the downtrodden

Let it not be thought that this policy is partial to the talented; it harms the unqualified minority person as well. When he is promoted to a position which calls for greater abilities than he has, when he is accepted by a school with requirements far in excess of his abilities, when he is pushed into a work situation "over his head," he is not the recipient of an advantage by any means. True, proponents of affirmative action do not *intend* any such thing to occur, but there is abundant evidence that it does. For example, says Roberts, the University of California Medical School accepts minority group members in affirmative action programs with grades "lower than the minimum required for white applicants."

Redefining merit

These and similar abuses are also widespread in Canada. When proportional population representation in the civil service was sought for minority groups by the Royal Commission on Bilingualism and Biculturalism in 1969, the criteria of merit had to give way. "It was suggested," reports Lance Roberts, "that the non-partisan criteria of merit and service be replaced by ones which would ensure 'effectively balanced participation.' " In 1971 the Pub-

lic Service Commission discovered a "dynamic concept of merit," one which could, conveniently, be used to recruit "French-speaking Canadians, female public servants, and native [peoples]." And in the 1978 Public Service Commission report, merit became only one of five principles upon which hiring and promotion were to be based. Included as well were the more subjective and arbitrary "sensitivity," "equity," and "responsiveness."

Attrition

Educational experience in Canada indicates that affirmative action has not achieved its "equality of result" goals. True, enrolments of women, native peoples, and other minorities are up, but little success has been attained in increasing the level of graduations. The difference between the two is the attrition rate, and this has been the source of great personal misery for the individuals involved. The reflections of a native person admitted to graduate school under affirmative action are a case in point: "If you have four years at university, you have the techniques to succeed. With only one year of university, as is my case, going to law school is pretty difficult. I feel that I should have been required to take another few years of university."

Based on his severe indictment of affirmative action, Lance Roberts recommends moderation in the move toward their greater implementation, a "swing in the pendulum" toward lesser reliance on this system, and further study before such large scale programs are initiated.

THE XYZ CORPORATION: A CASE STUDY

While most of the studies in this book concern the "big picture," and deal with statistics on an industrial or even national level, Carl Hoffmann and John Reed focus on just one company, the XYZ Corporation (the fictitious name given to a real U.S.-based Fortune 500 corporation). This micro-level approach allows for an in-depth analysis and serves as a complement to the other macro-level studies to be found in this book.

Evidence of discrimination?

There is no doubt that the personnel records of XYZ show a statistical pattern consistent with sexual "bias." For example, 82 percent of entry-level jobs, but only 61 percent of promotions, went to women in the years 1971 to 1977. This much is agreed upon by both

sides to the lawsuit brought by several female clerks against the corporation. What is disputed is whether this is caused by employer discrimination, as alleged by many feminists—and agreed to in principle by the Equal Employment Opportunity Commission—or of differential aspiration, motivation, and career commitment levels—as discovered by Hoffmann and Reed in their study.

In order to settle this question, our researchers subjected a random sample of 850 XYZ exployees to an exhaustive barrage of questions, aimed at eliciting actual employee attitudes. This was a double blind test (neither interviewers nor subjects knew the purpose of the questions) under controlled conditions (see the methodological appendix for a full explanation of the experiment).

And the results are truly staggering:

- While the company has in the event promoted a slightly higher proportion of the women who have requested promotion, only 11 percent of the female clerks but fully 46 percent of the male clerks have made application for such treatment.
- Twenty-five percent of the males but only 10 percent of the females reported following the publicly posted notices on company bulletin boards which advised of lateral transfers offering more pay, responsibility, or opportunity.

Why such differences?

How can one account for such differences in promotion seeking behaviour? Based on the research, they are due to lower aspirations on the part of XYZ women clerks, and less time available or confidence in their own ability. Females at XYZ, moreover, see present employment more in terms of a permanent job than as the first step in a career, and prefer pleasant working conditions over opportunities for promotion. These findings are broadly consistent with the view which holds socialization patterns, not employer discrimination, as responsible for differential male–female professional accomplishments. And the evidence, again, is overwhelming:

- Eight percent of males and 26 percent of females indicated they do not have the ability to fulfill a supervisor's job.
- Twelve percent of men and 28 percent of women said they would not accept a transfer to obtain promotion.
- Four percent of male clerks reported they expect to leave the labour force for a significant time before retirement (usually to upgrade educational qualifications), compared to 10 percent of female clerks (usually for "family reasons").

- A motivational index (based on aspiring to a higher level position, willingness to give up a preferred shift for promotion, and reporting ample time and ability for a supervisory role) showed 61 percent for male clerks and 31 percent for females.

Some interesting sociological variables

Hoffmann and Reed explain these motivational scores, in turn, on the basis of several sociological variables. Only 4 percent of married males but 53 percent of married females said they would give up their XYZ position if their spouse's job required relocation (81 percent of male supervisors but only 46 percent of female supervisors were married). In words which could have been written by Thomas Sowell, Hoffmann and Reed say: "Marriage appears to increase promotion-seeking among highly motivated men and to decrease it among highly motivated women."

Presence of children, not unexpectedly, also reduces female–male earnings ratios: 7 percent of men with children and 28 percent of women indicated they were not available to work during certain hours; 5 percent of such men and 30 percent of such women reported having not worked overtime in the past year; 34 percent of male supervisors but only 9 percent of female supervisors had children under 5 years of age in the home. Hoffmann and Reed say in this regard, "the effects of parenthood were like those of marriage, only more so."

Did the relatively low proportion of females among those promoted by the XYZ Corporation reflect discrimination? The answer is "clearly, no."

A GRISLY TALE

At first glance, it might be surprising to find Kurt Vonnegut Jr.'s short story "Harrison Bergeron" included in this volume. Vonnegut's contribution is literary, that of the others is economic and sociological; he relies on emotion, they rely on "cold" logic and evidence; he paints brilliant and vivid pictures with words, they content themselves with sociological and economic fact.

But beneath these seeming discrepancies lurks a more basic and fundamental similarity of world view. All of the contributors to this volume share a profound distrust of coercive government interventions into the economy aimed at forcing some notion of equality. In the view of the assembled social scientists, forced quotas and attempts to legislate equality are fraught with danger.

And Vonnegut's message in his forward-looking short story is very much in keeping with these findings. In a powerful and even scary tale, our best-selling and widely acclaimed novelist brings together the ingredients of quotas, affirmative action, forced levelling, egalitarianism, and envy. He lets them simmer until 2081 (99 years from the publication date of this volume) and arrives at the ultimate brew: Diana Moon Glampers, the United States Handicapper General, destroyer of the young hero, Harrison Bergeron.

Part 1
Equality and the Law

Chapter 1

Weber and *Bakke*, and the Presuppositions of "Affirmative Action"

THOMAS SOWELL

Senior Fellow
Hoover Institution

THOMAS SOWELL

Born in 1930, Professor Thomas Sowell received an A.B. in Economics, *magna cum laude*, from Harvard College in 1958, an A.M. in Economics from Columbia University in 1959, and his Ph.D. in Economics in 1968 from the University of Chicago.

Appointed a Professor of Economics at the University of California at Los Angeles in 1974, Dr. Sowell is presently a Senior Fellow at the Hoover Institution, Stanford University, California. He has also served as a Fellow at the Center for Advanced Study in the Behavioral Sciences, a Visiting Professor at Amherst College, and a Project Director at the Urban Institute, Washington, D.C.

He has published numerous articles in a wide range of professional and academic journals, including *Economica*, *Oxford Economic Papers*, *Canadian Journal of Economics and Political Science*, *Commentary*, *New York Times Magazine*, *The Public Interest*, *Regulation*, and *The Southwestern Law Review*. Among his more recent publications are: *Knowledge and Decisions* (Basic Books, 1980); *Race and Economics* (David McKay, 1975); *Classical Economics Reconsidered* (Princeton University Press, 1974).

Weber and *Bakke*, and the Presuppositions of "Affirmative Action"

THOMAS SOWELL

Senior Fellow
Hoover Institution

The Supreme Court's upholding of racial quotas in the *Weber* case, just one year after striking them down in the *Bakke* case, adds another strange chapter to a story that began with the Supreme Court declaring moot the same issue in the *DeFunis* case.[1] Yet the inconsistencies may be more apparent than real. The majority in *Weber*, like the four concurring Justices in *Bakke*, emphasized the narrowness of the issue they resolved[2] and that it turned on purely statutory construction, rather than being a constitutional landmark.[3] In this sense, the two cases are consistent with each other in avoiding a once-and-for-all pronouncement on quotas which both sides had hoped for. Indeed, *Bakke* and *Weber* are also consistent with *DeFunis* in avoiding a pronouncement of principle. How consistent these cases are otherwise—how consistent with each other or with the Civil Rights Act or the Constitution—is another and larger question.

Before attempting to analyze these larger questions, it is necessary to dissect the issues behind the controversies—not only the explicit points of contention, but also the barely articulated presuppositions which form the foundation of an elaborate superstructure of beliefs and imperatives.

The controversies which have raged around the concept of "affirmative action" have not clarified these fundamental matters. On the contrary, they have made it even more necessary to define the basic terms of the discussion, as well as to reconsider its premises and conclusions. The discussion here will include (1) the evolution of "affirmative action" as a concept, (2) its presuppositions about social processes, and (3) the implications of the *Bakke* and *Weber* cases specifically.

EVOLUTION

The central idea behind "affirmative action" is that it is often not enough to "cease and desist" from some harmful or proscribed activity. Sometimes the future consequences of the past activity must also be proscribed or mitigated. This idea was not new or peculiar to the civil rights issues of the 1960s.

In 1935, the Wagner Act used the identical phrase, "affirmative action," to describe an employer's duty to undo his past intimidation or harassment of union organizers and members, by posting notices of a new policy and by reinstating (with back pay) workers fired for union activity.[4] Otherwise the future effect of past intimidation (physical and financial) would inhibit the "free choice" elections guaranteed by the Act. For the employer merely to cease and desist would not end the future detrimental effects of his past conduct.

Similar principles apply in the racial or ethnic area. The common employer practice of hiring new workers by word-of-mouth referrals from existing employees meant that a formerly discriminating employer with an all-white work force would probably continue to have an all-white work force, even after discrimination among applicants had ceased, because his applicants would be the relatives and friends of his existing employees. The effects of the past racially discriminatory choices of employees would be perpetuated after the policy of racially discriminatory choices among applicants had ended.

In a similar vein, general channels of information and recruiting would tend to reflect past practices in the selection of students, executives, craftsmen, and in a wide variety of other selection situations and procedures. For this reason, to eliminate discrimination only at the decision-making point (employment, college admission, etc.) would not eliminate *de facto* discrimination—intentional or unintentional—in the process as a whole, including information channels and recruiting networks established in an earlier era to reach some desired segments of the population, but not others.

Therefore "affirmative action" *of some kind* was considered necessary to make non-discrimination a reality throughout a whole information-recruiting-choosing process, at least until new informal information networks could form and special recruiting activities by employers, universities, and others could overcome fears among previously excluded groups that they would not be considered eligible or would not be judged fairly.

Distinction between information networks and decision points

"Affirmative action," as it was first applied in a racial or ethnic context in the 1960s, meant various activities aimed at spreading information about newly opened employment or other opportunities, so as to increase the number of minority individuals in the pool of applicants—from which the actual selection would then be made *without regard* to race, color, creed, or nationality. In such a context, it was meaningful to speak of "affirmative action" to promote "equal opportunity," as expressed in President Kennedy's Executive Order 10925.[5] The special targeting of designated groups for informational or recruiting activity was perfectly compatible, in principle, with disregarding all group designations when the time came to choosing among competing individuals. None of this implied goals, preferences, or quotas as regards the final choices. Nor was there any implication of "compensation" to individuals or groups for past societal or institutional wrongs. All these things require additional assumptions and presuppositions.

"Affirmative action" as a general term therefore includes specific policies which may or may not center on numerical results. Even as a very general concept, however, it is a transitional policy. This presents no special problem for administrative or even legislative policy. For judicial and especially constitutional decision-making, however, there are serious difficulties. Are courts the appropriate institutions to determine how long social transitions should last, or the principles or indicia of its duration? Can a program be *transitionally* constitutional?

Retrospective results

While the general principle of "affirmative action" was announced in a series of Executive Orders of the President, in the Kennedy and Johnson administrations, the specific content of the term evolved in the implementing activities of administrative agencies. Tendencies toward shifting the emphasis of "affirmative action" from equality of prospective opportunity toward statistical parity of retrospective results were already observed, at both state and federal levels, by the time that the Civil Rights Act of 1964 was under consideration in Congress.

Senator Hubert Humphrey, in guiding this bill through the Senate, assured his colleagues that it "does not require an employer to achieve any kind of racial balance in his work force by giving preferential treatment to any individual or group."[6] He pointed out that section 703(j) under Title VII of the Civil Rights Act "is added to

state this point expressly."[7] That subsection declared that nothing in Title VII required an employer "to grant preferential treatment to any individual or group on account of any imbalance which may exist" with respect to the number of employees in such groups "in comparison with the total number or percentage of persons of such race, color, religion, sex, or national origin in any community, State, section or other area."[8]

Societal patterns

Virtually all the issues involved in the later controversies over "affirmative action," in the specifically numerical sense, were raised in the legislative debates preceding passage of the Civil Rights Act. Under section 706(g) an employer was held liable only for his own "intentional" discrimination,[9] not for societal patterns reflected in his work force. According to Senator Humphrey, the "express requirement of intent is designed to make it wholly clear that inadvertent or accidental discrimination will not violate the title or result in the entry of court orders."[10] Vague claims of differential institutional policy impact—"institutional racism"—were not to be countenanced.

For example, tests with differential impact on different groups were considered by Humphrey to be "legal unless used for the purpose of discrimination."[11] There was no burden of proof placed upon employers to "validate" such tests. In general, there was to be no burden of proof on employers; rather, the Equal Employment Opportunities Commission (EEOC) created by the Act "must prove by a preponderance" that an adverse decision was based on race (or, presumably, other forbidden categories), according to Senator Joseph Clark, another leading advocate of the Civil Rights Act.[12]

Senator Clark also declared that the Civil Rights Act "will not require an employer to change existing seniority lists," even though such lists might have differential impact on blacks as the last hired and first fired.[13] Still another supporter, Senator Williams of Delaware, declared that an employer with an all-white work force could continue to hire "only the best qualified persons even if they were all white."[14]

This legislative history is important, not only in itself, but also because it is wholly inconsistent with various judicial speculations and assertions about congressional intent in both the *Bakke* and *Weber* cases. The EEOC and other federal agencies administering "affirmative action" programs likewise went counter to all these legislative directives and intentions, usually with the traditional appellate court "deference" to an administrative agency's "expertise"

in interpreting its mandate. Central to the changed direction of policy was a shift from the concept of "equal opportunity" as a prospective decision-making principle to the retrospective concept of statistical parity of "representation" or other end results.

Distinction between prospective opportunity and retrospective results

The shift from the prospective concept of "equal opportunity" to the retrospective concept of parity of "representation" (or "correction" of "imbalance") occurred in stages. The first use of the term "affirmative action" in an Executive Order (No. 10925) was by John F. Kennedy[15] in 1961, and the policy announced for federal contractors was hiring and treatment "without regard" to various ethnic considerations.[16] Later Executive Orders added age and sex to ethnicity as proscribed categories. The key Executive Order (No. 11246) by President Johnson in 1965 created an Office of Federal Contract Compliance in the U.S. Department of Labor, and authorized it to issue guidelines to federal contractors.

In May 1968, this Office issued guidelines containing the phrase "goals and timetables" and "representation," but in a context which did not yet make it clear that employers were to have specific numbers and percentages set forth as measures of their hiring practices. The next set of guidelines, in 1970, spoke of "results-oriented procedures," suggesting a shift from the still prospective 1968 language of "goals and timetables for the prompt achievement of full and equal employment opportunity" to a retrospective "results" criterion.

The guidelines issued in December 1971 made it clear that "goals and timetables" were meant to "materially increase the utilization of minorities and women," with "under-utilization" being spelled out as "having fewer minorities or women in a particular job classification than would reasonably be expected by their availability. . . ."[17]

Employers were required to confess to "deficiencies" in their "utilization" of minorities and women whenever this statistical parity could not be found in all job classifications, as a first step toward correcting this situation. The burden of proof—and remedy—was on the employer. "Affirmative action" was now decisively transformed into a numerical concept, whether called "goals" or "quotas."[18]

PRESUPPOSITIONS

To equate the retrospective fact of statistical under-representation with the prospective act of discrimination requires additional presuppositions about the nature of social processes. So too does the belief that the extent of discrimination can be measured or monitored through numerical representation.

Group discrimination—differential treatment of similar individuals who belong to different groups—can be inferred from differences in group "representation" only insofar as the relevant characteristics by which individuals are chosen do not differ substantially from one group to another. *This is not even approximately true.*

Median age differences of a decade or more are common among American ethnic groups. Blacks, Hispanics, and American Indians are at least a decade younger than Americans of Irish, Polish, or Japanese ancestry—and more than twenty years younger than Americans of Jewish ancestry.[19] (See Table 1.)

TABLE 1
MEDIAN AGES OF AMERICAN ETHNIC GROUPS

Ethnicity	*Age*
Jewish	46
Polish	40
Irish	37
Italian	36
German	36
Japanese	32
NATIONAL AVERAGE	28
Chinese	27
Black	22
Indian	20
Puerto Rican	18
Mexican	18

Source: U.S. Bureau of the Census.[20]

These huge age differences reflect, in part, differences in the number of children per family, which is twice as large in some groups as in others.[21] Half of all Mexican Americans or Puerto Ricans in the United States are either infants, children, or teenagers.[22] To compare any group's representation in adult jobs with their representa-

tion in a *population* that includes five-year-olds is to compare apples and oranges. The comparison is especially inappropriate in the high-level occupations on which special attention is focused. These jobs typically require years of experience and/or education, and are consequently filled by individuals in their forties and fifties. In these age brackets, the *demographic* "representation" is so different from one group to another as to make an even occupational representation virtually impossible.

For example, more than 40 percent of Polish Americans are 40 years old or older, while less than 20 percent of American Indians, Mexican Americans, or Puerto Ricans are that old. At the extremes, just over half of all Jewish Americans are 45 or older, while only 12 percent of Puerto Ricans are that old.[23] Age differences of the magnitudes found among American ethnic groups play havoc with all the gross statistical comparisons that are commonly used, for age has a major impact, throughout all groups, on such variables as income, occupation, unemployment, fertility, and crime rates.[24] Income differences between age brackets in the U.S. population are greater than income differences between blacks and whites.[25]

Importance of age differences

Even where intergroup comparisons are limited to members of the adult labor force, age differences are still very substantial. The median age of all Puerto Rican income-earning heads of family was 36 years, according to 1970 Census data, while the corresponding age among Jews was 50 years.[26] Moreover, because the lowest income groups have only recently begun finishing high school or attending college on a large scale, their older members typically lack education requirements while their younger members necessarily lack the experience. For example, among blacks aged 55 to 64 years, more than 20 percent have less than five years of school,[27] and only 4 percent have completed college.[28] Among Puerto Ricans in the same age bracket, approximately *half* have less than five years of schooling,[29] and only 3 percent have completed college.[30] In short, the *combination* of experience (age) and education needed for high-level occupations accentuates intergroup disparities in qualifications and income, both of which tend to be greatest in the older age brackets. The Jewish family heads who are 14 years older than Puerto Rican family heads also average 6 more years of schooling.[31]

Geographical distribution

In a country of the size and regional diversity of the United States, geographical distribution affects incomes as dramatically as demo-

graphic distribution does. Income differences between California and Arkansas, or between Alaska and Mississippi, are greater than income differences between blacks and whites.[32] No ethnic group in the United States has an income that is as low as half the national average, but members of a given ethnic group in one location often earn less than half the income of members of the same ethnic group located elsewhere. Blacks in Mississippi earn less than half the income of blacks in New York state. Mexican Americans in the Laredo or Brownsville metropolitan areas in Texas earn less than half the income of Mexican Americans in the Detroit metropolitan area. Indians on reservations earn less than half the income of Indians located in Chicago, Detroit, or New York City.[33]

In short, the effects of geographical distribution are profound and are confounded with ethnic differences, as such, in gross statistical comparisons among groups. Virtually no two American ethnic groups have the same geographical distribution pattern.[34] Blacks are located in the low-income South to a substantially greater extent than most other Americans. The economic consequences of this can be seen in that while Mexican Americans and Puerto Ricans earn more than blacks nationally, blacks outside the South earn more than either of these Hispanic groups.[35] Their gross income differences are geographic rather than racial.

Age and location are variables with little moral or ideological significance and are not very amenable to governmental policy control. This may explain, but in no way justifies, their being almost totally disregarded in analyses of causes of intergroup differences in incomes or occupations. Moreover, age and location are among various neglected factors which invalidate the presumption that all intergroup differences are due either to current discrimination or to some behavior in the past or present by a personified "society." In some cases, we feel certain *from other evidence* that discrimination has existed and does exist. But both intellectually and legally, a serious problem arises when the real basis for belief is replaced by pseudo-scientific numerical indices, i.e., when issues are decided by gut feelings garnished with numbers. Many social processes and variables can and do generate the same numbers attributed to discrimination.

Cultural differences

Many substantial economic and social differences among ethnic groups in the United States reflect historical differences that existed before they ever set foot on American soil, e.g., the overrepresentation of Jews in the clothing industry,[36] Germans in the

beer industry,[37] or the Irish in politics and the priesthood,[38] not to mention such general cultural differences as varying receptivity to formal education. In the New York City schools of 1911, German and Jewish children finished high school at a rate more than a hundred times greater than Irish or Italian children.[39] Since the Irish were the dominant group in both municipal politics and among school teachers, these results could hardly have been due to discrimination against the Irish by either Germans or Jews. Similarly, in turn-of-the-century Boston, the Irish not only had more political power than the Jews, but higher incomes and more education among the adults—and still the Jewish children went on to college at a higher rate than the Irish children.[40]

The history of the Irish and the Jews in this era undermines the explanatory value of the usual socioeconomic indices, as well as those two favorite "causes" of social phenomena—"ability" and "discrimination." In addition to being better off than the Jews politically, economically, and educationally, the Irish also scored higher on mental tests administered to masses of soldiers in World War I.[41] Because the Irish had immigrated to the United States in large numbers before the Jews, American "society" had given them more material and educational advantages over the years. What American society could not give them were the Jewish attitudes and values—and these proved decisive, as the Jews rose past the Irish by all the usual economic, educational, and other indices. In short, the actions of "society" are often far from decisive in the outcome, much less all-determining.

Blacks and Jews

The case of blacks is obviously quite different from the case of the Jews, for all sorts of historical and other reasons that remain largely implicit. But in terms of the explicit argument and the explicit evidence cited in "affirmative action" cases—and applied to all sorts of ethnic, sexual, and other groups—the history of the Jews, Orientals, and other ethnic groups is relevant and fatally undermines their presuppositions. To the extent that the explicit evidence is merely *pro forma* recitation, the implicit argument is not tested for either its general validity or its applicability to each of the diverse groups covered by "affirmative action."

Ethnic Vision and the "National Average"

A common theme in "affirmative action" arguments is comparison of one group's statistics with "the national average" or with local or

regional data. This approach makes all deviations from the average look unusual or even suspicious. The implicit suggestion is that all groups would be "average" in the relevant respects but for intervening discrimination or other societal actions. But comparing each group with the national average seriatim is a very different process from looking at all the groups simultaneously—which may reveal that the national average is itself just one point on a wide-ranging continuum and that "deviations" on either side are quite common. In other words, the national average is nothing more than a statistical amalgamation of highly diverse group characteristics, and not a norm measuring what most people actually do or should do.

The median family incomes of various American ethnic groups illustrates the point:

TABLE 2
MEDIAN FAMILY INCOMES OF AMERICAN ETHNIC GROUPS

Ethnic Group	*Income as Percentage of National Average*
Jewish	172
Japanese	132
Polish	115
Chinese	112
Italian	112
German	107
Anglo-Saxon	105
Irish	102
NATIONAL AVERAGE	100
Filipino	99
West Indian	94
Mexican	76
Puerto Rican	63
Black	62
Indian	60

Source: U.S. Bureau of the Census and National Jewish Population Survey.[42]

The notion of a national average unreachable by ethnic minorities—or by non-white minorities—will not stand up, in the face of these data. Two of the top five incomes are by non-white groups. In addition, black West Indians have incomes not far from

the national average, and considerably higher than the incomes of Puerto Ricans, most of whom are white.

Anglo-Saxon dominance?

The supposedly dominant Anglo-Saxons have incomes below various groups who arrived in America after them and who faced varying degrees of discrimination on their way up. Anglo-Saxons may be envisioned as wealthy old families, but in fact they include poverty-stricken people scattered along hundreds of miles of the Appalachians and numerous other places in American society. Even the supposed numerical dominance of the Anglo-Saxons is largely mythical. They are indeed the largest of the ethnically identifiable groups, but (1) half of all Americans cannot identify their ethnicity to Census surveyors,[43] presumably because of intermixtures, and (2) Anglo-Saxons are only about 14 percent of the population.[44]

Despite widespread use of the majority–minority dichotomy, it is intellectually questionable to refer to 14 percent of the population as if they were a majority and to 13 percent (Germans) or 11 percent (blacks) as "minorities." Moreover, the inclusion of women as a disadvantaged group brings the total proportion of persons in the minority category up to about two-thirds of the total population.

Both the demographic and the economic data reveal the wholly arbitrary nature of the government's designations of various groups as "minorities" or "disadvantaged" groups—for the official list includes groups both above and below the national average, e.g., Japanese and Chinese as well as Indians or Mexicans. The only consistency in the list is an implicit vision of racist and sexist discrimination as the reason for group deviations from the national average. Where those deviations include incomes nearly a third *larger* than the national average (Japanese), they must at least suggest other very powerful influences at work—factors which cannot then be arbitrarily excluded from explanations of why other groups fall below the mythical national norm.

Many cultural differences do not lend themselves to quantification, but some have numerical effects. For example, half of all Mexican American women are married in their teens, while only 10 percent of Japanese American women marry that young.[45] It requires little imagination to see how that must affect opportunities for college attendance and/or lucrative careers, quite aside from employer discrimination or the sins of "society."

The special case of blacks

The unique history of blacks—both slavery and pervasive Jim Crow laws and practices—has been used as a justification for "affirmative action" programs, though as noted above, such programs are then applied to groups (including women) who add up to several times the size of the black population. But, putting aside this "entering wedge" approach to policy-making, how well do the presuppositions of "affirmative action" apply to the group which provides its strongest arguments? That is, how much of the still substantial black–white difference in incomes and occupations can be attributed to employer discrimination? Despite a voluminous literature on discrimination, this is a question seldom addressed and often settled by assumption. Thorow's *Poverty and Discrimination*, for example, simply *defines* discrimination as all intergroup differences in prospects,[46] without regard to the sources of those differing prospects.

Blacks and whites differ not only in skin color, but in many cultural characteristics. Yet much of the literature automatically ascribes economic differences between the two groups to whites' discrimination against blacks, i.e., to color rather than culture. However reasonable this may be as a plausible assumption—given the history of demonstrable racial discrimination—what is unreasonable is to treat this assumption or hypothesis as an empirical fact or as something transcending empirical facts.

Same color, different culture

One of the most obvious ways to test the effect of color against the effect of culture would be to compare the economic conditions of groups with the same color but with different cultures. Alternatively, the comparison could be made between groups with the same culture but of different colors. Seldom has either of these things been done.

Black West Indians living in the United States are a group physically indistinguishable from black Americans, but with a cultural background that is quite different.[47] If current employer racial discrimination is the primary determinant of below average black income, West Indians' incomes would be similarly affected. Yet, as seen in Table 2, West Indian incomes are 94 percent of the U.S. national average, while the incomes of blacks as a group are only 62 percent of the national average. That is, West Indians' incomes are 44 percent higher than the incomes of other blacks. Their "representation" in professional occupations is double that of blacks and slightly *higher* than that of the U.S. population as a whole.[48]

The argument has sometimes been made that white employers

distinguish West Indians from other blacks by accent, birthplace, or place of schooling and that this differentiation in their treatment explains the substantial intergroup economic differences between these two sets of blacks in the same economy.

Again, the test is not plausibility but evidence. If accent, birthplace, or place of schooling are responsible for West Indians' advantages in the marketplace, then those West Indians lacking such obvious clues for American employers would not be expected to have comparable advantages over other blacks. *Second generation* West Indians—born in the United States of West Indian parents—are less likely to have an accent and would have no distinguishing place of birth or schooling. If employer discrimination explains the economic condition of blacks, and the different conditions of West Indians, then second generation West Indians should not be expected to have as large an advantage over other blacks.

If, on the other hand, West Indian advantages are cultural, then second generation West Indians might be expected to continue to benefit from the values and behavior patterns of their parents, plus whatever additional benefits derive from their parents' socioeconomic success and their own greater familiarity with American society. In short, diametrically opposite predictions regarding second generation West Indians derive from the theory of cultural differences and the theory of employer discrimination as explanations of black incomes below the national average.

Second generation West Indians

The facts about the economic conditions of second generation West Indians are dramatic in themselves and decisive in their implications. Second generation West Indians have even higher incomes than first generation West Indians and higher incomes than the national average, or the incomes of Anglo-Saxons.[49] Second generation West Indians also have higher proportions in the professions than other blacks, first generation West Indians, the national average, or Anglo-Saxons.[50] These data are from the 1970 Census, which is to say they are 1969 incomes—two years before the 1971 federal guidelines mandating quota hiring—and so cannot be explained as the effects of "affirmative action."

These results are reinforced by the alternative comparisons of people with similar culture but different color. Richard Freeman's study of blacks and whites with the same reading (or non-reading) habits showed that by 1969 they were earning the same incomes, regardless of race.[51] Looked at another way, the still large racial income difference was cultural rather than racial as such. Data for

earlier periods did not show such a similar pattern. Blacks made less than whites in earlier years, even when cultural indicators were the same.[52] This is consistent with historical evidence of racial discrimination, while undermining the conclusion that all current differences can be automatically attributed to the same source.

There are many possible reasons for West Indians' advantages over other blacks.[53] The purpose here is not to praise, blame, grade, or otherwise morally rank groups. In some ultimate sense, we are all born into a world we never made, including the values around us. The more important point, from a causal standpoint or policy relevance, is the source of the racial statistical discrepancies so often cited. West Indian data are simply a means to the end of testing alternative theories of racial discrepancies. Like the comparison between the Irish and the Jews, this comparison among different black groups suggests that cultural traits reaching far back in history have continuing contemporary impact, invalidating any presumption of equal "representation," income, etc., in the absence of current discriminatory institutional policies.

The special case of women

Although the situation of women is often lumped together with that of ethnic "minorities" for "affirmative action" purposes, it is in fact an entirely different social phenomenon. Two key facts are routinely ignored in gross statistical comparisons of male and female incomes, occupations, and other areas of concern over statistical parity or representation:

1. Historical trends in these regards do not accord with any theory of sex discrimination or women's organized political struggles for equality, but accord almost perfectly with demographic trends.
2. Most of the current income and occupational differences between males and females as gross categories turn out, on closer scrutiny, to be differences between married women and all other persons.

Historically, women's position relative to that of men *declined* for more than two decades, across a broad front, from peaks reached in the 1930s or earlier. Women's share of doctoral degrees—both Ph.D.s and M.D.s—declined, along with their representation on college and university faculties (including the faculties of women's colleges run by women administrators), as did their representation among people listed in *Who's Who*.[54] Women's income as a percentage of men's income declined over a twenty year period from 1949 to 1969.[55] If sex discrimination is the chief explanation of the male–

female economic differences, it is hard to imagine why there would have been *increasing* sex discrimination during this particular period of apparent female economic retrogression. However, it is much easier to understand as a consequence of a parallel decline in the age of marriage for educated women and a rising number of children per woman.[56]

Single women earn *more* than single men

This mundane demographic explanation of socioeconomic trends also accords with recent upswings in women's occupational position as marriage and childbearing trends began to reverse in the 1960s.[57] The same explanation is even more dramatically apparent in contemporaneous comparisons. As of 1971, single women in their thirties who had worked continuously since leaving school earned slightly *more* than single men of the same age, even though women as a group earned less than half as much as men as a group.[58] In the academic world, single female faculty members who had received their Ph. D.s in the 1930s had by the 1950s become full professors to a slightly *greater* extent than male Ph.D.s of the same vintage, even though female academics as a group were far less successful than males by various indices.[59] A more recent study shows that female academics who never married earned more than male academics who never married, even before "affirmative action" "goals and timetables" became mandatory in 1971.[60] Many statistical comparisons sidestep the crucial effect of marriage on women's careers in various ways, including defining "single" women to include women who are widowed, divorced, or separated. Obviously, a woman who re-enters the labor force after many years as a housewife is unlikely to earn as much as a man who has been working continuously.

Although the situation of women is different from that of minorities, it is often treated similarly in that variables which do not lend themselves to ideological explanations or political crusades tend to be disregarded. Whatever one may think of the unequal distribution of domestic responsibilities found even among married couples who are both professionals,[61] it is not employer discrimination.

Institutional Responsibility

"Affirmative action" as a legal doctrine goes beyond assigning causation and blame to a personified "society." It attributes intergroup statistical variations found at a particular institution to actions of that particular institution. In legal theory, this breathtaking leap in logic is

only a "rebuttable presumption," but in practice rebutting such a presumption is often either impossible statistically or prohibitively expensive, even if there has been no discrimination whatsoever by the accused employer.

The validity of statistical conclusions cannot be independent of sample size, and the relevant sample—the number of employees in a specific job category—is often too small for *any* demonstrable conclusion, even when the total number of employees in all job categories is large. Moreover, hiring and promotion statistics refer to even smaller numbers of people than those employed in the job category. The EEOC's doctrine of *differential* validation of job criteria for its designated minorities[62] reduces the relevant sample size still further, thereby increasing the number of employees for whom the theoretically rebuttable presumption for "representation" data becomes *de facto* "proof" of discrimination.

Even where the employer has both sufficient sample sizes in all job categories and sufficient members of government-designated minorities to meet sample size requirements for statistical analysis, he must then face the issue whether the costs of the process of vindication are more or less than the costs of quota hiring. The cost of simple test validation has been estimated at "between $40,000 and $50,000"[63] under statistically favorable conditions. Differential validation for each group would obviously cost more.

Imposed costs

Legal controversies tend to center on the validity of end results reached by certain processes. But the cost of the process itself is not a negligible consideration. "Justice at all costs" is not justice, as "Pareto optimality at all cost" is not Pareto optimality. The ability to impose process costs is the ability to punish. The mere preparation of an "affirmative action" report can cost hundreds of thousands of dollars, *regardless* of the end result of the process. Many crimes do not carry fines that high. An employer faced with the process costs of justifying numbers that do not fit the preconceptions of a government agency—before a tribunal from that very same agency—must also, realistically, be prepared to appeal an adverse decision, a further process cost.

The employer whose numbers do not fit the preconceptions of government agencies, and who does not prove himself innocent to those same agencies, must then fashion a "remedy." The agencies involved do not specify what he is to do. They approve or disapprove plans he submits. In this way, they avoid the legal onus of themselves prescribing quotas in violation of the Civil Rights Act, while

adding to the process costs of the employer, who must guess at what size quotas will satisfy them—and continue to resubmit plans until he guesses right.

"Results" of "affirmative action"

Despite the shift in the meaning of "affirmative action," from prospective opportunity to retrospective results, the "affirmative action" program itself has little in the way of results to show for its own wide-ranging, costly activity. Studies by different economists, using different data and methods, have reached a similar conclusion: "affirmative action" has had little or no effect on black–white income ratios or occupational representation.[64] For example, "the rise in black–white wage ratios has occurred primarily in the more private sectors of the private economy, and not in those industries most susceptible to affirmative action pressure."[65] In the academic world—heavily dependent on federal money—the black–white pay differential was greater after "affirmative action" began in 1971 than it was before, and both before and afterwards, it was a gross difference in favor of whites that turned into a net difference in favor of blacks when job qualifications were held constant.[66]

This is not to claim that there has been no progress. With progress, as with "under-representation," the issue is not about the facts but the reasons for the facts. Progress, like numerical representation, is not independent of group qualifications. "Almost half the rise in the ratio of black–white male wages" from 1968 through 1975 was statistically explained by "converging" job qualifications.[67] The neglected variable of geographic location was also important. Relocation "accounted for approximately one-third" of the rise of black–white wage ratios.[68] An earlier study had found migration to be "the principal reason for the rise in racial income ratios between 1940 and 1960."[69] In short, variables almost totally ignored in the presuppositions of "affirmative action" have had—and continue to have—major impact on both intergroup disparities and the lessening of disparities.

Equal opportunity, not "affirmative action"

The automatic attribution of whatever ethnic economic progress has occurred to "affirmative action" has been promoted by before-and-after comparisons in which "before" was long before the 1971 guidelines on goals and timetables, and before the whole equal opportunity phase that preceded "affirmative action." This confounds the effects of two very different policies—equal opportunity with regard to race or ethnicity, and "affirmative action" with regard to

those very same factors. There were dramatic improvements in the relative positions of low-income ethnic groups during the 1960s or equal opportunity era; more so than during the 1970s "affirmative action" policies. To attribute the total advancement of both phases to the latter is clearly invalid.

However little empirical support there is for the effectiveness of "affirmative action," it would seem—theoretically—that quotas are a stronger measure that should have more effect than equal opportunity. In fact, there are theoretical as well as empirical reasons for doubting this.

The incentives provided by equal opportunity laws and policies are rather unequivocal. Discrimination against comparable individuals from different groups incurs liability under the law. Non-discrimination reduces or eliminates that liability, given that the burden of proof is on the employee to demonstrate employer policies that cannot be demonstrated, by hypothesis. In short, equal opportunity policies make the non-discriminatory alternative cheaper to the employer.

"Affirmative action," on the other hand, provides two opposing sets of incentives. An employer's immediate liabilities are lowered by hiring from government-designated groups, but his longer run liabilities are raised insofar as employees from the government-designated groups can subject him to additional process costs whenever their pay, promotion, or discharge patterns do not coincide with those of others or with the preconceptions of government agencies. With the burden of proof on the employer—and often either impossible or prohibitively expensive—it is by no means clear whether he is better off in the long run to have acquired such potentially expensive employees as a means of reducing government hiring pressures. Depending on the specifics of his circumstances, those offsetting incentives may make hiring members of government-designated groups either advisable or inadvisable. The net effect is not nearly as clear-cut as under equal opportunity policies.

The academic world

A particularly striking example of this combination of incentives and disincentives to hire from designated groups is the academic world. Academic institutions in general, and highly rated research universities in particular, typically hire and then discharge non-tenured faculty after a few years with no allegation of incompetence or wrongdoing. It is essentially on-the-job screening and (in the case of research universities) gambling on the unknowable future research creativity of junior faculty and discarding the losing bets. In those

research universities with the highest standards, most bets may be losing bets, meaning that it is impossible to accurately predict which particular individuals will take their places in the forefront of their professions, and all that is possible is to select a promising collection of young scholars emerging from graduate school.

"Affirmative action" in this academic context means that the virtually inevitable discharge of many blameless individuals subjects the institution to large legal process costs, *regardless* of the outcomes of those processes. In turn, this provides the employing institution with powerful incentives to avoid having to discharge members of the government-designated groups. Retaining them all as tenure faculty members may be either impossible (given the limited number of tenure positions) or prohibitively expensive (since a tenure appointment is a lifetime commitment to pay out perhaps a million dollars or more to the tenured individual). One obvious way to avoid having to discharge members of the government-designated groups is not to hire them in the first place, or to hire them for academic positions outside the usual up-or-out system in which junior faculty must be either promoted or fired. Still another way to avoid the discharge dilemma is to seek primarily those members of the government-designated groups who already have a track record (degrees, publications, etc.) minimizing the likelihood that they will need to be discharged.

Perverse results

The incentives created by "affirmative action" in colleges and universities tend therefore to (1) *lower* the demand for untested members of the government-designated groups relative to the demand for untested members of the remainder of the population, (2) *raise* the demand for demonstrably better qualified members of the designated groups relative to equally demonstrably better qualified members of the general population, and (3) *shift* members of the government-designated groups out of the faculty, where up-or-out policies prevail, into the college or university administration, where they do not.

Empirical evidence supports these theoretical conclusions. A post-"affirmative action" study of college and university faculty shows that (1) blacks without doctorates and with few or no publications earned *less* than whites of the same description,[70] while (2) blacks with a Ph.D. from top-rated schools and with several articles published earned *more* than whites of the same description,[71] and (3) black academics were in the administration rather than the faculty, in far higher proportions than their white colleagues.[72]

The perverse incentives created by "affirmative action"

policies may be either more pronounced or merely more visible in the academic world. The point here is simply that there are contrary incentives to hire and not to hire from government-designated groups, and that the net result of these "affirmative action" pressures is not as unequivocal as the straightforward anti-discrimination thrust of equal opportunity laws and policies.

THE *BAKKE* CASE

Allan Bakke, a white applicant for admission to the medical school of the University of California at Davis, was rejected in both 1973 and 1974, even though individuals with far lower qualifications were accepted because they were members of government-designated ethnic groups. Bakke instituted a lawsuit, charging discrimination. The trial court held that he had been unlawfully discriminated against by racial criteria for admission, though it did not order his admission, because there were other white applicants who were also rejected and their qualifications might have led to their admission instead of Bakke's. The California Supreme Court, in a six to one decision, affirmed the unlawfulness of the exclusion of Bakke in favor of less qualified candidates for racial reasons, and ordered him admitted. The U.S. Supreme Court, in a five to four decision, affirmed the decision of the California Supreme Court.

Justice Powell's official opinion for the Supreme Court in the *Bakke* case brought the doctrine of compensatory preferences out into the full light of day and decisively rejected it as a legal principle, as well as casting doubt on it as a social theory. There are no inherent constitutional rights of *groups*, such as would be necessary for a general policy of group compensation for societal wrongs. "The guarantees of the Fourteenth Amendment extend to persons."[73] Where remedial and compensatory group benefits have been awarded in a particular case, it has been based on findings of group discrimination "not just by society at large, but by the respondent in that case."[74] According to Powell: "Every decision upholding the requirement of preferential hiring under the authority of Executive Order 11246 has emphasized the existence of previous discrimination as a predicate for the imposition of a preferential remedy."[75]

Similarly, where the authority was "constitutional or statutory," rather than an Executive Order, the Supreme Court had "never approved preferential classifications in the absence of proved . . . violations."[76] There is no pre-existing constitutional group right to remedial or compensatory action as "special wards entitled to a

degree of protection greater than that accorded others."[77] The very concept of a "benign" quota or "benign" discrimination against the dominant majority in favor of groups suffering "stigma" was rejected. The equal protection clause of the Fourteenth Amendment "is not framed in terms of 'stigma' "—a word with "no clearly defined constitutional meaning."[78]

Complexity, difficulty, arbitrariness

In addition to being constitutionally unwarranted, compensatory preferences for historic societal wrongs were held to be beyond the range of judicial competence. The very concepts of "minority" and "majority" involve complications, for "the white 'majority' itself is composed of various minority groups, most of whom can lay claim to history of prior discrimination at the hands of the state and private individuals."[79] To select which groups' deprivations exceeded some arbitrarily selected level of tolerance would be just the beginning of the difficulties, for the effect of judicial remedies would itself change the weights or rankings of the various groups with respect to remaining, uncompensated wrongs. The "variable sociological and political analysis" necessary for such ever-changing rankings "simply does not lie within the judicial competence."[80] The Powell opinion, in other words, rejected the idea that there are judicial remedies for all historic wrongs—an idea seldom explicitly avowed in this form, but without which the lengthy elaboration of historic wrongs, as in Justice Marshall's dissenting opinion,[81] would be pointless.

Whatever the merits of the official Supreme Court opinion written by Justice Powell, it was in fact the opinion of only one Justice. The four concurring Justices (Stevens, Burger, Stewart, and Rehnquist) concurred with the judgment only "insofar as it affirms the judgment of the Supreme Court of California" which had invalidated the special admissions program at the Davis medical school and ordered Allan Bakke admitted. Lest there be any doubt, the concurring justices "respectfully dissent" from Powell's opinion "to the extent that it purports to do anything else."[82]

Technical grounds

The basis for this very narrow concurrence was, among other things, that Powell's lone opinion was based primarily on constitutional grounds, while the concurring opinions limited themselves strictly to statutory grounds—specifically Title VI of the Civil Rights Act of 1964.[83] The traditional preference for statutory rather than constitutional resolution can hardly explain the extremes to which the con-

curring Justices went to avoid the Constitution in this case. They (1) imputed to Congress an intention to create a private right to sue under Title VI,[84] despite its lack of any such authorizing language, in a statute whose *other* titles do contain such language,[85] and (2) base the need for this imaginative exegesis on the assertion that "Congress was not directly concerned with the legality of 'reverse discrimination' or 'affirmative action' programs" when writing the Civil Rights Act of 1964, being preoccupied with discrimination against minorities.[86]

While the exegesis that produced the private right of action under Title VI is merely questionable, the legislative history which supposedly necessitated the exegesis is demonstrably false. As noted earlier, a wide variety of "reverse discrimination" issues were debated when the Civil Rights Act was under consideration, and some of this concern found its way into the explicit language of the Act, notably section 703(j).[87] Indeed, Justice Rehnquist, after concurring in this bold assertion of congressional neglect of "reverse discrimination" issues in the *Bakke* case, proceeded in the *Weber* case to elaborate at great length congressional concern over this very issue.

Creative history

Why the fictitious legislative history in *Bakke*? Its only use in the *Bakke* concurring opinion was to justify the need for exegesis creating a private right to sue, which in turn enabled the concurring Justices to avoid a judgment based on the Constitution. The traditional preference for statutory authority was here carried to the point of virtually avoiding the Constitution like the plague. In doing so, the Court preserved its options to pick and choose among future "affirmative action" programs it might like or not like, rather than make a constitutional ruling that could affirm or deny their legality permanently. The concurring Justices' assertion that this case "is not a class action" but only a "controversy . . . between two specific litigants"[88] reinforces this interpretation. Their approval of quotas in *Weber* after rejecting them in *Bakke* is further support of the conclusion that both the "liberals" and the "conservatives" on the Supreme Court have sought *ad hoc* judgments on particular "affirmative action" plans, rather than a principled ruling.

The four dissenting Justices (Brennan, White, Marshall, and Blackmun) squarely faced the constitutional issues faced by Powell and avoided by the concurring Justices. The dissenters of course reached opposite conclusions from those of Powell. In the dissenting view neither Title VI nor the Fourteenth Amendment forbids "preferential treatment of racial minorities as a means of remedying past

societal discrimination."[89] They did not go so far as to claim that either authority *required* preferential treatment, but argued that "voluntary use of racial preferences to assist minorities" is legal.[90] Congressional intent was discerned by the dissenting Justices, not from the many repudiations of compensatory preferences in the original consideration of the Civil Rights Act of 1964,[91] but from the later (1977) failure of a reiterating rider to a deadlocked H.E.W. appropriations bill to survive a conference committee concerned with resuming overdue funding.[92]

Burden of proof

Having thus established—to their own satisfaction—that voluntary compensatory preferences were neither unconstitutional nor illegal under the Civil Rights Act, the dissenting Justices proceeded to argue that *mandatory* group preferences had been imposed by the Supreme Court itself in a long string of cases. Employers were forced to eliminate employment criteria which "have a disproportionate impact on racial minorities," even "in the absence of discriminatory intent"[93] (despite the language and legislative history of section 706(g))[94] and despite losses suffered by innocent third parties[95] analagous to Allan Bakke. The burden of proof had been put on employers to "validate" such criteria in general and to produce "differential validation" for affected minorities in particular.[96] Similarly, school boards have been forced to abandon "color blind" pupil assignment plans, in order to correct past discrimination, even though this too injured third parties.[97] The deliberate gerrymandering of a political district to enhance the voting effectiveness of a disadvantaged ethnic group had likewise been upheld despite its negative impact on others, including in this case another ethnic minority.[98]

Was the majority in *Bakke* saying that it was not prepared to go down that road any further, or any more times? Or was there some reason in legal principle rather than a policy judgment concerning degree?

Powell's opinion would have the issue turn on prior determinations of institutional discrimination[99] as in *Griggs* or the school cases where there was a finding of prior *de jure* segregation. But this apparent principle becomes somewhat less convincing—and indeed, less principled—in the light of the standards of evidence used to determine either employer "discrimination" or public school "segregation." These triggering findings have been based on inferences from numbers and percentages. The Davis medical school's relative newness, and the existence of "affirmative action" admis-

sions programs there throughout its brief history, made such triggering numbers impossible to come by. If that is the only difference in this case, and if the Supreme Court continues to accept disproportionate numbers or percentages as presumptive evidence of discrimination, then *Bakke* may become a curiosity rather than a landmark.

THE *WEBER* CASE

After criticism of their employment practices by the Office of Federal Contract Compliance (OFCC), the Kaiser Aluminum & Chemical Corporation established a training program in cooperation with the United Steelworkers Union. At Kaiser's Gramercy, Louisiana, plant, where Brian Weber worked, at least 50 percent of the trainee positions were reserved for blacks, until their low proportions (2 percent) among Kaiser craft employees rose to approximate their proportions (39 percent) in the local labor force. Brian Weber, a white worker, was rejected when he applied for the Kaiser trainee program, even though black workers with less seniority were accepted. Weber sued under the Civil Rights Act, claiming discrimination. He won in the Federal District Court, and again in the Court of Appeals, but the U.S. Supreme Court reversed their decisions, five to two. The four dissenters in *Bakke* were joined by Justice Stewart to uphold quotas.

The majority opinion, delivered by Justice Brennan, emphasized "the narrowness of our inquiry."[100] There was no constitutional issue, according to Brennan, because the Kaiser trainee plan "does not involve state action," which would be required to invoke the Fourteenth Amendment against unequal treatment by government. The Kaiser–Steelworkers plan "was adopted voluntarily," in Brennan's opinion,[101] completely ignoring the role of the Office of Federal Contract Compliance, which the Court of Appeals had noted in its opinion.[102]

Voluntary quotas?

The repeated emphasis on the "voluntary" nature of the Kaiser "affirmative action" plan eliminated the question of whether the Civil Rights Act *required* quotas, reducing the issue to whether it *permitted* quotas. But even after sidestepping the Constitution and the lack of any authorization of quotas in the Civil Rights Act, the majority still faced the formidable barrier of sections 703(a) and 703(d) of the Act. Section 703(a) declared it unlawful for an employer

"to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual's race, color, religion, sex, or national origin. . . ." Section 703(d) more specifically declared it unlawful to "discriminate against any individual" in "apprenticeship or training."

Brennan's majority opinion simply rejected "a literal interpretation" of these words.[103] Instead, it sought the "spirit" of the Act, its "primary concern" with the economic problems of blacks. According to the Brennan exegesis on the legislative history, these words do not bar "temporary, voluntary, affirmative action measures undertaken to eliminate manifest racial imbalance in traditionally segregated job categories."[104] This performance received the sarcastic tribute of Justice Rehnquist that it was "a *tour de force* reminiscent not of jurists such as Hale, Holmes, and Hughes but of escape artists like Houdini."[105] Rehnquist's dissent inundated the Supreme Court with the legislative history of the Act, and Congress' repeated and emphatic rejection of the whole approach of correcting imbalances or compensating for the past.[106] The spirit of the Act was as contrary to the decision as was the letter.

SUMMARY AND IMPLICATIONS

The original meaning of "affirmative action," as a general attempt to inform and recruit applicants from groups long excluded from employment and other opportunities, quickly gave way to its current meaning—choosing among applicants on the basis of numerical group results to be approximated, whether called "goals" or "quotas" or the "correction" of "imbalances." The prospective concept of opportunity was replaced by the retrospective concept of results. Indeed, the two concepts are often used interchangeably, though to do so implies that *nothing but* discrimination can explain large intergroup differences in representation, remuneration, promotion, etc. Supreme Court supporters of numerical "affirmative action" have explicitly stated this. To the majority in *Weber*, there could be "little doubt that any lack of skill has its roots in purposeful discrimination of the past,"[107] and to the four Justices dissenting in the *Bakke* case, Allan Bakke "would have failed to qualify for admission" in a non-discriminatory world, being outperformed in such a hypothetical world, by sufficient numbers of minority applicants whose current failure to qualify in this world "was due principally to the effects of past discrimination."[108] These four Justices (Brennan, White, Marshall, and Blackmun) see their task as "putting

minority applicants in the position they would have been in if not for the evil of racial discrimination."[109] Behind this staggering notion is the simplifying presupposition that discrimination must be the decisive explanation of intergroup differences. But however morally important the evil of discrimination may be, that is no measure of its causal impact, much less a reason to ignore the causal significance of such non-moral variables as age, location, and cultural values. Once the causal decisiveness of discrimination is treated as an hypothesis rather than an axiom, empirical evidence seriously undermines its presumed causal primacy. Among the highest income groups in the United States are non-WASP and non-white groups with a history of suffering severe discrimination, including the mass internment of Japanese Americans in World War II.

Blacks are not unique

The uniqueness of the historic disabilities of blacks is often invoked by supporters of "affirmative action," including Supreme Court Justices in the *Bakke* and *Weber* cases.[110] But that very uniqueness undermines both their causal and legal arguments. However much various data (income, education, etc.) for blacks differ from "the national average," such data are not unique. Neither the median family income, occupational level, years of schooling, I.Q., or unemployment rate of blacks is the worst among American ethnic groups. There are non-enslaved, non-Jim Crowed, non-black groups worse off in each of these respects.[111] This is hardly a reason for complacency, but the point is that the moral uniqueness of black history does not imply a causal uniqueness. Moreover, the economic performance of West Indian blacks in the United States suggests that color discrimination as an explanatory variable will not in fact bear the weight that is placed on it. But even if the factual evidence for the current uniqueness of blacks were far stronger than it is, that would hardly be an explanation for a legal principle invoked on their behalf and then extended successively to other groups lacking that uniqueness and constituting—all together—a substantial majority of the American population.

It is ironic for the historic discrimination against a racial minority to be invoked as the basis for current discrimination against the residual minority of persons not designated as special by the government agencies armed with the unchecked power to make or withhold such arbitrary designations.

Ideological designations

Just how arbitrary (or ideological) these designations can be is shown by the fact that preferential decisions are authorized in favor of Chinese Americans over Irish Americans, for example, even though the former have high incomes, more education, and a greater proportion of people in the professions. It is a further irony that the principle of preferential treatment is rejected by the very groups for whom it is most often invoked, blacks and women. According to the Gallup Poll, 64 percent of blacks and 80 percent of women reject preferential treatment in employment or college admission.[112] Indeed, the Gallup Poll could find no racist, regional, income, political, or other group in favor of this central principle of "affirmative action."

The lack of popular support or statutory authorization for "affirmative action" programs, in which a few fervently believe, has had broader implications for the functioning of elective government and the integrity of the courts. It raises somber questions about how far we have gone, and how fast we are going, from democracy towards a judicial *ad hoc*racy.

Part 2
The Economics of Equality

Chapter 2

On Discrimination, Prejudice, Racial Income Differentials, and Affirmative Action

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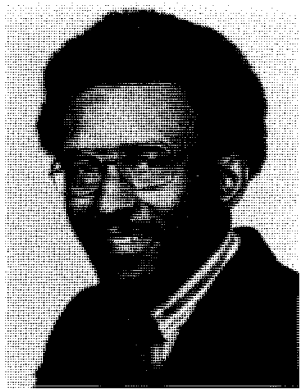

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On Discrimination, Prejudice, Racial Income Differentials, and Affirmative Action

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RACIAL DISCRIMINATION AS AN EXPLANATION OF WAGE DIFFERENTIALS

Differences in income by race, particularly between blacks and whites, have occupied the attention of social scientists for well over a decade. Huge quantities of census data leave no doubt that there are persistent income differences associated with race. The basic issue is why? This is particularly important given the wide acceptance of social policy dedicated to improving the economic status of blacks.

The effect of education

It is generally noted that the income differential between whites and blacks rises as education increases. Says Kenneth J. Arrow:

> Another reason for arguing that racial discrimination exists in the demand for labor is that the measured income differentials are greater at higher educational levels. For example, among males aged 35 to 44 in the northern United States in 1959, the ratio of mean non-white to mean white income was 79 percent for those with elementary school education, 70 percent for those with high school education and only 59 percent for those with college education. . . . [I]t is hard to give any explanation for these figures based on supply considerations. It is most reasonable to explain them on the hypothesis of a racial discrimination in demand that is more intensive for higher economic positions, the jobs into which the more educated go.[1]

and as Finis Welch reports:

> The most important result is that the market evidently discriminates much more heavily against a Negro's education than against his skilled labor. Thus relative to whites with similar schooling, Negro income declines as school completion increases.[2]

Numerous statistical studies have been motivated by these and similar findings. By and large they conclude that, after controlling for education and other socioeconomic variables thought to influence earnings, there remains an "unexplained residual" in the comparison of black–white earnings which is thought to approximate racial discrimination in the labor market. The typical explanation is that employers or employees exhibit a distaste for working with blacks. Therefore, if the black worker is to be employed, he must offer a compensating differential in the form of lower wages to offset white employer/employee distastes. The explanation goes on to assert that the distaste for blacks is greater at the higher level jobs since these entail more supervisory responsibilities. White aversion to black supervisors thus renders the highly educated black less valuable to the firm.

Statistically elusive factors

This hypothesis is satisfactory only if there is confidence that *all* variables influencing income are known and adequately controlled. However, we suspect that many factors influencing income and/or productivity are statistically elusive. Some of the more difficult variables to account for, but which influence productivity, are chance, genetic endowment, and household or cultural values that shape individual time preferences* (and hence investment decisions).

Paradoxical female income ratios

One of the best kept secrets in the differential earnings literature is that black–white female income ratios do not exhibit patterns even remotely similar to their male counterparts. Table 1 shows black–white income ratios by sex.

*Time preference is a measure of the relative importance assigned to different periods of time. A high time preference rate indicates impatience for present consumption, and thus, relatively, an unwillingness to engage in saving-investment behavior.—ed.

TABLE 1
RATIO OF BLACK–WHITE INCOME BY SKILL LEVELS IN 1960

Education	*Male*	*Female*
College	.60	1.02
High School	.69	.79
Grade School	.75	.87

Source: Richard B. Freeman, "Labor Market Discrimination," in *Frontiers of Quantitative Economics*, vol. 11, eds. Michael D. Intriligator and David A. Kendrick (New York: American Elsevier Publishing Company, 1974), p. 503.

The remarkable showing of black female college graduates relative to their white counterparts persisted into the 1970s. In 1970 the black–white female college graduate income ratio was 1.25! That is, black female college graduates were earning a median income which was 25 percent higher than their white sisters.

On the other hand, by 1970 there was an improvement in the relative economic status of black male college graduates of thirteen percentage points in the decade. But their median income was still only 73 percent of that of white male college graduates.

The favorable economic position of black female college graduates is not a new phenomenon and cannot be attributed to recent federal anti-discrimination policy. As early as 1950 the black female college graduate earned a median income which was 91 percent that of her white counterpart. The difference between median incomes for black and white females in general has been considerably less than that for males. Table 2 gives black–white female income ratios by region for females 14 years of age and over in the years 1950, 1960, and 1970. Table 3 gives the same information for males.

TABLE 2
BLACK–WHITE FEMALE INCOME RATIOS

	1950	*1960*	*1970*
Northeast	.84	.99	1.17
North Central	.86	.97	1.17
South	.58	.56	.67
West	.86	.96	1.08

Source: *U.S. Census of Population 1950, 1960, 1970.*

TABLE 3
BLACK–WHITE MALE INCOME RATIOS

	1950	*1960*	*1970*
Northeast	.75	.71	.75
North Central	.81	.76	.79
South	.58	.56	.56
West	.68	.71	.71

Source: *U.S. Census of Population 1950, 1960, 1970.*

Table 2 shows that, except for the South, black females had achieved economic parity with white females by 1970. Moreover, the data shows that black females as a group, except for the South, have had median incomes very close to that of white females for nearly three decades. Black males are *just now* achieving the economic position relative to white males that black females, relative to white females, had achieved in 1950!

The flaw in the "taste for discrimination" hypothesis

These facts call into question most theories of racial earnings differentials, particularly the *relative discrimination* hypothesis. It is argued by Welch that discrimination against the physical labor of blacks was considerably *less* than discrimination against black education.[3] But this hypothesis fails to explain the apparent lack of discrimination against black females. In fact, using the identical methodology utilized by Welch and others, we might conclude that there is *racial discrimination against white female college graduates*. This, according to the prevailing thought, would be the only way to explain the fact that black female college graduates earn higher wages than their white counterparts.[4]

There are at least three important questions that are inadequately dealt with in the racial discrimination literature:

1. Why does the black–white female income ratio rise with increased education while the opposite occurs in the black–white male income ratio?
2. Why do the virtually nonexistent black–white female income differences in the general population not carry over to the males?
3. What can possibly account for the 25 percent income advantage black female *professionals* enjoy over their white counterparts?

Definitive answers to these questions are all but impossible

because only highly aggregated data is available. However, while not able to provide complete answers, empirical evidence tends to weaken some of the usual explanations. These standard accounts range from poor quality education and lower group socioeconomic status to racial discrimination in labor markets. If these factors cause black male income to be significantly lower than that of white males, then how can black females, who presumably share the same environmental background as black males, have incomes that are for the most part *equal or greater* than white females?

Professional occupational distribution is crucial

Some insight into these questions may be obtained if we analyze the racial differences (or the lack thereof) in the professional occupational distribution broken down by sex. How do blacks and whites compare, by sex, within the professions? This is crucial, because:

1. if occupational distributions are similar by race within a sex group, then preliminarily we can attach more significance to the wage discrimination hypothesis, and
2. if the occupational distribution differs by race within a sex group, then one possible explanation of racial income differences may reflect the fact that one group is more highly represented in the higher paying jobs within the professional ranks than the other.[5]

To test for occupational differences, the percentage of persons who are professionals in each occupation was computed by race and sex. Therefore, the basic data unit is, for example:

$$\text{wf} = \frac{\text{total white female architects}}{\text{total white female professionals}}$$

Since the degree of relationship was desired, the Kendall rank order coefficient of correlation was used.[6] The experiment was performed with males and females, by race, across 27 professional classes listed in the 1970 *U.S. Census of Population*.

Statistical test

The Kendall coefficient of correlation (τ) was computed for both male and female professionals. This yielded:

$$\tau_m = 0.6752 \quad (0.001)$$
$$\tau_f = 0.8519 \quad (0.001)$$

Both correlation coefficients were significant at the 0.001 level, but were significantly larger in the case of female professionals. This

means that the *similarity* in distribution among the professional occupations is stronger in the case of females than in the case of males.

A chi-square test was also performed on the data to determine whether a systematic relationship exists between the distribution of blacks and whites in professional occupations.[7] The value of chi-square (X^2) obtained for black and white male professionals was 0.1414. This indicates the absence of a systematic relationship. On the other hand, the X^2 obtained for black and white female professionals was 44.01, and suggests a statistically significant relationship.

These findings indicate that a good part of the income differential between white and black male professionals may lie in different occupational distributions. This would imply income differentials, *even if* the population groups were otherwise equal and treated equally in every respect. For example, the largest category (rank 1) of white male professionals is engineers. This class constitutes 18 percent of white male professionals. But only 5 percent of black male professionals are in this category (rank 7). The largest classification for black male professionals is non-university teachers, which comprises 21 percent of the total. Non-university teachers constitute the second largest class of white male professionals, only 12 percent.

The significance of these distributional differences is seen when we compare occupational earnings. According to the 1970 *U.S. Census*, the median earnings of engineers was $13,149. For non-university teachers, the figure was $8,711. Making the most heroic assumption that blacks and whites earn the same pay within the respective occupations, there would still be significant difference in average black and white male professional incomes. But the median earnings of black male engineers was $10,494—far less than the $13,149 registered by white males. The earnings of black male non-university teachers was $7,777 compared to $8,711 for white male non-university teachers. On the other hand, median earnings for black female non-university teachers ($6,620), exceeded that of white female non-university teachers ($6,369). Appendix A shows all other rankings of male professionals, and further confirms our thesis.

Women: a special case

For female professionals there are entirely different results. Non-university teaching is the largest classification (rank 1) for both black and white female professionals. Forty-six percent of black female and 41 percent of white female professionals are in that category. "Nurses and dieticians" is the second most important grouping among female professionals. It accounts for 18 percent of blacks and

19 percent of whites. Appendix B indicates the rank orders. It shows that black–white female professions are far more similar in their distribution along the occupational structure than are black–white males.

Given the similarities between black and white female professionals, why is the median income of the former 125 percent higher than the latter? The statistics might be interpreted as showing the effect of rural versus non-rural employment and compensation. Blacks as a group are more urban than whites, and urban salaries are higher than rural. That a larger percentage of black female professionals are urban, given a similar professional occupation distribution, could very well account for the income differential. Particularly when we note that teachers and nurses—the most important female employment category—earn higher salaries in metropolitan areas than in non-metropolitan areas.

Investment in human capital

Another explanation relates to human capital investment decisions and skill requirements for different occupations. Let us assume that women invest fewer resources in human capital for reasons that need not concern us here. This implies that the skill level required for the typical "woman's" professional job is lower than that for men. Assume that blacks in general—men and women—also have fewer resources invested in human capital. To the extent that these assumptions accurately reflect reality, the similarity in the incomes of black and white professional women and the dissimilarity in the incomes of black and white professional men cease to be a puzzle. That is, professional blacks of both sexes may have the same level of investment in human capital as white females. Thus racial differences in income would only show up in comparison between black and white *male* professionals. Contrary to popular opinion, there may be very little discrimination by race. The widely publicized differences in black–white male professional earnings would merely reflect discrimination on the basis of skills. Preliminary evidence suggests that this may be the case.

As Table 4 shows, the differences in education (a major proxy for investment in human capital) are considerably smaller when the comparison, by race, is made between female professionals. For example, at higher education levels the difference between black and white male professionals who have completed 16+ years of education is over three times that of the difference between their female counterparts.

There is thus reason to question the standard explanations given

TABLE 4
EDUCATION BY RACE AND SEX

Black Male Professionals	
Median years of education	15.7
Percent having 12+ years' education	87.1
Percent having 16+ years' education	47.7
Black Female Professionals	
Median years of education	16.0
Percent having 12+ years' education	87.7
Percent having 16+ years' education	50.0
White Male Professionals	
Median years of education	16.3
Percent having 12+ years' education	93.9
Percent having 16+ years' education	57.9
White Female Professionals	
Median years of education	16.1
Percent having 12+ years' education	93.3
Percent having 16+ years' education	53.2

Source: *U.S. Census of Population, 1970*: Occupational Characteristics.

for black–white differences in income. Poor quality education, low socioeconomic status of the household, low household resources,[8] are more likely explanations of racial income differences. What remains unanswered is that if these factors explain black–white male income differences, why do black females relative to white females appear to be immune from the deleterious effects of these influences?

RACIAL DISCRIMINATION IN THE LABOR MARKET

A major problem in the analysis of racial discrimination in both the scholarly and popular literature is the inconsistent usage of terms and concepts. This practice results in faulty empirical work and illogical analysis.

Prejudice and discrimination

Joseph E. Stiglitz writes in reference to the effects of the minimum wage, "The employer can, with no economic cost, indulge in his *prejudices*."[9] Kenneth Arrow states, "*Discrimination* means that some economic agent has some negative valuation for B or some positive valuation for W, or both, a valuation for which the agent both is willing to pay and has the opportunity to pay."[10] Says Orley Ashenfelter, "Economists typically avoid analyzing the nature and

determinants of prejudice itself and prefer to concentrate on the analysis of the effects. . . ."[11] Finally, Arrow asserts, "employers *discriminate* against blacks because they believe them to be inferior workers."[12] Each of these statements use the words "discrimination" and "prejudice" interchangeably—but refer to different phenomena. The first quotation of Arrow and that of Ashenfelter imply that discrimination and prejudice refer to the same phenomenon—preferences. Ashenfelter suggests that prejudice is the same as tastes and treats it as a given. Arrow, in a similar fashion, views discrimination as equivalent to tastes. Stiglitz also seems to treat prejudice as a taste. Kenneth Arrow's statements present a problem in that he used the word "discrimination" to denote two *different* phenomena. His first statement treats it as a matter of taste while his second views it as an information phenomenon. In the latter case Arrow suggests that the employer has a subjective conditional probability distribution on the association between race and worker productivity.

Let us now consider a quote from Richard B. Freeman, one that typifies most of the thinking in the racial discrimination literature:

> In this paper I focus on the patterns of market discrimination which, in the framework of the standard economic analysis of discrimination, are defined as differences in the wages, employment, and related job status between similarly situated and able workers that can be traced to prejudiced actions of employers, unions, or consumers. The conceptual experiment which measures discrimination is to change the race (religion, sex, etc.) of the individual and observe what happens to his economic position. A possible practical experiment would be to present employers with a set of job applications from workers that differ solely in, say, their race and find out who would be hired. Discrimination could be inferred from a deviation in the selection process from that predicted by random sampling.[13]

Such an experiment is *not* a reliable measure of the existence or absence of racial tastes that may influence minority employment. The reason is that while the *experimenter* may have reliable information on the productivity of a particular employee, there is no reason at all to believe that the employer is similarly blessed. Even if the applicants have identical credentials by race, there is no reason why employers will *perceive* these credentials as equally creditable.[14]

Operational definitions of discrimination and prejudice

There are three different types of behavior in racial relations. One is preferences, which are human wants and desires that form the basis for choice. People desire many objects which they feel will bring them satisfaction. But there are no objective standards by which we can evaluate preferences, i.e., we cannot say, scientifically, that one preference is "better" or "worse" than another. There are thus no conceptual distinctions among preferences. We cannot say that there is a conceptual distinction, that can be measured scientifically, between a preference for a particular model car among the many models, or a preference for a particular race among the many races. The most that can be said is that *given* a set of preferences, the individual's behavior may or may not be consistent with them: he can optimize, or fail to do so, within some externally imposed resource constraint.

Discrimination itself may be interpreted as a choice based upon utility maximization. *Racial* discrimination may be defined as the act of choice where racial attributes provide the choice criteria. In this interpretation, *racial* discrimination does not differ in any fundamental sense from other kinds of discrimination, e.g., discrimination *in favor of* one type of entertainment and *against* another type of entertainment.[15]

Prejudice is a useful concept if we stick close to its Latin derivation, which means to pre-judge. Economists may usefully interpret prejudiced behavior as *the act of making decisions on the basis of incomplete information. All* people—since they are non-omniscient—are prejudiced in this sense. Prejudice is a continuous variable, not a binary one: people exhibit *degrees* of prejudice.

Different people for different decisions choose to acquire different amounts of information prior to acting. There is a criteria used to determine the amount of information an individual will rationally invest in prior to making a decision: people search for information up to the point where the added cost of another unit of knowledge is just offset by the expected benefits that will be derived from that additional unit.

It is crucial to understand that both the costs and benefits from an additional unit of information vary from individual to individual. On the cost side, economic actors differ in their ability or efficacy in the collection and processing of information. On the benefit side, people differ in their risk averseness and in their subjective evaluation of an additional unit of information, i.e., the marginal rate of substitution between the product of information (increased probabil-

ity of making the "correct" decision) and all other goods is not the same for all individuals.[16]

Therefore, the conceptual experiment suggested by Freeman, cited earlier, cannot be viewed as a reliable measure of the absence or presence of certain racial tastes. In such an experiment it is important for the experimentor to recognize that while *he* may have reliable information that workers are undifferentiated except by race, the employer may not. Even employers with race-neutral tastes have to perceive that certain skills are distributed randomly by race if they are to select employees randomly. To the extent that skills are *not* distributed randomly by race, racial (or sexual) attributes may be employed with some success as an indicator of the productivity level sought by the firm. Using race as a "proxy" for some other characteristic is consistent with preferences that are malevolent, benevolent, or indifferent towards a particular race.

Statistical discrimination

Individual employees differ in their skills, work habits, attitudes, and many other personal characteristics that shape behavior. Employers are responsible for discovering worker productivity prior to and during employment. This may be done, as we have suggested, by selecting some market or non-market attribute as a criteria for estimating potential contribution to output. Unfortunately there do not exist either perfect or costless predictors of employee productivity. As expected, there are costs associated with hiring the "wrong" employee, and there are costs associated with finding the "right" one. Firms will not bear any cost, no matter how high, to find the best employee; they will rationally seek to economize on information costs.

In recent years, several economists, namely, Arrow, Phelps, McCall, Stiglitz, and Spence, have developed models consistent with this discussion.[17] These models constitute what might be called the statistical hypothesis of job discrimination. The most general model of employer choice is the simple adaptive one which assumes a world of uncertainty and costly information. Here the employer may start out with conditional probabilistic beliefs which are race neutral. He randomly chooses employees (grouped by some criteria, say, the possession of a high school diploma) and retains them if, during the trial period, their productivity equals or exceeds a criteria value (x) (Figure 1). However, successive hiring trials provide employers with information about the association between productive capabilities and other attributes including race and sex. As such,

the employer's prior subjectively held conditional probabilistic beliefs are either confirmed or denied. If through successive sampling (hiring) the employer finds that the conditional probability of a candidate's productivity meeting the critical value (x) is related to the race or sex of the candidate, he revises his probabilistic beliefs. His choice criteria are revised such that race (sex, height, accent, and the like) plays a greater role in worker selection.

The suggestion that racial or sexual attributes will be used in worker selection implies by itself nothing about employer racial or sexual *tastes*. It does imply scarcity. Employers cannot be sure of the productivity of a worker before he is hired; moreover, the worker's productivity may not be readily discernible after he is hired. The process of hiring uses resources. In addition, the trial period is costly; it, too, uses the resources of the firm in the form of added supervision, monitoring, and materials. Employers have incentive to economize on all of these costs.

A slight variation of the simple adaptive model of employer choice is the *correlative model*. In this model employers are assumed to possess socioeconomic data about various racial groups in the country and assume a positive relationship between worker productivity and factors such as high quality schooling, absence of a criminal record, reputable references. If, say, blacks as a group attend poorer quality schools, are more likely to have a criminal record, have less reputable references, then the employer will assign a higher conditional probability that a white candidate, rather than a black one, has a productive capacity that equals or exceeds (x).

These models, which can be readily applied to activities other than employment, suggest among other things that:[18] (1) employers will be less willing to recruit at predominantly black schools; (2) employers will tend to require "exceptional" abilities of blacks relative to whites for the identical job; (3) blacks, to become employed, may have to offer a compensating difference in the form of working for a lower wage.

Search vs. experience

We may usefully partition the production of information into two techniques, namely, those which are *search* intensive and those which are *experience* intensive. Pure search refers to choice situations where the relevant information is acquired *prior* to purchase. Pure experience refers to choice situations where the relevant information is acquired *after* the purchase.[19] For most choices the production of information technique embodies elements of search *and* experience. Nonetheless, for the purposes of present discussion, it

may be conceptually useful to think of some choice situations as embodying one technique or the other.

Whether information will be produced by search or experience depends on the cost of one relative to the other. For example, in learning the quality of canned food items, experience (buying, then tasting) may be a cheaper technique to acquire information than search. But in determining the quality of a house for purchase, search (e.g., hiring a construction consultant) may constitute an information production technique that is cheap relative to experience.

The reason for arbitrarily separating the production of information into search and experience elements is that it may permit us to learn about the optimal amount of information produced (or the degree of prejudice) prior to making choices. We ask, then, what is the impact on the production of information of such cheaply observed attributes as race and sex in market activity?

If jobs are listed according to whether information on worker productivity by *experience* is cheap relative to search, they would tend to exhibit the following characteristics:

(a) relatively short term contracts,

(b) relatively small individual worker contribution to total output,

(c) seasonal demand for output whereby employers are frequently in and out of the labor market.

On the other hand, if jobs are listed according to whether information on employee productivity is relatively cheaper by using the *search* technique, they would entail:

(a) relatively large amounts of firm-specific human capital investments,

(b) relatively large individual worker contribution to total output,

(c) jobs with long contracts,

(d) jobs where it is costly to fire the employee.

The job characteristics listed above influence the expected value of making the "correct" decision. For example, the costs associated with hiring a wrong employee may be greater in the case of a long term contract than with a short one. Therefore, we can expect employers to seek greater amounts of information prior to the hiring decision (search) than in the case of short term contracts.

Employee contributions to total output

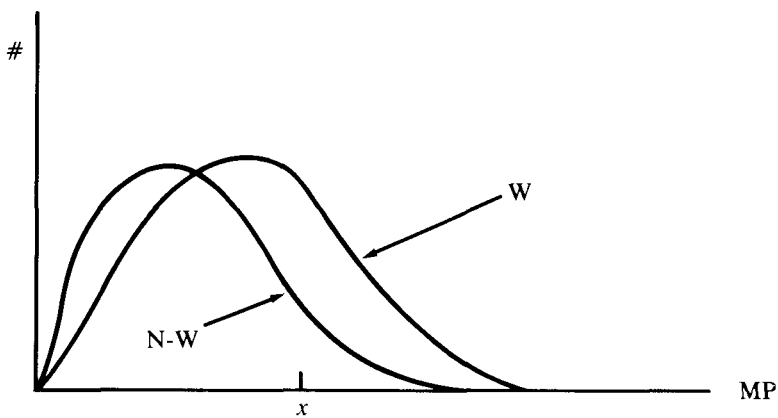
The day-to-day decisions of workers in different occupations have different impacts on the firm's performance. For example, choices

made by a janitor are likely to have a smaller impact on the firm's profit and sales than those of a purchase officer. Therefore, in making hiring decisions, it pays the firm to allot fewer resources to the acquisition of information concerning the work characteristics of the former than the latter. The information production technique in the latter case is likely to be search intensive: the expected loss from hiring the "wrong" purchaser is higher than that from hiring the "wrong" janitor. Therefore, more resources will be expended acquiring information before the hiring decision.

If this line of reasoning is correct, the use of personal physical characteristics such as race (holding employer tastes constant) will play a greater role in hiring decisions where employee contribution to total output is small (the janitor), and the information technique will tend to be relatively experience intensive.

This prediction is not equivalent to predicting fewer non-whites in lower level employment. Nor is the expectation that physical attributes such as race will play a smaller role in higher level positions the same as the anticipation of more non-whites there. Physical attributes may have different values as an estimator of worker productivity. This can be expected to the degree that worker characteristics are not distributed equally by race and sex. Figure 1 makes this point clear. It shows a hypothetical depiction of the distribution of non-white and white productivity.

FIGURE 1



In the figure, the mean white marginal productivity (MP) is higher than the productivity of non-whites. If an employer was

seeking an employee having a productivity of (x), selection of candidates on the basis of race would economize on his search costs because, as depicted, the conditional probability of a white selected having a productivity of (x) is greater than that for a non-white.

Short term work contracts

Some jobs are necessarily short term in nature because of seasonality in product output or unpredictable fluctuations in the demand for the firm's output. There are many jobs which fall into these categories; examples are: some sales clerks, farm workers, stevedores, mail clerks, etc. In fact, there are highly organized markets for temporary workers exemplified by nationwide firms such as Kelly Girl, Manpower Incorporated, etc.

There is one facet of this market that is of particular interest: temporary employment offers the employer an opportunity to test his *a priori* conditional probabilities concerning race (sex) and worker productivity and revise them at relatively low costs. There are important reasons why employers may be more willing to experiment (racially) in the hiring of temporary employees: (1) there are relatively small amounts of firm investment made in a temporary employee, (2) poorly performing temporary employees are more easily fired, and (3) the expected loss from an incorrect hiring decision is lower. Evidence for this kind of behavior is cited by Gary Becker: "There is some evidence that discrimination is less against Negroes in temporary than in permanent jobs, and this may occur because the duration of the contract is less."[20] Our reasoning differs from that of Becker. He attributes the appearance of less racial discrimination against blacks to a *taste* phenomena. We attribute his observation to a *cost* phenomena.

Pure search: sports and academia

Earlier it was suggested that pure search refers to an information gathering technique where employee productivity data is acquired prior to employment. It was also suggested that under this technique, holding tastes constant, physical attributes would play a smaller role as an indicator variable. Perhaps the most obvious example of an economic activity where worker productivity characteristics are acquired prior to hiring is the sports industry. Although nothing in life is guaranteed, in sports such as baseball, football, and basketball there are a series of precise quantitative data whereby individual productivity can be reliably determined. Such data consists of statistics relating to batting averages, yards gained, field goal percentages, and so forth. Only in a few occupations can individual productivity

be so cheaply and accurately estimated before the individual is hired.

Traditionally, sports have been an economic activity which has offered significant economic opportunity for minorities. We suspect that this is related to the information gathering characteristics of the sports industry. Perhaps the most significant aspect is that the employee does not bear the cost of *group* characteristics.[21] In other words, in many activities poor group performance imposes an externality cost on an individual member even though *his* performance is considerably higher than the average. This external cost is created by the conditional probabilistic beliefs of employers, based on group characteristics. But in economic activities such as sports, where information is acquired prior to hiring and productivity is easily measured, the individual is judged more on his own merits and less by attributes of his racial group. Moreover, employers in the sports industry cannot capture monopoly rents on information with regard to employee productivity. Information on worker productivity is freely available to all prospective employers and any such rents would be bid away. In addition, statistical studies conclude that: "Generally, race had no significant impact on salary when considered in conjunction with 'objective' measures of player value."[22]

There are other fields that have characteristics similar to the sports industry. These are, most notably, the academic and scientific professions, where performance in terms of research contributions and publications can be reasonably evaluated before the hiring decision.

The American Council on Education (ACE) has made a massive survey which covered over 60,000 and 42,000 faculty members for the years 1968-69 and 1972-73, respectively, at more than 300 colleges. The ACE data shows that without adjusting for differences in faculty qualifications, the average white male faculty member earned $17,309 compared to a black equivalent of $16,169, a difference of $1,140.[23] However, when a comparison is made which holds academic qualifications constant (the quality of academic degree, number of scholarly publications, etc.), black male faculty members earn *more* than whites. Specifically, blacks with five or more publications earned $1,673 more than their white counterparts.[24]

No doubt, in addition to information production technique and high visibility of output, there are other economic factors that explain minority income parity in activities such as sports and academia. One very important characteristic of the sports industry is that it is very difficult to control access to training. In other fields, incumbent practitioners can readily prevent the acquisition of skills and place barriers to entry. Activities such as medicine, the law, electrical

work, and plumbing, have used union legislation, licensing, and other prohibitions to gain these ends. However, youths cannot easily be prevented from joining neighborhood and high school athletic teams. In addition, one of the most significant inputs to athletic proficiency lies completely beyond the control of incumbent practitioners: to a large degree, sports (and entertainment) skill depends on genetic endowment. Moreover, athletic performance, at least for individual sports, is not as dependent on interpersonal relations as in the case of managers or salesmen. If we are to accept *any* portion of the taste hypothesis of racial discrimination, this is an important factor.

In summing up, one fact stands out in stark relief. In sports and academia, where we can adequately measure those factors that influence income, it turns out that blacks are not as discriminated against as they are purported to be in other areas of economic life. This observation should be a cause of concern to students of racial differences in income. Surely one would not venture to say, in an attempt to save the taste hypothesis, that no distaste for blacks exists among sports and academic personalities. A far more plausible answer is that there may be a significant problem in our estimation procedures which do not permit us to control for human capital quality differences as adequately in other areas of economic life as we can in sports and academia.

MARKET ENTRY BARRIERS AND INCOME DIFFERENTIALS

One fruitful area for the study of black–white income differentials is the analysis of the effects of market entry restrictions. Economic theory suggests that a less preferred worker (the "wrong" race, sex, low skill level) will earn low wages, but there is nothing that can explain his high unemployment rate, for less preferred workers, in the absence of market entry restrictions, can always compete with more preferred workers by offering a compensating difference, i.e., work for a lower wage. The real world phenomena of "last hired, first fired," then, is a reflection of barriers to entry—not of the underlying functioning in the marketplace. We argue that the difference between black and white income is made more significant by market entry restrictions.

The law and minority group welfare

In the discussion of matters concerning equality of opportunity, the distributional impact of various laws is completely omitted by civil rights activists, lawyers, and others. Such an oversight has important

consequences on the advancement of minorities because it is the legal structure, or "rules of the game," that weighs very heavily in determining the outcomes from a given activity. Having argued that the presence of individual racial preferences, *per se*, may well have little to do with the socioeconomic development of non-preferred racial groups, we now show how important is the capacity of the preferred group (or dominant political coalitions) to use the coercive powers of government to subvert the operation of the market in such a way as to redistribute wealth in favor of preferred groups. An implication of this hypothesis is that when the distribution of goods and service is decided by way of the political mechanism as opposed to the market, minorities tend to be worse off. For in the political arena the decision criteria tends to be *majority* rule, and almost by definition where such criteria exists *minorities* are less well off; in contrast, the market mechanism is essentially a one-person one-vote system.

In order to understand how the institutional structure adversely affects minorities, we start with the first fundamental Law of Demand: the lower the price of an object of desire the greater is the quantity demanded or rate of purchase (and conversely, the higher the price of an object the lower is the quantity or rate of purchase). This relationship between price and rate of purchase applies to every good or service. In some markets, the relationship is very complex; but nonetheless, there is always an inverse relationship between price and quantity purchased. We must recognize that the legal structure can (and is in fact designed to) render some activities more costly than others in order to achieve some goal. For example, traffic laws and their associated penalties are designed to raise the price of reckless driving, hence reducing this activity. Here the relationship is easily seen; but in some activities, to which we now turn, the relationship is less obvious.

The Davis-Bacon Act

The Davis-Bacon Act was enacted in 1931 for the purpose of protecting local wage rates on federal construction projects from competition with lower wage non-union labor. The Act required that all workers on federal construction projects be paid in accordance with local prevailing union wages. Concerned about the tendency for non-union and non-local constructors to under-bid contractors in high wage and highly unionized areas, the proponents of this Act argued that successful bidders often imported labor from the South and other low wage areas, thereby producing unemployment and lower wages in high wage areas.

One effect of the Davis-Bacon Act was to discourage non-union contractors from bidding on federal projects. This was because of the pay differential problems that would result if non-union employees on federal projects received high wages while others, equally skilled, were given lower pay on private jobs. To the extent that non-unionized contractors are discouraged from competition on a substantial part of federal construction, it has economic consequences for minority workers and younger workers who are more likely to work in the non-unionized sector of the construction industry.[25] Furthermore, the high wage levels required by the Davis-Bacon Act discourage the usage of apprentices and other low skilled people on federal construction projects. This counters the federal government's efforts to train minorities through manpower training programs.[26]

It is clear that this discriminates against the most marginal workers.[27] Suppose that this method of wage determination results in electricians being paid $10 per hour on a particular federal construction project. Assume further that black electricians in the area are on the average less skilled than whites. It is easy to see that contractors, given the requirement that they pay $10 per hour, have strong inducement to hire only the most skilled. If they *have* to pay $10, they might as well get $10 worth of work. Thus, even if they are race neutral, they will hire only whites. The black electricians, if they are to work at all, will have to go to another sector where they can earn $4 per hour, for example.

Suppose in absence of the Davis-Bacon wage requirement the market clearing wage on the federal construction project would have been $6 per hour for low skilled electricians and $8 per hour for the higher skilled. Clearly this set of alternatives would produce higher income earning alternatives for black workers, and hence the income differential between black and white workers, though still positive, would have been less.

National Labor Relations Act

The basic statute controlling the conduct of labor relations in the U.S. today is the amended National Labor Relations Act (NLRA). This is popularly known as the Wagner Act, which has been amended by the Taft-Hartley and the Landrum-Griffith Acts. Essentially, the National Labor Relations Act gives a union representing the majority of employees the right to negotiate the terms and conditions of employment for all. Unions are interested in improving the attractiveness of employment for their members. However, when they succeed, they also improve the attractiveness of that job to non-

members. Methods are therefore devised to restrict entry. In most cases unions cannot control the number of people who learn a particular skill, but they can control the number of workers who are admitted to the union. Such a restriction will be effective if an agreement can be obtained to limit employment to those who are either referred by or acceptable to the union. One of the most effective ways that unions control entry is through state licensing regulations. Here a law is passed whereby a person can practise the trade only if he has a licence. State licensing boards consist mainly of incumbent practitioners or people recommended by them, who have a vested interest in reducing the number of entrants so that they do not pose an economic threat.

Minimum wage laws

For most labor service transactions the minimum wage that can be paid is specified by law. However, while the government specifies the minimum price at which employment can take place, it does *not* require that the transaction itself be made. Implementation of a wage that exceeds that which would obtain in the marketplace (based on the productivity of a given worker) has highly predictable effects: employers will make changes in the quantity and quality of labor hired. This will produce gains for some workers at the expense of others. The most adverse effects will be felt by the marginal workers. For example, if a wage of $3.30 per hour must be paid, who will the firm hire? Clearly the answer in terms of economic efficiency is to hire those whose productivity is above, or closest to, $3.30 per hour. Even if the firm were willing to train a worker whose output was $1.50 per hour, the minimum wage makes doing so an unattractive proposition.

The racial effect and other distributional effects of the minimum wage law can be brought into sharper focus if we look at the demographic composition of the workers who tend to have the lowest skills. In such a pool, youths, because of inexperience and immaturity, are disproportionately represented. Black youths, with the added burden of past discrimination, are particularly hard hit. Also heavily represented among marginal workers are the uneducated, women, and the handicapped. It is no accident that these groups are also the most disproportionately employed. Whether there is a "plot" or not cannot be fully discerned. But the clear result of the minimum wage law is a lowered probability that marginal workers will be hired. As late as 1948, black youth labor market participation was higher than that of white youths and their unemployment rate was less. But with each and every increase in the level and coverage of the minimum

wage law, that picture has changed. Now the very opposite is the case.

A more sinister motivation behind the minimum wage law unfolds when we realize that labor unions are the major advocates. Why do they support the minimum wage law when their members earn wages that far exceed the legal minimum? It is no accident that in many respects low skilled labor is a substitute for high skilled labor. Consider the following: suppose that a widget could be produced by either using three low skilled laborers or one person with high skills. Further, let the wage of the former be $13 per day and that of the latter $38 per day. Obviously, if the firm were to minimize cost, it would hire the high skilled worker since it could produce a widget for $38. (It would cost $39 if it were to use the low skilled technique.)

Suppose, now, that the highly skilled worker were able to use his influence in government to exact a minimum wage of $20 per day in the widget industry. He would of course argue the case on moral grounds such as "living wages," "fairness," and/or "worker exploitation." Now, after the minimum wage law is passed, he could demand $59 and still retain his job because the cost of using the low skilled workers to produce the widget would be $60. Without the passage of this law, any such demand would be summarily rejected, since the low skill technique would cost only $39.

Such a tactic was used by white racist unions in South Africa to drive out black construction workers who were competing for jobs. The tactic is effective because, remembering the Law of Demand, the minimum wage law raises the cost of hiring a relatively non-preferred worker.

True, not all minimum wage advocates are quite so cynical. Many people favor this law for "good" reasons. But intentions, no matter how well motivated, can never guarantee results. In much the same way the Law of Gravity operates in an identical manner whether a person voluntarily jumps or merely trips from a tall building. The net effect is the same.

Licensing

Many businesses such as interstate trucking, taxi-cabs, and others, require that the would-be entrant receive prior permission to practise from a state licensing board or an association of incumbent practitioners in the trade. In these licensed fields, the practitioners either directly or indirectly control the licensing board. Incumbents, it will be apparent, have a vested economic interest in reducing their numbers in order to protect their incomes. In the interstate trucking industry, for example, one must obtain a licence from the Interstate

Commerce Commission (ICC) in order to be a common carrier. Needless to say, there are very few blacks that have such a licence.[28] In most cities, in order to own and operate a taxi-cab, one must either have a city permit or buy a medallion for each vehicle. In New York this privilege sells for $65,000; in Chicago, $40,000; in Baltimore, $30,000. The result is that blacks as a percentage of the population own relatively few cabs in these cities. In contrast, in Washington, D.C., where there are no such high requirements for entry, black ownership is higher.[29]

The practice of licensing has adverse effects on poor people, latecomers to the activity, and those without much political clout. Blacks are highly represented here. In other words, licensing requirements force people to meet extraneous factors or conditions in order to be successful in business. This is particularly unfortunate because these are areas where the capital costs of business entry are relatively low. There would be far more black businessmen in these industries were it not for the entry restrictions.

The answer, in these and other problems afflicting minorities, is *not* to turn to the government for redress. We must realize that statist institutions are the *problem*, not the solution. The best safeguard for blacks and other minorities is the free market, not government intervention. Asking for further constraints on voluntary exchange is the very opposite of what is needed.

If the union did not control job entry, for example, then whether it discriminated or not would be almost irrelevent to minority interests. Union discrimination against minorities could best be rendered harmless if they were not allowed to decide who gets a job in the first place. The courts have sought to remedy both job and union discrimination by requiring so-called "objective" qualification tests and affirmative action. Although they appear "fair" on the surface, worker competency standards are no talisman, as many people believe. *No worker is unqualified or qualified in an absolute sense.* Qualified or unqualified can only have meaning in a relative sense, that is, relative to some wage. There is no objective way of deciding who is qualified or unqualified. It is a decision that should be left up to buyer and seller.

I conclude that attention needs to be refocused away from racial discrimination, *per se*, and toward the statist institutional mechanisms in our society that make racial discrimination more probable and more costly to minorities. We must instead look to those market mechanisms that reduce adverse distributional effects to disadvantaged people.

AFFIRMATIVE ACTION AND EQUALITY OF EDUCATIONAL OPPORTUNITY

Higher education and minority opportunity

Ethnic minorities have suffered past and present inequities that impede their ability to compete effectively in the marketplace. However, no specific remedy—either public or private—logically follows from this insight. The danger, in matters of this sort, is to assume that effective policy springs naturally from good intentions. It does not. Effective policy to improve the socioeconomic status of minorities requires dispassionate analysis. We must first understand the causal elements accounting for the present state of affairs and as well have a realistic assessment of the costs and benefits of any given remedy.

One policy often suggested for minority economic growth is higher education. For the large part, educational services consist of the development of human labor resources. This investment in *human* capital[30] has essentially the same effect on income as investment in *non-human* forms of capital. Both forms offer the promise of increasing the productive powers or the earning capacity of the entity in question. Humans acquire education of various forms in order to enhance their future productive capabilities.[31]

For some minorities, such as persons of Jewish ancestry, the problem associated with the acquisition of higher education has been one of racial/religious discrimination at the college level. For others—such as blacks, native peoples, and Spanish speaking persons—the difficulty has been more complex. Involved are limited educational values, very poor quality primary and secondary education, and widespread racial discrimination. These factors produce a quite different set of circumstances for blacks *vis-à-vis* Jews. For Jews, eliminating racial discrimination at the college level alone was sufficient to permit the development of human capital. But for blacks, a more involved policy is required.

Quality of black education

The California Achievement Test (CAT) taken by Philadelphia's elementary and secondary school students points out the deplorable state of affairs in the black community, and there is evidence that suggests that the problem is not limited to Philadelphia but is prevalent in most, if not all, U.S. major metropolitan areas. In predominantly black high schools—such as Germantown, Penn, Gratz, Franklin, and Overbrook—no more than 19 percent of the students could read at or above the national norm.[32] In two of these schools no more than 5 percent of the student body could read at the national

norm. In each of these two, three-quarters of the student body were reading at a level that would place them more than five years behind the average student in the United States. The academic standards at the primary school are just as deplorable.

While there are those who question what test scores measure, they nonetheless indicate the presence or absence of the skills necessary for success in this society. They are fairly good predictors of the same. More importantly, test scores indicate that increasing the number of blacks who receive a higher education is a deeper problem than mere attention to admissions policy at the college and professional school level. The difficulties faced by black aspirants to higher education are not of the kind that are solved by affirmative action legislation or by a change in the "hearts and minds" of college admissions boards.

Affirmative action admissions policy

While deans, chancellors, and personnel officials struggle with the various commands and guidelines from governmental agencies on college admissions and hiring policies, minorities should question their own long run welfare as opposed to the short or long run interests of the institution. Such questioning should focus on quotas of various kinds. Meeting governmentally sponsored quotas, or at least going through "good faith" motions, clearly benefits the university or college. It avoids the ire of government and this enables the college to keep or acquire additional federal funds. But this is *not* consistent with the long run interests of minority group members themselves.

Qualification for college work depends upon the standards and degrees of selectivity that a particular college has traditionally maintained. The over 3,000 American and Canadian colleges have a range of academic standards that will accommodate at least 60 to 75 percent of high school graduates. On the other hand, there are a handful of colleges where only the top 5 or 10 percent of high school graduates can reasonably be expected to succeed. Few high school graduates of *any* race or socioeconomic status are adequately qualified to succeed at colleges such as MIT, Harvard, University of Toronto, or McGill. Failure to take this into account, and considering only the relative absence of blacks on a given college campus, can produce disastrous consequences. If black students are shoved into this situation, a group of proud young people will be placed in an educational environment in which they are obviously academically inferior. The effect is to enhance feelings of inferiority and reinforce racial stereotypes held by other (white) students and educators. The large

ability difference can spark the causal link from frustration to aggression as we have seen on many campuses of top academic institutions.

Crash recruitment programs also result in the deterioration of quality standards. This may take several forms. Faculty members may be pressured, informally, to assign grades on the basis of skin color rather than performance or there may be an evolution of substandard courses designed for black students. This has two undesirable consequences. First, the student who is under-prepared receives erroneous signals as to his competency *vis-à-vis* his competitive counterpart. Secondly, it demeans the accomplishments of black students who in fact achieved by merit. It also contributes to racial stereotypes for white students who are by and large aware of such practices when they exist.

The results of poorly formulated minority educational policy can be costly in other ways, particularly when black is interpreted as synonymous with incompetency. This can be seen by the following report. A medical professor at Harvard University questioned a policy at that medical school which attempted to redress past social inequities by lowering performance standards for blacks. On the day after this story was reported in the media white patients began to refuse to be examined by black medical students.[33] No doubt such episodes can be in part traced to an admissions target goal policy of 20 percent minority students in each medical freshman class. Such a policy resulted, last year, in the admission of five minority students with Medical College Admission Test (MCAT) scores in the mid-400s out of a possible 800. The average MCAT score at Harvard University is considerably higher (it averages in the mid-600s).[34] The tragedy of such a set of circumstances at Harvard and elsewhere is not that it permits a few incompetent black doctors to practise. The real tragedy is that it lowers the market value of medical degrees held by *competent* black doctors. This effect is independent of possibly benign intentions of such an admissions policy. We live in a world of racial stereotypes, and there is no cheap way of distinguishing between those blacks who achieved their positions through merit and those who were just passed along in the name of social equality.[35]

The hard fact of life is that it takes many years for any individual to develop the set of skills and aptitudes that will make him a successful college student or professional school candidate. The formulation of these skills starts during the pre-school years. There is no known way to bring a student, who is already college age, with a Scholastic Aptitude Test (SAT) score of 300, up to the level of a student with a SAT of 500 in the space of a year or two. In fact I would venture to say that if one deliberately set out to sabotage achieve-

ment by blacks, he could not design a system more effective than affirmative action for the accomplishment of his goal.

Educational vouchers

Instead of a primary emphasis on school integration as a policy to boost black academic achievement, what is needed is a mechanism whereby schools and parents can effectively meet the educational requirements of students having a variety of backgrounds and goals so as to maximize academic potential. Parents and students should be able to tailor education to their individual needs.

Many proponents of educational vouchers recognize that there is merit to the public financing of education. But this does not necessarily imply public *production* of education. There are gains to be made in terms of accountability, efficiency, and consumer sovereignty if the state monopoly on public education is eliminated. Under the unregulated version of the voucher plan, the state would continue to finance education, but disbursements, on a predetermined per pupil basis, would be made directly to parents in the form of a voucher that can only be spent on education. Parents would then be free to select their children's schools. Schools would be able to charge what the market will bear.[36]

Some of the advantages of the voucher plan can be seen when we evaluate the present alternatives for parents dissatisfied with the quality of education received by their children. Under the current system, parents who believe that their children are receiving an inferior education can air their grievances to the local school board or state lawmakers. If dissatisfied with the response, they can organize politically to try to unseat these lawmakers and school administrators. These tactics, however, require not only sophisticated political skills but also entail large organizational costs in the form of money, time, and effort. A coalition large enough to force a change in the local school board must be formed. In contrast, under the voucher proposal, the *individual* parent can take effective action on behalf of his child by placing him in another school.[37] To take this action under the present system requires that the parent must change his residence to an area having higher quality schools. Or else he can enroll his child in a private or parochial school. But then he must pay tuition at the latter in addition to paying property taxes to support the local school that he finds undesirable.

Another advantage of the voucher plan is that it would introduce variety to education which is needed if children of various backgrounds with different learning handicaps are to be effectively educated. At present most school curricula are administered by a

remote central authority, permitting little scope for significant tailoring to meet special needs. The voucher system, by fostering competition among schools, would introduce variety into the system. It would also give school administrators greater selectivity over the character of their student bodies. Currently, most schools in inner city areas must accept too many students who are so openly hostile to the educational process that they effectively prevent it from occurring. Under a voucher system administrators would be able to expeditiously (as Black Muslim and parochial schools do) expel such students or not admit them in the first place. And to the extent that schooling would remain compulsory up to a certain age level, there is the expectation that special schools would evolve to meet the needs of students with severe disciplinary problems.[38]

There are several criticisms of the voucher plan. Some say that parents are not competent judges of education for their children. Others say that a voucher system would lead to increased racial homogeneity in schools.[39]

There are those who advocate a radical return to free market institutions, where education would be bought and sold without any government involvement at all, in much the same way as music or language (Berlitz) lessons are now arranged.

The voucher system presented here is not a Utopia which will solve every conceivable problem. But it will be a substantial improvement over the present system of education confronted by most blacks.

University employment

Affirmative action in hiring means different things to different people. For some it means that hiring decisions should be made without regard to race, religion, or sex. It can mean a quota system where the work force consists of a racially representative sample of the country's population. To others affirmative action requires that firms systematically seek out and favor minorities, i.e., engage in preferential hiring. In each case the test of good faith by employers and universities is the *number* of minority people hired or admitted as a percentage of the population. In other words, affirmative action is a results-oriented policy. Poor results imply bad faith. But this is completely invalid, unless skills, tastes, and attitudes for various jobs and other economic activities are distributed in proportion to population percentage. Only in such a case would the number of minority members be the same in any given activity as they are in the population at large, in the absence of discrimination. But it seems rather unlikely that skills, tastes, and preferences for any activity are

distributed exactly in proportion to a group's percentage in the population.[40] Affirmative action, then, has ignored basic group differences.

Let us ask what affirmative action has meant for blacks and females on college faculties. One way of answering this question is to compare the number of blacks and females on college faculties in 1968-69 and the same in 1972-73 after the establishment of the U.S. Revised Order No. 4 in 1971, which required goals and timetables for increasing minority faculty.[41] The American Council on Education survey mentioned previously serves as a useful data base. The ACE data show that the percentage of black academics rose from 2.1 percent in 1968-69 to 2.9 percent in 1972-73. Female participation on campus increased from 19.1 percent in 1968-69 to 20 percent in 1972-73. These changes are hardly revolutionary. The evidence shows that minority gains occurred mostly as a result of the breakdown of blatant racial discrimination resulting from the enactment of the Civil Rights Act of 1964 and not the affirmative action policies of the Nixon administration. Data also show that black Ph. D.s are being fully utilized.[42] The tragedy of the matter is that if colleges and universities hired *every* black Ph. D. in the United States, active or retired, living or dead, there would be less than three black faculty members per college in the United States.

ACE data show a black–white faculty differential of $640 per year for 1972-73 in favor of whites ($16,307 compared to $16,667). But holding the quality of the degree and the number of publications in professional journals constant, *black academics earn more than white academics*. That is, black academics who have published five or more articles earn about $3,000 per year more than their white counterparts. Blacks who do not have publications and are otherwise undistinguished earn less than their white counterparts. If these last observations can be attributed to the pressure of affirmative action, it suggests that the program helped those blacks who needed help the least.

Employment in construction

The construction industry has been another focal point for affirmative action programs. The U.S. Office of Federal Contract Compliance (OFCC) is the agency charged with ensuring affirmative action in the construction industry and elsewhere. Evaluations of programs designed to increase the share of jobs held by blacks in the construction industry show that the results have been meagre. For example, it is reported that the share of blacks in skilled construction employment has increased, but the programs have not assured that

blacks will become a permanent part of the work force through union membership.[43] Hammerman, on the basis of EEOC data has shown that there has been little increase in minority membership in most skilled crafts at the national level.[44] Mattila and Mattila reported in their study of electricians and plumbers—who are under great pressure in most cities due to the nearly complete absence of blacks—little evidence of an increase in the number of minority craftsmen.[45] A number of other professional studies of the construction industry reach similar conclusions, namely, that affirmative action has not increased employment opportunities significantly.[46]

At least in the colleges and in the construction industry, affirmative action has produced results that can hardly be called significant. But its primary achievement thus far has been to split the traditional coalition between Jews and blacks and give the false impression that those hard-won achievements by blacks came through gifts, not merit.

APPENDIX A**
BLACK/WHITE MALES RANKED BY PROFESSION OCCUPATION

Rank	*Black*	*%**	*White*	*%**
1	Non-University Teachers	0.21	Engineers	0.18
2	Professional Workers (allotted)	0.10	Non-University Teachers	0.12
3	Engineering Technicians	0.09	Engineering Technicians	0.10
4	Writers, Artists, Entertainers	0.08	Writers, Artists, Entertainers	0.08
5	Social Workers	0.06	Accountants	0.078
6	Engineers	0.05	Doctors, Dentists	0.07
7	Religious Workers	0.05	University Teachers	0.05
8	Doctors, Dentists	0.04	Professional Workers (allotted)	0.04
9	University Teachers	0.04	Lawyers & Judges	0.04
10	Accountants	0.04	Religious Workers	0.03
11	Personnel & Labor Relations Workers	0.04	Computer Specialists	0.03
12	Health Technologists	0.03	Personnel & Labor Relations Workers	0.03
13	Nurses, Dieticians	0.02	Life & Physical Scientists	0.027
14	Computer Specialists	0.02	Technicians (Non-Health, Eng.)	0.02
15	Life & Physical Scientists	0.02	Social Workers	0.01
16	Voc. & Ed. Counselors	0.02	Social Scientists	0.01
17	Lawyers & Judges	0.01	Research Workers	0.01
18	Technicians (Non-Health)	0.01	Operations & Systems Researchers	0.01
19	Research Workers	0.008	Health Technologists	0.01
20	Social Scientists	0.008	Architects	0.008
21	Librarians	0.006	Voc. & Ed. Counselors	0.008
22	Architects	0.005	Nurses, Dieticians	0.007
23	Operations & Systems Researchers	0.005	Foresters & Conservationists	0.005
24	Mathematical Specialists	0.003	Librarians	0.004
25	Foresters & Conservationists	0.003	Mathematical Specialists	0.003
26	Farm Management Administrators	0.001	Farm Management Administrators	0.003
27	Home Management Administrators	0.00007	Home Management Administrators	0.00005

*Rounded percentage of total professionals within race.

** Adapted from the *U.S. Census of Population, 1970*: Occupational Characteristics.

APPENDIX B**
BLACK/WHITE FEMALES RANKED BY PROFESSION OCCUPATION

Rank	*Black*	*%**	*White*	*%**
1	Non-University Teachers	0.46	Non-University Teachers	0.41
2	Nurses, Dieticians	0.18	Nurses, Dieticians	0.19
3	Professional Workers (allotted)	0.08	Writers, Artists, Entertainers	0.05
4	Social Workers	0.06	Professional Workers (allotted)	0.05
5	Health Technologists	0.04	Accountants	0.04
6	University Teachers	0.02	Health Technologists	0.04
7	Accountants	0.02	University Teachers	0.03
8	Librarians	0.02	Social Workers	0.03
9	Writers, Artists, Entertainers	0.02	Librarians	0.02
10	Personnel & Labor Relations Workers	0.02	Personnel & Labor Relations Workers	0.02
11	Voc. & Ed. Counselors	0.01	Doctors, Dentists	0.02
12	Engineering Technicians	0.01	Engineering Technicians	0.02
13	Computer Specialists	0.007	Computer Specialists	0.01
14	Doctors, Dentists	0.005	Voc. & Ed. Counselors	0.01
15	Life & Physical Scientists	0.004	Research Workers	0.007
16	Research Workers	0.003	Life & Physical Scientists	0.006
17	Technicians (Non-Health, Eng.)	0.003	Religious Workers	0.006
18	Social Scientists	0.003	Social Scientists	0.005
19	Religious Workers	0.003	Engineers	0.004
20	Mathematical Specialists	0.002	Technicians (Non-Health, Eng.)	0.004
21	Home Management Administrators	0.002	Lawyers & Judges	0.003
22	Engineers	0.002	Mathematical Specialists	0.003
23	Lawyers & Judges	0.001	Operations & Systems Researchers	0.002
24	Operations & Systems Researchers	0.001	Home Management Administrators	0.001
25	Farm Management Administrators	0.0004	Architects	0.0004
26	Architects	0.0003	Foresters & Conservationists	0.0004
27	Foresters & Conservationists	0.0002	Farm Management Administrators	0.0003

*Rounded percentage of total professionals within race.

**Adapted from the *U.S. Census of Population, 1970*: Occupational Characteristics.

Chapter 3

Economic Intervention, Discrimination, and Unforeseen Consequences

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Government intervention in such issues as human rights, discrimination, affirmative action, equal pay for equal work is commonly seen as productive, efficient, and just—in a word, as on the side of the angels. On the other hand, businessmen, employers, the marketplace, the profit system, are often viewed as the "devil" in the scenario as far as racial, sexual, and other prejudices are concerned. Evidence cited for these evaluations are black–white and male–female earnings differentials, discriminatory behaviour on the part of private employers, and the widely trumpeted good intentions of those charged with administering human rights programs. The government, in short, is seen as part of the solution to the predicament of minorities; the private sector is viewed as part of the problem.

Yet at least with regard to several well-known and highly acclaimed public sector initiatives, this conventional wisdom is suspect. To show this, we will consider the argument that affirmative action, equal pay for equal work, and various anti-discrimination measures have boomeranged: although specifically created to help people who have been the object of discrimination, they have had unintended and negative consequences. We shall also deal with such programs as minimum wage laws, anti-usury provisions, zoning, and rent control legislation. While not purposefully aimed at alleviating minority group suffering, these have, nevertheless, had the very opposite results from those intended, and the ills have particularly focused on societies' most downtrodden minority group members.

MINIMUM WAGE LAWS

The avowed intention of minimum wage laws is to raise the wage levels of workers at the bottom of the employment ladder. Instead, the actual effect of such legislation has been to cut off the bottom few rungs of this ladder, thus making it far more difficult for lesser skilled workers to achieve high or even moderate-paying jobs.

The explanation for this is straightforward. If, for example, the law compels that a minimum of $3.25 per hour be paid, the employer will suffer grievous losses if he hires a worker with a productivity of, say, $1.25 per hour: the firm will have to forfeit the $2.00 per hour differential between the $3.25 it must pay and the $1.25 value it receives. Naturally, under such circumstances, the employer will be extremely reluctant to hire such an employee. And the fate of low productivity workers is thus clear—unemployment.

Without the minimum wage law, such a worker could be *employed* at $1.00 or $1.25 per hour, and not *unemployed* at the relatively exalted wage of $3.25—where his actual earnings are, of course, nil (excluding unemployment insurance). Worse, he is thus precluded from learning the skills necessary to command entrance to the higher wage brackets. Under this law, the worker must already be worth $3.25 per hour or more to be employed at all. Thus the minimum wage law cuts off the bottom rungs of the employment ladder.

Compensating differentials

What does this have to do with discrimination against racial and other minorities?

Let us assume (1) a minimum wage level of $3.25 per hour, (2) two young lads—one white, one black—each with productivity of $3.25 per hour, competing for the same job, and (3) a white employer prejudiced against hiring blacks. Under such, perhaps typical, circumstances it is easy to see that the white lad will easily be able to out-compete the black for the job. The two prospective employees are economically indistinguishable, and the employer can indulge his taste for discrimination at no cost to himself.

In the absence of the minimum wage law, however, the traditional economic weapon of the downtrodden can come into play: his willingness and ability to accept a lower wage offer. If the white youngster insists on $3.25 per hour, but his black competitor is willing to work for only $3.10, $2.50, or $1.90 per hour, or even less, then it is not at all clear that the white will be hired, even by an employer prejudiced against blacks.

More realistically, and unfortunately, the sad fact is that the productivity of the white youth is likely to be greater than that of the black. The reasons for this are well known. They include differential educational, cultural, and motivational backgrounds, as well as preparation, related work skills, breakdowns of the family unit, and a host of other unquantifiable phenomena.[1] But the effects of the minimum wage law are painfully obvious: if the average productivity of white youth is, say, $3.25 per hour compared to $3.00 per hour or less for black youth (each with some variance), and the law requires that no less than $3.25 be paid in wages per hour, it is easy to see that the black youth will less likely be hired than the white. And this result stands even on the assumption that all employers are "colour-blind" (i.e., they seek only to maximize profits). For the law penalizes employers who hire black youngsters (their expected loss is 25 cents per hour) relative to those who hire whites (no expected loss in this numerical example).

The statistical record more than bears out the contention that the minimum wage law creates teenage unemployment for both whites and non-whites, but especially for the second group. In 1948, for example, when the effective minimum wage rate was much lower, and when racial prejudice was more widespread, marked, and virulent than today, white teenage unemployment in the U.S. was 10.2 percent, while *black* teenage unemployment was only 9.4 percent. Today, in a much less discriminatory epoch, but where teenagers are "protected" by a more stringent minimum wage law, white youth unemployment is 13.9 percent, while black youth unemployment is an astounding and shameful 33.5 percent.[2]

EQUAL PAY FOR EQUAL WORK

There are important implications to be drawn from this insight relevant to the spate of laws now being enacted and implemented in Canada and the U.S. known under the generic term "equal pay for equal work."[3] Although such interferences with the market economy are usually intended to benefit women, analysis of such laws can be applied to blacks, native peoples, francophones, or, for that matter, to redheads.

An essential point brought forth in the previous discussion was that the downtrodden group had one ace-in-the-hole: the ability to work for a lower wage than everyone else. Although perhaps the object of scorn, derision, and hatred, the minority member was able to claw his way back into economic respectability because he was so eminently *employable*; his willingness to work for less made him an

economic attraction even to those most prejudiced against him.[4] Take this one advantage away, and he would have been at the mercy of those whose greatest pleasure consisted in his discomfiture.

But this is precisely the effect of "equal pay for equal work" (EPFEW) legislation. Although conceived with perhaps the best intentions, such laws banish, at one fell swoop, the ability of a group, in this case females, to counteract the economic discrimination they may suffer in modern society. The harm to the cause of women is immense, for EPFEW does not require that women be hired. It only mandates that *if* a woman is hired she be paid the same as men of equal productivity. But what good is a law that can push female unemployment rates up through the roof while ensuring "equal pay" for jobs they don't have and will not be able to attain?[5] EPFEW legislation will create a field day for those who wish to drive women "back into the kitchen." Feminists support this only at the risk of whatever economic gains women have made in recent years.

Perhaps the starkest example of the operation of this particular economic law occurs in South Africa. In that racist society, job reservation laws are presently on the books, which, as the name implies, specifically reserve certain occupations for certain races. That is, the law compels that there be "white jobs," "black jobs," and so on.

But white racist labour union leaders, the beneficiaries of such legislation, are actually on record expressing a willingness to have job reservation laws abolished—*provided EPFEW laws are substituted in their place*.[6] With friends of EPFEW legislation such as Arrie Paulus, the head of the South African (whites only) Mine Workers Union, it surely needs no support of feminists.

Arbitrariness

Another difficulty is that "equal opportunity" is a subjective, not an objective, phenomena.[7] Women do not come equipped with a little tag which indicates their productivity, once and for all, in a manner from which no dissent is possible. (Nor, of course, do men.) Productivity, rather, is a continually changing phenomena which varies with, for example, education, intelligence, age, experience, presence or absence of complementary factors of production, which can only be partially quantified, as well as with such factors as motivation and determination, which are completely incapable of exact measurement.

Productivity must be estimated (or guessed at) by entrepreneurs, who do so every day, and lose money for each mistake they

make. They are far more able to make such determinations accurately than are judges and juries who have little experience in this endeavour, and risk no personal funds if they err. Since they assume that productivity measurements are easily ascertainable, EPFEW laws are at variance with the facts. They are thus incapable of fair and non-arbitrary implementation.

The earnings gap

This is not to say it is completely implausible to support the position that EPFEW laws are required. There is ample evidence to suggest that male and female compensation and promotion rates differ. For example, the overall female/male wage ratio for all employees in Canada was .485 in 1979. That is, females, on average, earned only 48.5 percent as much as males.[8] The question is whether or not this reflects an inherent problem in the labour market. The proponents of EPFEW apparently think so. But it is an error to conclude, from such information, that the state of affairs is a result of conscious and hostile human design (i.e., employer discrimination against women), that this is disgraceful and unfair, and that therefore a determined effort on the part of government is required to "right these wrongs." Consider, in this regard, the statement of no less an authority than Dr. Ratna Ray, Director, Women's Bureau, Labour Canada:

> Of our three-part series—*Facts and Figures*—this part is the most critical, because it shows the *patterns* of earnings in the Canadian labour force. Readers will soon notice that women's earnings are still lagging disgracefully behind in a society in which "How Much Is That Doggy In The Window" pretty well rules our lives.
>
> Economic self-sufficiency for women? "We've only just begun!" Despite sporadic progress, there's a long way to go. Canadian employers, economic planners and decision-makers should take a long hard look at these figures. Because they tell a shocking story, a story of shortsightedness and languorous efforts towards the utilization of human resources in the workforce. Our publication comes hard on the heels of the National Council of Welfare's report *Women and Poverty* which concludes that "After fifty years or so of unpaid, faithful service a woman's only reward is likely to be poverty."[9]

Such an interpretation, no matter how widespread, is far from proven.

The difficulty is that there are several alternative hypotheses

which can explain why women's wages, incomes, and salaries lag behind those of men. When these are acknowledged, it is no longer necessary to resort to discrimination on the part of the employer, business prejudice, or "capitalism," as explanations for the male/female earnings gap.

Men and women differ in a wide range of economic, educational, and sociological characteristics, each of which exerts an independent effect, raising expected male incomes and reducing expected female incomes. For example, working men tend to be older[10] than women, more highly concentrated in the higher paying professions,[11] more heavily unionized in the highly skilled and legislatively protected blue-collar industries,[12] and tend to work, to a greater degree, on a full-time, full-year[13] basis.

Corrections in the estimates

Not unexpectedly, when female/male income comparisons have been corrected for these factors, the ratio tends to rise. If working women are assumed to retain their own income levels, but to take on the same age pattern as working men, the female/male income ratio rises from .485 to .521; if we assume that females are divided among elementary and university teaching in the same manner as males, the ratio increases from .743 to .814; if the female/male income ratio is corrected in a similar manner for full-year or part-year status, it increases from .528 to .575. See Table 1.[14]

As important as these variables are, the strongest determinant of the so-called male/female earnings "gap" is none of these things. Rather, it is marital status, and the asymmetric effects of marriage on male and female earnings. That is, marriage increases male earnings, and reduces female earnings.[15]

This occurs for many reasons. Wives, to a greater degree than husbands, take on a higher and disproportionate share of childcare[16] and the housework and homemaker tasks.[17] They are more likely to quit their jobs if their partner receives a better job elsewhere,[18] to interrupt their careers for domestic reasons,[19] to place their homes and families ahead of their jobs or professions,[20] and even to purposefully attempt to keep their earnings below that of their spouses.[21] It is impossible to quantify the effects of such phenomena in driving a wedge between married male and female incomes, but there is little doubt that they are important.

The asymmetrical effects of marital status on earnings by sex can be seen by a perusal of Table 2, which abstracts from such variables as age, occupation, location, full time or part time, union-

TABLE 1
ADJUSTED CANADIAN FEMALE/MALE INCOME RATIOS

Adjustment made for:	*(1)* *Annual Male Income*	*(2)* *Annual Female Income (Before Correction)*	*(3)* *Annual Female Income (After Correction)*	*(4)* *Annual $ Gain to Females (3) − (2)*	*(5)* *Female/Male Income Ratio (Before) Correction) (2) ÷ (1)*	*(6)* *Female/Male Income Ratio (After) Correction) (3) ÷ (1)*
Age Pattern	$15,143	$ 7,342	$ 7,593	$ 251	.485	.521
Full-Year/Part-Year Status	16,440	8,679	9,451	772	.528	.575
University and Elementary School Employment Patterns	26,141	19,414	21,280	1,886	.743	.814

Source: *The Labour Force*, Dec. 1980, Catalogue No. 71-001, Statistics Canada, pp. 75-105.
Teachers in Universities, Catalogue No. 81-241, Statistics Canada, p. 57.
Income Distributions by Size in Canada, 1979, Catalogue No. 13-207, Statistics Canada, pp. 99, 104-109.

TABLE 2
AVERAGE INCOME OF INDIVIDUALS IN CANADA BY MARITAL STATUS, 1971-1979

	Single	*Married (1)*	*Other*	*Total (1)*
Males				
1967	$2,665	$ 6,210	$ 3,492	$ 5,334
1969	2,697	7,300	4,394	6,162
1971	3,192	8,322	5,117	7,004
1972	3,889 (2)	9,008	(2)	7,633
1973	4,024	10,051	6,992	8,410
1974	4,805	11,630	7,776	9,749
1975	5,437	12,919	8,365	10,865
1976	5,876	14,736	10,146	12,430
1977	6,850	15,050	10,105	12,698
1978	7,079	16,654	12,239	13,871
1979	8,331	18,002	12,575	15,143
Females				
1967	2,380	2,241	2,259	2,283
1969	2,574	2,435	2,738	2,524
1971	2,817	2,994	2,985	2,948
1972	3,231 (2)	3,253	(2)	3,243
1973	3,409	3,658	3,720	3,604
1974	3,902	4,362	4,403	4,255
1975	4,511	4,845	4,983	4,788
1976	4,761	5,373	5,658	5,285
1977	5,967	6,032	6,410	6,085
1978	6,035	6,825	7,411	6,749
1979	6,847	7,403	7,800	7,342
Ratio Female/Male				
1967	.89	.36	.65	.43
1969	.95	.33	.63	.41
1971	.88	.36	.58	.42
1972	.83 (2)	.36	(2)	.43
1973	.85	.36	.53	.43
1974	.81	.37	.56	.44
1975	.83	.37	.60	.44
1976	.81	.36	.56	.43
1977	.87	.40	.63	.48
1978	.85	.41	.61	.49
1979	.82	.41	.62	.49

(1) Married and Total figures are published in each year's *Income Distributions by Size* (Statistics Canada, Catalogue 13-207). Single and Other averages are from unpublished tables, Survey of Consumer Finances, Statistics Canada.[22]

(2) Single figure includes Single and Other.

ization. Here, the female/male income ratios diverge widely, based on marital status. Throughout the 12-year span covered, the married category has consistently shown the lowest ratios; the singles, the highest; and "other" (widowed, divorced, separated) has occupied an intermediate position. So stark is the difference, that the female/male income ratio actually doubles (or more) as we move from married to single status. This ratio even approaches unity, although without ever quite reaching it, in eloquent testimony to the differential effects of marriage on earnings.

There is, however, a difficulty with this data: it is not precise enough. It includes not only wages and salaries, which can, perhaps, serve as a basis for employer discrimination, but also income from self-employment, investments, pensions, and government transfers, which clearly are unrelated to employer discrimination.

Wages and salaries only

In order to remedy this situation, we turn to Table 3, which includes *only* wages and salaries and specifically excludes all other income. As a test of the hypothesis that marital status has widely asymmetrical effects on earnings by sex, Table 3 is an improvement over Table 2 in yet another way: it collapses the categories of "married" and "other" into "ever married," which, as the name implies, includes all people who were *ever* married, regardless of the marital status they now occupy. That is, it compares people presently married, divorced, widowed, *or* separated, with those who were never married in their entire lives. Table 3 thus furnishes a comparison of people who have been touched in some way by the institution of marriage with those who have not.[23]

And the results are truly staggering! Never-married females in Canada earned $4,169.72 in 1971, while their male counterparts registered earnings of $4,201.24. The differential by sex for those who have never been married amounted to only $31.52 for an entire year; this translates into a female/male earnings ratio of 99.2 percent!

We can see, too, that the poor earnings record of all females compared to all males (a ratio of 37.4 percent) is almost entirely a function of "ever married" status (a ratio of 33.2 percent). As of 1971, at least, Canadian women who have never been married have indeed "come a long way, baby" toward earnings equality with men. We will have to wait several years for the results of the 1981 census to see whether or not this tendency persists.

TABLE 3
FEMALE/MALE EARNINGS RATIOS BY MARITAL STATUS, CANADA, 1971

	Never Married		*Ever Married*		*Total*	
	Female	*Male*	*Female*	*Male*	*Female*	*Male*
Sample Size	2,117	2,439	14,060	27,800	16,177	30,239
Income	$4,169.72	$4,201.24	$2,216.58	$6,674.91	$2,407.70	$6,430.30
Income Differential (Male – Female)	$31.52		$4,458.33		$4,022.60	
Income Ratio (Female/Male)	.992		.332		.374	

Source: This table is based on calculations made from the empirical record compiled by Peter Kuch and Walter Haessel, who used the Public Use Sample Tape as a source (computed for individuals aged 30 years and over). See their Census Analytical Study written on behalf of Statistics Canada and entitled: An Analysis of Earnings in Canada (Ottawa: Ministry of Industry, Trade and Commerce, 1979, Catalogue 99-758E), pp. 113, 206.

Market impediments

While for the most part wage differentials reflect attributes of employees other than sex, it is true that impediments to market operation may produce discrimination-like wage differentials. Impediments which have this effect include minimum wage laws and union entry restrictions. However, the most significant impediment to market response is that a large fraction of the labour force is employed by the public sector.

Public sector employers, unlike their private sector counterparts, have no financial incentive which inhibits them from discriminatory employment practices. The public sector bureaucrat neither gains nor loses financially as a result of his or her employment decisions and is free therefore to engage in whatever form of discrimination suits him or her.

Even in this case, however, EPFEW laws and/or quotas may not be in the best interests of the oppressed, a question to which we now turn.

AFFIRMATIVE ACTION IN THE PUBLIC SECTOR

It is impossible to overestimate the importance of the distinction between discrimination in the private and public sectors. We have seen that in the former sphere there exist market forces which continually erode the scope of prejudicial behaviour. There is, unfortunately, no such tendency in government.

Given the great difficulties, social costs, and unintended negative consequences of proportional representation requirements, quotas and other similar prescriptions based on retrospective results, and given the market's ability to reduce discriminatory behaviour—in the absence of legislation which retards this process—a case is made, throughout this book, against the employment of affirmative action programs in the private sector.[24] We also noted above that the incentive system operating in the private sector may not work in the public sector. Accordingly, we must now assess the case for equal opportunity programs (based on quotas and proportional representation) in the field of public employment.

At the outset, this seems an attractive idea. There are thousands of minority group members, especially in the southeastern U.S., in the northern and western states and in many of the Canadian provinces as well who have been victimized by discriminatory hiring practices on the part of public agencies. This has imposed real and lasting costs on the groups out of favour, whether based on race, sex, national origin, or some other criteria.

Discrimination in the public sector, moreover, is considered unjust and immoral by many. The funds which pay for government employment come from all citizens—including minority members. For anyone to be precluded from a public job because of race, sex, national origin, sexual preference, skin colour, or any other such criteria,[25] after being forced to pay for this very same unemployment through coercive taxes, is nothing more than a cleverly disguised, but particularly insidious, form of exploitation.[26]

Public sector quotas?

Despite the superficial attractiveness of quotas for every conceivable minority group in the public sector, the case for such a program diminishes upon deeper analysis.

The difficulty is that quotas are unjust.[27] The beneficiaries (in those rare cases where someone actually benefits) are the *wrong* people: the 18- to 21-year-olds, applying for their first jobs, who never bore the brunt of past employment discrimination, by definition. The real victims are those who would have liked to have been police officers, firefighters, letter carriers, civil servants, in the past, but were not even considered, even though fully qualified, because of their race or sex. But these people, for the most part, are already either settled in their present jobs, or retired from the labour force. If anything, monetary settlements might seem a preferable alternative.

Another problem is that quotas are based on the premise that in the absence of discrimination each minority group would be proportionally represented in every job classification. But as Sowell and Williams make abundantly clear in their contributions to this volume, not only is there no evidence for this conclusion, there is every reason to believe the exact opposite. Minority groups are heterogeneous, with different ages, educational levels, geographical locations, cultures, histories, and so on.

If quotas are not the ideal answer, what may be done instead to correct the obvious injustice of discrimination in the public sector?

A modest proposal

One suggestion is that laws prohibiting discrimination in the public sector be strengthened. This would include severe fines and loss of job penalties to the *individual* civil servants found guilty of such behaviour. Fines levelled on government per se would do little good since they can be passed along to (innocent) citizens through higher taxes. People who feel victimized by discriminatory practices on the part of government would be able to sue for damages on this account,

and freedom of information laws would be broadened so as to allow access to employment application test scores or other relevant documents upon which such a suit could be based. If such machinery is put into place, in this view, it will go a long way toward stopping public sector discrimination, *de facto* as well as *de jure*.

INSURANCE

Laws prohibiting discrimination also threaten to play havoc in several other fields. Insurance companies commonly "discriminate against" the elderly and the sickly; they either refuse to grant life insurance, or only do so at significantly higher premium rates, for example, to a 70-year-old man with a heart condition. Should such discrimination be permitted?

Insurance is an industry dedicated to pooling and spreading risk.[28] While health, injury, or sickness of any one person is beyond prediction, actuarial tables have been established for the probability of such occurrences in the aggregate. Because of this, insurance companies can charge premiums to large numbers of people and underwrite the costs of the unfortunate few; all customers pay a relatively small amount, in effect, for the security that should they be struck by calamity, they or their loved ones would be protected from great expenses, and thus would remain financially secure.

But if the system is to work well, the insurance company must make fine distinctions between people regarding the likelihood of catastrophe. It must base the payment of premiums on the degree of risk. (Indeed, its profits depend almost entirely on this ability.) Failure to make these distinctions (i.e., *discriminations*) based on riskiness, and to tailor premiums to the degree of risk, will lead to bankruptcy, for the low risk customers will tend to migrate to other insurance firms, encouraged by the lower premiums there. The company which does not discriminate will therefore be left with high risk patrons; it will either have to charge them more, thereby effectively discriminating (specializing in high risk ventures) or face bankruptcy as the high payouts swamp the small premiums.

It might be argued that *all* insurance companies should be forced to adopt a non-discriminatory posture. In this way, it might be contended, none of them could gain a competitive advantage over any of the others.

A difficulty

The difficulty with this plan is related to a little known but highly important benefit conferred upon society by insurance. (The social

good created by the insurance industry is as hard to overestimate as it is unknown by the general public.)

Let us suppose that overeating leads to heart disease, that houses built in geographical areas A, B, and C run greater risks of fire, storm, or flooding damage, and that high marks in high-school driver education courses are associated with fewer automobile accidents. As a result, insurance companies, in their unending quest for profits, will charge lower premiums to people who alter their actions to conform to these discoveries (losing weight; not building in dry forests or near flooding rivers; enrolling in traffic safety courses).

People are thus led, as if "by an invisible hand" (but actually by the *insurance industry*, and the price system) to try these different modes of behaviour. Apart from the inalienable right of insurance companies, and everyone else, to practise this sort of discrimination, *this* is why it would be very unfortunate to prohibit all insurance companies from discriminating: there would be fewer economic incentives rewarding and encouraging such "safe" behaviour.

Pension plans and snooping

A case in point is the recent Canadian Human Rights Commission regulation[29] condemning discrimination between men and women with regard to pension plans. It is a plain actuarial fact—established through years of insurance experience—that women tend to live longer than men. With sexual discrimination prohibited, equal pension premiums would render men more profitable customers to insurance companies, as on average they will collect benefits for fewer years. The Canadian Human Rights Commission prohibition will therefore tend to result in (1) the encouragement of male over female labour (men will now be cheaper to employ); (2) the segregation of the labour force by sex (so that no one employer would have to make different contributions on this basis); (3) in the withdrawal of employers, especially small ones, from pension plans altogether; and/or (4) the migration of companies to areas which do not prohibit discrimination in pension premium payments on the basis of sex. Needless to say, any of these eventualities would effectively discourage workers from pooling risks concerning retirement income.

Another case in point is the order of the Ontario Consumer and Commercial Relations Ministry to the Fireman's Fund Insurance Company. The ministry enjoined the insurance company from questioning its clients about their convictions on alcohol or sex-related offences, on whether they are usually restless, sad, or sweaty at night, and on other personal subjects.[30]

Frank Drea, the former Ontario Consumer Affairs Minister, objected to this practice on two grounds: first, he claimed it was an invasion of privacy; and, secondly, that it was compulsory, since the company offered a discount on its policies of up to 30 percent for those who filled in the questionnaires and demanded full price from those who refused.

Customer discounts

There are some serious difficulties in this position. Scores of firms, representing dozens of industries, offer customers a discount if they, in turn, do something, otherwise onerous, desired by the company; and they refuse these special discounts to customers who will not so accommodate them. For example, many banks offer customers who maintain certain minimum ($500) balances free or reduced price chequing services, and refuse this to those whose deposits are not sustained at these levels. Mail order houses usually give special benefits to those who pay in advance.

Other firms commonly offer discounts only to those who will, for example, shop, demand service, purchase, or put in an appearance at a time convenient to the supplier, not necessarily to the customer, and refuse price reductions to those who insist on satisfying their own schedules. Department stores offer discounts at "January and August white sales" to people who defer their sheet and linen purchases until after the holiday and summer season; bowling alleys typically discount their admission prices to those who play from midnight to 4 a.m.; church dances usually reduce their ticket prices to patrons who show up "early" (i.e., "before 8:30 p.m."); theatre-goers can often save money by attending matinees, not Saturday evening performances; airline travel costs less at night than during the daytime. Government rate-setting boards have even accorded permission to electric and telephone utilities to vary price in correlation with peak demands (long distance telephone calls cost more during business hours than in the wee hours of the morning).

Consumer tips

It is well known and has been for many years that those who buy "wholesale" or in bulk can usually save money compared to fellow shoppers at the retail level. But recently, special discounts have been offered by "no frills" grocery supermarkets, and by "self-service" gas stations—but only to customers willing to make the special efforts required on their behalf. Similarly, people are learning that giving advance notice to companies usually leads to special dis-

counts. Examples include: booking airline flights well ahead, purchasing a series of concert tickets for the whole season, subscribing to magazines for two or three years at a time, joining a book or record club, and committing oneself to a certain level of future purchases. Financially troubled municipalities such as New York City have even given special real estate tax breaks to property owners who pay in advance, while charging the same old (high) rates to those who pay on time.

Would anyone care to suggest that these and other similar commercial innovations amount to compulsion? To coercion? That these firms "have no right" to offer their customers discounts as a reward for behaving in a way that the firm wishes? Hardly. And since there is no difference in principle between an insurance firm offering discounts to customers who answer survey questionnaires and all these other cases, Drea's charge of compulsion and harassment against the Fireman's Fund Insurance Company falls to the ground.

Nor is this practice an "invasion" of privacy. It is rather a voluntary confidence of a personal nature given by the client to the insurance company, in return for the 30 percent rate reduction. It is certainly no more an "invasion" of privacy than the voluntary confessions widely accorded to clergymen, lawyers, and psychiatrists in our society. To be consistent with its Fireman's Fund decision, the Ontario Consumer and Commercial Relations Ministry would have to ban personal declamations in these areas as well—ludicrous and manifest folly if ever there was one.

Why the questionnaires?

Having settled the legitimacy of these questionnaires, let us now inquire as to their social usefulness. The insurance company did not embark upon this project out of sheer cussedness, perversity, or morbid curiosity; it was rather an attempt to save money for its customers, and thereby earn greater profits for itself—something fully in keeping with its legitimate mission as a Canadian business firm.

How does this work? If Fireman's Fund could better discriminate on the basis of its questionnaire between high and low risk customers, it would be in a position to ask lower premiums of the latter group while still maintaining, or even increasing, its profit returns. And not only that. The company could then expand its base of operations with its new lower rates, attracting customers both from competitors and from the presently non-insured public. Conceivably, this greater volume might even allow the firm to pass some of these savings onto its original high-risk customers, thus benefitting

both the high and low risk groups. If not, even the people in the high risk group are still not made worse off by the questionnaire, as they are always free to patronize other insurance companies which do not make these fine distinctions.

Alternatively, the scheme might fail and may not reliably measure risk; it might be too costly to operate, even if it does. In this case, the company, and it alone, will be the loser. It would be unwise public policy to prohibit such experiments, even so; first, because we cannot tell in advance whether it will succeed or not; and, secondly, because this is precisely how commercial progress is gained—through trial and error.

"AGEISM"

There are also affirmative action guidelines approved by several U.S. Bank Regulatory agencies[31] prohibiting discrimination in borrowing. These bar credit application discrimination on the basis of race, colour, religion, national origin, gender, marital status, age, and receipt of public assistance benefits. Let us take age as an example, and apply the analysis developed above.[32]

The abiding interest on the part of the lender, it can readily be imagined, is the likelihood that the principal, plus interest, will be repaid; and if not, that there will be enough collateral to make good on the loan. All else pales into relative insignificance compared to this main concern.

One obvious shortcoming with age non-discrimination is that persons under a certain age, usually 16, 18, or 21, depending on the jurisdiction, are not even legally obligated to pay their debts. Surely banks and other lenders could reasonably be expected to "discriminate" against such persons, under present legal codes. But even if these laws were rescinded, or if the affirmative action guidelines on age were reinterpreted so as not to apply to such young people, difficulties still remain.

An important determination in lending policy is the creditworthiness of an applicant: the likelihood that he will repay, on time, at no further cost or inconvenience to the financial institution. And young people, even if legally liable for their debts, are not widely perceived as sufficiently creditworthy. Consider a person aged 22 who wants to borrow $4 million. He may have enough collateral such that, if he defaults, the lender would be able to recoup his losses. But this costs money, time, and aggravation. An older person with a longer track record may be more attractive, even if he has less collateral.

Forcing banks to ignore the age of the borrower would put them

at a competitive disadvantage relative to other lending institutions. And if *all* lenders could somehow be prohibited from discriminating on the basis of age,[33] this would entail higher recovery costs for bad loans. Banks would thus be forced to offer lower interest payments on savings. This would reduce saving, investment, and lending, with negative repercussions on the economy.

SIZE DISCRIMINATION

Affirmative action has also been applied, all across Canada, to personal characteristics such as height. In Edmonton, for example, Tall Girls Shops Ltd., a family business with branches in 13 major cities,[34] was refused permission by the Alberta Human Rights Commission to advertise for tall (female) sales clerks. Mr. Gould, the general manager of the concern (which caters to women who average 5′ 10″ in height, and excludes women below 5′ 7″), felt that tall sales clerks "could better understand the needs of their customers." But this line of reasoning was rejected at a Human Rights Commission meeting held in Calgary.

It is easy to see why the Alberta Commission withheld permission to advertise for tall sales clerks: discrimination is, after all, discrimination, and must be stamped out under the Human Rights Code. It is a little more difficult to discern why Tall Girls Shops Ltd. was allowed to continue discriminating against men in its quest for tall *female* clerks. The commission gave "for reasons of modesty" in explanation, but did not venture to show why mere "modesty" was placed before presumably more important "human rights."

Nor is it clear why this company was allowed to continue its discrimination against short *customers*, while being reprimanded for favourable treatment accorded tall *employees*. Surely the very name of the Tall Girls Shops Ltd. may be considered an affront to short women who want to purchase clothing. One cannot help wondering if the day will ever arrive when tailoring clothes for people in accordance with their height and girth will ever be considered discriminatory and therefore prohibited; such a practice must of necessity make (invidious) distinctions between individuals, and this is what the equalitarian philosophy would appear to deem improper.

How tall is tall?

Similar analysis can be applied to the Toronto Towers Tall Club,[35] which limits membership to men above 6′ 2″ and women exceeding 5′ 10″. This organization puts on a beauty contest in order to pick a "Miss Tall Toronto"—an "unfair" contest if ever there was one,

because it necessarily precludes short women from consideration. (We pass lightly over the question of whether beauty contests per se—and perhaps the institution of marriage, for that matter—improperly discriminate against ugly people.)

But these are matters of aesthetics, unworthy, perhaps, of the attention of dismal economists. More to their interest then will be a statistical study which concludes that 6′ plus men in the United States earn 8 percent more than their shorter counterparts who are under 5′ 6″. This works out to a $500 annual pay hike for each additional inch of height. A Canadian survey shows similar results. Men who earned $25,000 per year or more were 3.7″ taller, on the average, than those whose income fell into the $5,000-$10,000 bracket.[36]

Short police

Another case of height discrimination took place in Toronto, where local police were criticized in the Clement Report, chaired by the former Attorney-General of Ontario.[37] The finding was that the current minimum physical requirements of 5′ 8″ and 160 pounds for men are discriminatory.

In defence of these rules, Philip Givens, Chairman of the Metro Board of Police Commissioners, stated, "We don't want a 5′ 5″ karate expert; we want someone who will be able to put down a potentially volatile situation just by walking in." Mr. Clement rejected this reasoning and suggested instead the RCMP system, whereby potential recruits are awarded points for height, weight, strength, intelligence, education, etc., in competitive examinations.

But there are difficulties with this alternative as well. While a point system based on height may be more *flexible* than an outright prohibition, it is no less discriminatory. Short people are still placed at a disadvantage when awarded fewer points than their taller brethren. (The point system, moreover, discriminates against all people with low scores on the *other* criteria, such as weight, strength, intelligence.) Right now, the National Basketball Association practises outright discrimination against short people (other things equal—such as speed, endurance, intelligence—they prefer the seven footer to the five footer). Would anything essential change if the NBA were instead to adopt the RCMP method of allocating joint credits partially based on height? Hardly. Short people would still find it more difficult to find acceptance in this "world of the giants."

RENT CONTROL LEADS TO DISCRIMINATION

When rents are forcibly held below the point at which demand and supply can be equilibrated, the amount of residential housing space tenants *want* to occupy exceeds that which landlords are willing to make available. These extra rental units have to be rationed in *some* manner. With upward movements in rent levels precluded by law, other mechanisms play a greater part.

Nepotism, discrimination, favoritism are the answers; all play an increased role. The landlord cannot (legally) charge more rent; so he feels, with some reason, that he can pick and choose on whatever other basis suits him. If he is so disposed, for example, he can choose beautiful young women as tenants, or people without children, or, given the case we are considering, white persons.[38]

At one fell swoop, the least favoured elements of society, the groups who otherwise would fear the brunt of discrimination (tenants with children, ugly women, older persons, homosexuals, blacks, native peoples, minority group members) will have lost the one thing that enables them to compete with more "attractive" individuals: the ability to pay for what they want. Prohibited by law from offering greater financial remuneration, they will be at the bottom of the list of tenants waiting for choice apartments.[39]

USURY

Usury prohibition is another law created with the best of intentions but which have unintended and negative side effects on the poor and racial minorities—the very people the enactment was (presumably) designed to protect. A law which places a ceiling on interest charges might seem to guarantee loans at lower rates than would otherwise have taken place. After all, if the law compels interest on loans lower than otherwise might have prevailed, it would seem to follow that people would be able to borrow money at improved terms, and that the poor and minority group members might be the beneficiaries of such a program.

In actual practice, however, nothing could be further from the truth.

What determines the interest premium people pay for loans is their *creditworthiness*, the likelihood that they will repay. Creditworthiness is not something granted to the borrower by the lender; on the contrary, the borrower has it, or fails to have it, when he makes the first approach. It is based on, among other things, reputation, reliability, "standing" in the community, collateral, hard work.

For reasons that need not concern us here, blacks and other

minority group members are usually perceived to have less creditworthiness than other people. They are regarded as high risk borrowers. They do not pay the prime rate (the rate charged by banks to their most wealthy, reliable, and established customers); nor do they pay even the slightly higher rates usually accorded businesses and individuals with more modest financial accomplishments. When minority group people obtain loans at all from "legitimate" sources, they find they must pay additional premiums which defray the higher risks undertaken by those who agree to lend them money.

No loans

But if legitimate lenders face an interest ceiling, they will not be able to recoup their losses on high risk loans with premium interest rates. Their natural inclination will be not to lend money at all to high risk minorities.[40] Leon Louw says,

> In other words, the only way in which poor people can compete with rich people for the available credit or capital is to offset their disadvantage in terms of risk by offering a compensating difference in the form of higher interest. Usury laws limit the maximum permissable interest rate or terms of repayment to that level at which rich people or low-risk borrowers can obtain credit, but at which high-risk borrowers are priced out of the market. This means that the law paraded as being for the protection of the poor against exploitation, in fact discriminates against them and diverts credit and capital from the poor to the rich.[41]

Enter the "loan shark," or blackmarket lender. Cut off from the normal source of loanable funds, the high risk minority borrower has no alternative but to turn to the underground or underworld economy. Here, such niceties as interest rate ceilings are ignored. The result is *much* higher interest costs than would otherwise prevail.[42] Nor is the lender hemmed in by time-consuming legalistic machinations; in case of default, he can quickly send in his goon squad with baseball bats and "cement shoes" to ensure loan repayment.

Usury laws, then, have the exact opposite effect to their widely trumpeted intentions. Instead of lowering interest charges for the poor and minority group members, it raises them. And instead of dealing with a bank or legitimate finance company, it forces the poor and minority group member into the clutches of people who will not hesitate to inflict serious physical sanctions in case of default.

ZONING

Zoning is another legislative enactment which, although it does not even mention specific racial or ethnic minority groups, none the less has the effect of discriminating against them.

How does this work?

Zoning was conceived in order to preclude the close location of "incompatible land uses," such as the proverbial glue factory and office tower.[43] But even this noble sounding mission is fraught with danger for the poor and minority group peoples, for under the guise of eliminating such obvious nuisances, zoning has made it more difficult for *any* commercial enterprises to infiltrate into the poorer neighbourhoods.

This zoning prescription appears as an obvious benefit to those fortunate enough to live in high quality suburbs. They most often do not work where they live, and usually have automobile access to the business districts, recreational, and shopping areas of their cities. But for many of the poor, prohibiting commercial development in their neighbourhoods has meant greater unemployment, or a longer journey to work, and greater difficulties and inconvenience in purchasing amenities.[44]

Exclusions

Less noble sounding are the aspects of the law which have come to be known as "exclusionary zoning." These are the clauses which specify minimum lot size of dwellings, which demand high quality structures, which, for example, disallow mobile and prefabricated homes. Although they also scrupulously avoid mention of the poor or minorities, it does not take a long chain of reasoning to see that these groups actually bear the brunt of this law. Leon Louw says in this regard:

> Zoning laws usually limit the number of people who may occupy, or the amount of housing which may be built on, a given piece of land. The effect is that the poor, who could compete with the rich for prime land by pooling their money and living in higher densities, are precluded from doing so.[45]

Nor are the poor and minorities taken in by the siren song of zoning. An analysis of a straw vote which rejected legislation in Houston indicates that the poorer and more heavily weighted black areas tended to oppose zoning, while the more affluent, exclusionary, and caucasian districts tended to favour it. For example, in an area on the east side of Houston designated "Negro" by the *Houston*

Post, comprising ⅔ tenants and with a 95.3 percent vote for the Democrat in the gubernatorial election, 72.3 percent of the voters rejected zoning. In Sharpstown, an affluent area designated "almost all white" with virtually no tenants, which voted by a 74.3 percent margin for the Republican gubernatorial candidate, only 31.7 percent of the people voted against zoning.[46] Reports Bernard H. Seigan:

> . . . the predominant pattern of voting shows that high-income precincts (middle-middle to upper, inclusive) in the newer areas of the city generally supported zoning and that the lesser-income precincts (lower and lower-middle) in the older areas generally opposed it. In general, restricted areas wanted zoning, whereas unrestricted areas rejected it. . . . There was an exceedingly high correlation between the voter's record in the straw vote and the voter's economic status as indicated by median value of home owned or average monthly rental.[47]

We must conclude, in the light of this evidence, that governments now enjoy an unmerited reputation for solving the problems of human rights and discrimination. On the contrary, affirmative action, EPFEW, and various anti-discrimination initiatives have backfired, harming the very minorities they were supposed to protect. Government programs such as minimum wage laws, anti-usury codes, rent controls, and zoning legislation have had unforeseen and negative consequences on the minority peoples, who have been among the greatest victims of discrimination.

Chapter 4

An Economic Theory of Discrimination

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An Economic Theory of Discrimination

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INTRODUCTION

One might venture the generalization that no single domestic issue has occupied more space in our newspapers in the postwar period than discrimination against minorities, and especially against Negroes. This generalization is unquestionably true of the period since the momentous decision by the Supreme Court to outlaw segregation by color in public schools. While much of the discussion has concentrated on discrimination in such non-market activities as church and school attendance and voting, there has also been considerable discussion of discrimination in the marketplace—in employment, housing, transportation, etc. Such discrimination has assumed importance not only because of its direct economic consequences but also because of the belief that by eliminating market discrimination one could eliminate much of the discrimination in non-market areas.

Although discrimination against Negroes in the United States receives world-wide publicity, the extent of discrimination in the marketplace in this country is probably much less than in almost every other country in the world. In South Africa discrimination is also based on color; the plans for "Apartheid" envisage almost complete residential segregation of whites and blacks and large-scale

This essay is abridged from *The Economics of Discrimination* by Gary Becker (University of Chicago Press, 1957). For full documentation, citation of evidence, and details of calculation, the reader is urged to consult that publication—ed.

segregation and discrimination in other market areas. In Commonwealth countries and in many of Great Britain's colonies there is much discrimination against colored people; but, since market discrimination by Englishmen is combined with geographical separation from England, this is often not considered "English discrimination." In most undeveloped countries there is so much discrimination against women and persons of lowly origins (e.g., the "untouchables") that this is uniformly agreed to be a major obstacle to rapid economic progress. In Great Britain, France, and other western European countries there is still discrimination against persons from lower classes and in Communist countries against persons with capitalistic backgrounds. These examples should suffice to show that a study of the economic consequences of discrimination is applicable not only to the United States but to almost every country in the world.

FORCES DETERMINING DISCRIMINATION IN THE MARKETPLACE

In the sociopsychological literature on this subject, one individual is said to discriminate against (or in favor of) another if his behavior toward the latter is not motivated by an "objective" consideration of fact.[1] It is difficult to use this definition in distinguishing a violation of objective facts from an expression of tastes or values. For example, discrimination and prejudice are not usually said to occur when someone prefers looking at a glamorous Hollywood actress rather than at some other woman; yet they are said to occur when he prefers living next to whites rather than next to Negroes. At best calling just one of these actions "discrimination" requires making subtle and rather secondary distinctions.[2] Fortunately, it is not necessary to get involved in these more philosophical issues. It is possible to give an unambiguous definition of discrimination in the marketplace and yet get at the essence of what is usually called discrimination.

The analytical framework

Money, commonly used as a measuring rod, will also serve as a measure of discrimination. If an individual has a "taste for discrimination," he must act *as if* he were willing to pay something, either directly or in the form of a reduced income, to be associated with some individuals instead of others. When actual discrimination occurs, he must, in fact, either pay or forfeit income for this privilege. This simple way of looking at the matter gets at the essence of prejudice and discrimination.

Social scientists tend to organize their discussion of discrimination in the marketplace according to their disciplines. To the sociologist, different levels of discrimination against a particular group are associated with different levels of social and physical "distance" from that group or with different levels of socioeconomic status; the psychologist classifies individuals by their personality types, believing that this is the most useful organizing principle. The breakdown used here is most familiar to the economist and differs from both of these: all persons who contribute to production in the same way, e.g., by the rent of capital or the sale of labor services, are put into one group, with each group forming a separate "factor of production." The breakdown by economic productivity turns out to be a particularly fruitful one, since it emphasizes phenomena that have long been neglected in literature on discrimination.

By using the concept of a *discrimination coefficient* (this will be abbreviated to "DC"), it is possible to give a definition of a "taste for discrimination" that is parallel for different factors of production, employers, and consumers. The *money* costs of a transaction do not always completely measure *net* costs, and a DC acts as a bridge between money and net costs. Suppose an *employer* were faced with the money wage rate π of a particular factor; he is assumed to act as if $\pi(1 + d_i)$ were the *net* wage rate, with d_i as his DC against this factor. An *employee*, offered the money wage rate π_j for working with this factor, acts as if $\pi(1 - d_j)$ were the net wage rate, with d_j as his DC against this factor. A *consumer*, faced with a unit money price of p for the commodity "produced" by this factor, acts as if the net price were $p(1 + d_k)$, with d_k as his DC against this factor. In all three instances a DC gives the percentage by which either money costs or money returns are changed in going from money to net magnitudes: the employer uses it to estimate his net wage costs, the employee his net wage rate, and the consumer the net price of a commodity.

A DC represents a non-pecuniary element in certain kinds of transactions, and it is positive or negative, depending upon whether the non-pecuniary element is considered "good" or "bad." Discrimination is commonly associated with *dis*utility caused by contact with some individuals, and this interpretation is followed here. Since this implies that d_i, d_j, and d_k are all greater than zero, to the employer this coefficient represents a non-monetary cost of production, to the employee a non-monetary cost of employment, and to the consumer a non-monetary cost of consumption.[3] "Nepotism" rather than "discrimination" would occur if they were less than zero, and they would then represent non-monetary *returns* of production, employment, and consumption to the employer, employee, and con-

sumer, respectively.

The quantities πd_i, $\pi_j d_j$, and pd_k are the exact money equivalents of these non-monetary costs; for given wage rates and prices, these money equivalents are larger, the larger d_i, d_j, and d_k are. Since a DC can take on any value between zero and plus infinity, tastes for discrimination can also vary continuously within this range. This quantitative representation of a taste for discrimination provides the means for empirically estimating the quantitative importance of discrimination.

Tastes for discrimination

The magnitude of a taste for discrimination differs from person to person, and many investigators have directed their energies toward discovering the variables that are most responsible for these differences.

The discrimination by an individual against a particular group (to be called *N*) depends on the social and physical distance between them and on their relative socioeconomic status. If he works with *N* in production, it may also depend on their substitutability in production. The relative number of *N* in the society at large also may be very important: it has been argued that an increase in the numerical importance of a minority group increases the prejudice against them, since the majority begins to fear their growing power; on the other hand, some argue that this leads to a decline in prejudice. Closely related to this variable are the frequency and regularity of "contact" with *N* in different establishments and firms.

According to our earlier definition, if someone has a "taste for discrimination," he must act *as if* he were willing to forfeit income in order to avoid certain transactions; it is necessary to be aware of the emphasis on the words "as if." An employer may refuse to hire Negroes solely because he erroneously underestimates their economic efficiency. His behavior is discriminatory not because he is prejudiced against them but because he is ignorant of their true efficiency. Ignorance may be quickly eliminated by the spread of knowledge, while a prejudice (i.e., preference) is relatively independent of knowledge.[4] This distinction is essential for understanding the motivation of many organizations, since they either explicitly or implicitly assume that discrimination can be eliminated by a wholesale spread of knowledge.[5]

Since a taste for discrimination incorporates both prejudice and ignorance, the amount of knowledge available must be included as a determinant of tastes. Another proximate determinant is geographi-

cal and chronological location: discrimination may vary from country to country, from region to region within a country, from rural to urban areas within a region, and from one time period to another. Finally, tastes may differ simply because of differences in personality.

Market discrimination

Suppose there are two groups, designated by W and N, with members of W being perfect substitutes in production for members of N. In the absence of discrimination and nepotism and if the labor market were perfectly competitive, the equilibrium wage rate of W would equal that of N. Discrimination could cause these wage rates to differ; the *market discrimination coefficient* between W and N (this will be abbreviated to "MDC") is defined as the proportional difference between these wage rates. If π_w and π_n represent the equilibrium wage rates of W and N, respectively, then

$$\text{MDC} = \frac{\pi_w - \pi_n}{\pi_n}$$

If W and N are imperfect substitutes, they may receive different wage rates even in the absence of discrimination. A more general definition of the MDC sets it equal to the difference between the ratio of W's to N's wage rate with and without discrimination.[6] In the special case of perfect substitutes, this reduces to the simpler definition given previously, because π_w^0 would equal π_n^0.

It should be obvious that the magnitude of the MDC depends on the magnitude of individual DCs. Unfortunately, it is often implicitly assumed that it depends *only* on them; the arguments proceed as if a knowledge of the determinants of taste was sufficient for a complete understanding of market discrimination. This procedure is erroneous; many variables in addition to tastes take prominent roles in determining market discrimination, and, indeed, tastes sometimes play a minor part. The abundant light thrown on these other variables by the tools of economic analysis has probably been the major insight gained from using them.

The MDC does depend in an important way on each individual's DC; however, merely to use some measure of the average DC does not suffice. The complete distribution of DCs among individuals must be made explicit because the size of the MDC is partly related to individual *differences* in tastes. It also depends on the relative importance of competition and monopoly in the labor and product markets, since this partly determines the weight assigned by the

market to different DCs. The economic and quantitative importance of N was mentioned as one determinant of tastes for discrimination; this variable is also an independent determinant of market discrimination. This independent effect operates through the number of N relative to W and the cost of N per unit of output relative to the total cost per unit of output. Both may be important, although for somewhat different reasons, in determining the weight assigned by the market to different DCs. Reorganizing production through the substitution of one factor for another is a means of avoiding discrimination; the amount of substitution available is determined by the production function.*

The MDC is a direct function of these variables and an indirect function of other variables through their effect on tastes. Our knowledge of the economic aspects of discrimination will be considered satisfactory only when these relationships are known exactly.

EFFECTIVE DISCRIMINATION

An MDC between any two groups can be defined for a particular labor or capital market or for all markets combined; in the latter, interest would center on the effect of discrimination on the total incomes of these groups. For example, discrimination by whites presumably reduces the incomes of Negroes, but how does it affect their own incomes? Many writers have asserted that discrimination in the marketplace by whites is in their own self-interest; i.e., it is supposed to raise their incomes. If this were correct, it would be in the self-interest of Negroes to "retaliate" against whites by discriminating against them, since this should raise Negro incomes. If, on the other hand, discrimination by whites reduces their own incomes as well, is the percentage reduction in their incomes greater or less than that in Negro incomes? It is an implicit assumption of most discussions that minority groups like Negroes usually suffer more from market discrimination than do majority groups like whites, but no one has isolated the fundamental structural reasons why this is so. It is shown in the following that discrimination by any group W reduces their own incomes as well as N's, and thus retaliation by N makes it worse for N rather than better. It is also shown why minorities suffer much more from discrimination than do majorities.

*The production function is an equation which relates the amount of output to the amounts of the inputs or factors needed to produce it—ed.

The model

New insights are gained and the analysis made simpler if the discussion is phrased in terms of trade between two "societies," one inhabited solely by N, the other by W. Government and monopolies are ignored for the present, as the analysis is confined to perfectly competitive societies. Since our emphasis here is on the overall incomes of W and N, the multiplicity of factors of production will be ignored, and the discussion will be confined to two homogeneous factors in each society—labor and capital—with each unit of labor and capital in N being a perfect substitute in *production* for each unit of labor and capital in W. These societies do not "trade" commodities but factors of production used in producing commodities. Each society finds it advantageous to "export" its relatively abundant factors: W exports capital, and N labor. The amount of labor exported by N at a given rate of exchange of labor for capital is the difference between the total amount of labor in N and the amount used "domestically"; the amount of capital exported by W is derived in a similar manner.

The following conditions would be satisfied in a full equilibrium with no discrimination: (1) payment to each factor would be independent of whether it was employed with N or W; (2) the price of each product would be independent of whether it was produced by N or W; and (3) the unit payment to each factor would equal its marginal value product.* If members of W develop a desire to discriminate against labor and capital owned by N, they become willing to forfeit money income in order to avoid working with N. This taste for discrimination reduces the net return[7] that W capital can receive by combining with N labor, and this leads to a reduction in the amount of W capital exported. Since this, in turn, reduces the income that N labor can receive by combining with W capital, less N labor is also exported. In the new equilibrium, then, less labor and capital are exported by N and W, respectively. It can be shown that this change in resource allocation reduces the equilibrium net incomes of both N and W.[8] Since discrimination by W hurts W as well as N, it cannot be a subtle means by which W augments its net command of economic goods.[9]

*The marginal value product is the change in the value of the total product resulting from the use of one (small) unit more (or less) of a variable input—ed.

Discrimination and capitalists

Although the aggregate net incomes of W and N are reduced by discrimination, all factors are not affected in the same way; the return to W capital and N labor decreases, but the return to W labor and N capital actually increases. There is a remarkable agreement in the literature on the proposition that capitalists from the dominant group are the major beneficiaries of prejudice and discrimination in a competitive capitalistic economic system.[10] If W is considered to represent whites or some other dominant group, the fallacious nature of this proposition becomes clear, since discrimination *harms* W capitalists and benefits W workers. The most serious non sequitur in the mistaken analyses is the (explicit or implicit) conclusion that, if tastes for discrimination cause N laborers to receive a lower wage rate than W laborers, the difference between these wage rates must accrue as "profits" to W capitalists.[11] These profits would exist only if this wage differential resulted from price discrimination (due to monopsony power), rather than from a taste for discrimination.

DISCRIMINATION IN THE ECONOMY

Employer discrimination

If one individual discriminates against another, his behavior lacks "objectivity"; in the marketplace, "objective" behavior is based on considerations of productivity alone. An employer discriminates by refusing to hire someone with a marginal value product greater than marginal cost; he does not discriminate by refusing to hire someone with a marginal value product less than marginal cost, as might occur in cases of discrimination by employees or customers against this person. A discriminator expresses his subjective tastes or preferences, and these tastes have been quantified by means of DCs. When faced with the money wage rate π, an employer acts as if $\pi(1 + d)$ were the net wage rate, with d being a DC measuring the intensity of his taste for discrimination. Since d can vary continuously, the intensity of a desire to discriminate can also vary continuously. Profits forfeited are the costs or deterrents to discrimination, and they, too, vary continuously in magnitude.

Each employer compares the intensity of his tastes with the intensity of the costs and determines the action bringing the maximum net return. For example, suppose two groups, W and N, are perfect substitutes in production, and an employer has a DC of value d against N. If the market wage rate of W, π_w, is less than $\pi_n(1 + d)$, only W is hired, since the intensity of tastes is greater than that

of costs; if π_w is greater than $\pi_n(1 + d)$, only N is hired, since the intensity of tastes is less than that of costs; and if π_w equals $\pi_n(1 + d)$, both W and N are hired, since the intensity of tastes equals that of costs.[12]

Trade union discrimination

Competition in the labor market has been assumed thus far. The analysis has several implications for discrimination in unionized markets; but, since little empirical work has been done in this area, it would be unwise to develop these implications at this time. It suffices to point out that if a union has a DC against a group of non-union N, these N may be excluded from the union; the greater the union's DC, the more likely this is. The magnitude of the union's DC is determined by the DCs of union members. If one member of the union were selected at random to be union leader and decision-maker, the union's DC would, on the average, equal the median DC in the distribution of DCs among union members. At the other extreme, union decisions may be reached by majority rule, with each member having one vote and with each free to run for office. It can be shown that no platform could get more votes than one offering the median DC, and, therefore, the median would, in equilibrium, be the union's DC (see Government Discrimination below). At both extremes, then, the expected DC equals the median DC among union members.

In a competitive labor market, discrimination by a group, W, against a group of perfect substitutes, N, does not cause market discrimination.[13] If, however, a union of W discriminates against a group of substitutable non-union N by refusing to admit them to the union, this could cause market discrimination against these N. Indeed, many have claimed that union discrimination is a major cause of market discrimination. For example, F. Y. Edgeworth argued that women's wages in England were lower than those of comparable males primarily because trade unions had raised male wages and that women were excluded from these unions partly because of discrimination against them by males.[14]

A wage differential between unionized and non-unionized labor may not arise from union discrimination (i.e., the money income of union members may be increased by a policy of exclusion) but from discrimination by other groups. A group of whites or males can have a strong union because they were the first to enter an occupation or because they are particularly militant. However, some of their economic strength might be due to their sex or color, as violence might not be permitted and political pressure might not be exerted for Negroes or females.[15] The higher incomes of males and whites

would then be due partly to social and political discrimination against Negroes and females. A detailed empirical examination of these alternative explanations is necessary before the behavior of trade unions toward minority groups can be fully understood.

Consumer discrimination

Although it has frequently been assumed above that members of two groups were "perfect substitutes in production," this was not defined rigorously. When discussing employer and employee discrimination, it is best to distinguish between marketable and non-marketable output; perfect substitutes in production would mean "perfect substitutes in producing *marketable* output." A group of N might produce woolen goods as marketable output and disutility to their employers as non-marketable output. According to this definition, the latter would not be considered part of their real productivity; if it were, market discrimination could not occur in a competitive economy.[16] This distinction cannot be made in separating consumer discrimination from other consumer choices, since the marketability of output depends on the whole system of consumer preferences. However, it does suggest a general procedure of dividing the attributes of any output into two classes, the attributes in one of these being relevant only when consumer discrimination exists.[17] For example, a consumer's evaluation of a retail store may be based not only on the prices, speed of service, and reliability but also on the sex, race, religion, and personality of the sales personnel; the latter class of attributes would be relevant only when a desire to discriminate exists. This example shows that any dividing line between these two classes is quite arbitrary and is determined solely by the purpose of the investigation.

Assume that all attributes have been divided into these two classes and that consumers have tastes for discrimination against members of a group, N. If P_n were the *money* price of an output produced or sold by N, a consumer would act as if $P_n(1 + d)$ were the *net* price, where d is the DC of this consumer. In the absence of discrimination, two groups, W and N, that are perfect substitutes in production would receive the same competitive equilibrium wage rate, but consumer discrimination against N reduces N's wage rate relative to W's. It can be shown that if all consumers have the same DC, d, and if exactly m units of N or W can produce or sell one unit of output, the MDC against N equals d multiplied by the ratio of the price per unit of output to the amount paid to N per unit of output.[18]

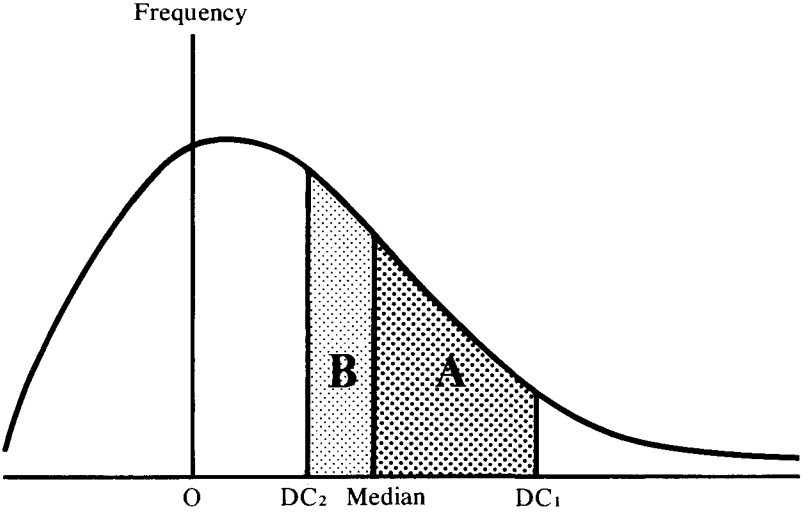
If consumers differed in their tastes, d would equal the DC of

the consumer on the margin between buying from W and N. If the supply of N labor were one-third that of W and if all consumers bought the same amount, d would equal the first-quartile DC in the distribution of DCs among consumers. If the supply of N labor became equal to that of W, d would equal the median DC. Since consumers differ in their desires, net prices, and incomes, they usually do not buy the same amount. Those buying output produced by N pay less per unit of output and therefore tend to consume more, and those with relatively large incomes also tend to consume more. Nevertheless, if consumers differ in their DCs, an increase in the relative supply of N always increases the MDC, since consumers with larger DCs must be induced to purchase from N; for the same reason, a decrease in the dispersion also increases the MDC.

GOVERNMENT DISCRIMINATION

The importance of government discrimination has often been emphasized, and at least a brief discussion of the variables determining government behavior seems appropriate. Let us suppose that the electorate periodically chooses by majority vote one of two competing political parties. Let us assume that the only issue in the election is government policy toward two groups and that the preferences of each voter can be represented by a DC. Figure 1 represents the

FIGURE 1
DISTRIBUTION OF TASTES FOR DISCRIMINATION AMONG THE ELECTORATE



frequency distribution of DCs among voters. Each party promises, if elected, to act as if it had a particular DC, and each individual votes for the party promising a DC closest to his own. Clearly, a promise for DC_1 (to the right of the median) could not be an equilibrium position, since a promise of any DC in the region A must receive more votes; likewise, a promise of DC_2 (to the left of the median) could not be an equilibrium one, since any DC in the region B must receive more votes. Therefore, the median DC is the only possible equilibrium position. This result should be expected, since a well-functioning political democracy is supposed to effect a compromise between extreme views, and the median is a natural compromise.

An application of this model to the real world is not likely to be very fruitful unless the following factors are considered: (1) the compromise is effected among the preferences of voters and not of the population at large (disenfranchised groups, such as Negroes in the South and women in some countries, have no direct influence on government policy); (2) individual preferences with respect to government behavior may differ from their preferences with respect to their own private behavior; and (3) it has been assumed that each election decides only a single issue, but in most actual elections a single vote expresses a choice on many issues.

This "tie-in" of issues may be an important explanation of why minority groups often have a disproportionate influence on government policy. Let there be three classes of voters, W_1, W_2, and N, and two issues, one determining the amount of government discrimination against N. Suppose that both W_1 and W_2 consider the other issue much more important and that their views on this issue differ greatly; N considers the discrimination issue more important, and its views on the other issue are more similar to W_1's. A political candidate might not be able to obtain a majority of all votes from W_1 alone but might from W_1 and N combined. By offering a platform with W_1's views on the other issue and N's views on discrimination, he would obtain N's votes and probably W_1's votes as well; even if W_1 wanted to discriminate against N, it would willingly compromise because of its greater concern over the other issue. Thus N's views on discrimination would become government policy, notwithstanding that it is a minority and that W_1 and W_2 both prefer greater discrimination against N.

This analysis implies that state governments in the South greatly discriminate against Negroes, since Negroes have been disenfranchised, southern whites desire a large amount of government discrimination, and race relations is one of the most pressing issues. In northern states, on the other hand, discrimination by governments

would be much less, since Negroes do vote, the desire for *government* discrimination is not so keen, and race relations is a less important issue. This prediction seems consistent with the actual behavior toward Negroes of southern and northern governments.

Part 3

The Sociological Impact of Forced Equality

Chapter 5
Understanding Affirmative Action

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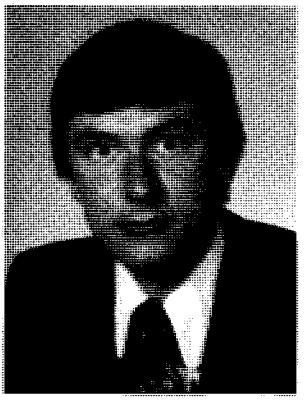

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Understanding Affirmative Action

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INTRODUCTION

A distinctive trait of North Americans is their enthusiasm for material things. This passion for wordly items is purportedly purchased at the cost of a relative disdain for intellectual matters.[1] However, to note that many moderns are uninterested in matters of the mind is not to claim that ideas do not matter; indeed they do.[2]

The contrast between the enduring importance of ideas as guides to action and the public's lack of concern with intellectual issues takes on special significance alongside the rise of the "New Class."[3] This New Class consists of the recent and rapidly expanding body of bureaucrats, technocrats, lawyers, and intellectuals, all of whom are well educated and interested in using the public rather than the private sector as the tool to shape social policy. These people have firm ideas about what constitutes a "good" or "just" society and care enough about ideas to devote their careers to the realization of such goals. Besides appreciating that ideas have consequences, the New Class also understands the reciprocal relationship that exists between knowledge and power: knowledge brings power, but with power also comes the capacity to legitimize one's own beliefs as knowledge.

The New Class

For those who resist centralization of all sorts, the rise of the New Class is unsettling, for it represents another instance of monopolization, this time of ideas. As the New Class' voice in the establishment

of social policy grows, the opinions and perspectives of the *demos* are jeopardized. As this occurs, society moves a step closer to being governed for the people but not necessarily by them.

In Canada the recent establishment of affirmative action programs represents clearly the determination of social policy by the New Class. Increasingly one reads of the introduction of affirmative action initiatives, but one is hard pressed to find evidence suggesting that any significant proportion of Canadians had any say in the formation of such policies or, for that matter, even knew such programs were being considered before they were implemented.

The Canadian Experience

Experience suggests that what Canadians know about affirmative action often comes from reading about the well-publicized *Bakke* or *Weber* cases, or about busing in the United States. Canadian observers are often unaware that the reason for so much public discussion about affirmative action in America results from the legal challenges to, and legal entanglements concerning, the validity of such programs. In contrast, such messy legal arguments, and the public discussion arising from them, are unnecessary in Canada, for here such programs were legally proclaimed admissible and non-discriminatory before most were even implemented. If Canadians generally do not realize this, or wonder why they had so little voice in or information about the determination of such laws, it is simply more evidence of the efficient work by those in charge of establishing policy.

The present study examines the nature, variety, and potential problems of affirmative action policies. The probable consequences of such policies will also be discussed. To the extent that those in charge of establishing affirmative action are stimulated to reassess their positions, or those governed by such policies are led to think about what is occurring, we will have achieved our objective.

AFFIRMATIVE ACTION: A MULTI-DIMENSIONAL IDEA

Since affirmative action policies are recent additions to our roster of melioristic programs, public understanding of their nature and variety is limited. Relevant to an initial appreciation of the meaning and operation of affirmative action are clarification of the ideas upon which these policies are based, the forms these policies may take, and the central arguments used to justify their introduction.

Its Nature

To know what policy makers mean when they talk of "affirmative action" is not always easy. Affirmative action involves political action and, as we all realize, the language of politics is notoriously obscure.[4] However, it is possible to sift through the multiplicity of meanings and establish several common components. Such an exercise begins by placing the recent development of affirmative action in historical perspective.

Affirmative action was conceived in the United States during the 1960s as a strategy for reducing the racial inequalities that persisted despite the many legislative programs of that period. For present purposes, without taking an unnecessary excursion into American socio-politics of the past decade, it is sufficient to note that the impetus behind affirmative action was essentially compensatory. Proponents believed that after a long history of discrimination, the formal establishment of non-discrimination was not sufficient: a more *immediate* solution was required.[5] Affirmative action was to effectively right past wrongs and produce a situation where social equality prevailed.[6]

An import from the U.S.

Initiated in the United States and transported into Canada,[7] affirmative action comprises a collection of programs intended to reduce the discrimination suffered by various ethnic groups, races, sexes, and other minorities. These programs are expected to do more than just eliminate malicious discrimination, a goal that receives the assent of just about everyone; they attempt to counterbalance the effects of previous discrimination by providing compensation for inequalities that have allegedly resulted from such practices.[8]

We can gain some insight into how affirmative action is justified and interpreted by its supporters by noting the language in which such programs are couched. Language provides the conceptual tools we use to describe and think about our worlds,[9] and allows us to evaluate our surroundings.[10] Even the choice of the label "affirmative action" indicates the ethical and political orientation of its defenders.

Social improvement is the goal

The salient feature of the term "affirmative action" is its "liberal" connotation, in the modern sense of that term.[11] Clearly, those proponents using the term[12] view themselves as supporting policies that will make positive changes and improve society. Like much of

the language employed in modern social commentary,[13] the designation "affirmative action" is more inspirational than informative; it tells us more about the intentions of its users than it describes the programs they support.

Reverse discrimination

A review of the literature[14] reveals that affirmative action is known by many labels, one of which is particularly useful to understanding the content of these programs. "Reverse discrimination" provides a clearer image than "affirmative action," for it describes the type of action such programs intend.[15]

Exponents of these programs make their aims evident by posing and answering the question: Where illegitimate discrimination has been discovered, is it sufficient to *rectify* past discriminatory practices or must *compensation* to previously discriminated groups be instituted and, if so, how? Advocates of affirmative action believe it insufficient merely to replace discriminatory practices with a set of legitimate procedures. They claim that reparations must be made to wronged groups for previous discrimination, even where this involves discriminating *in favor* of the victims of historical discrimination. Cohen's observation that affirmative action replaces one form of discrimination with another deserves attention:

> Affirmative steps to eliminate racially discriminatory practices rightly win the assent of all. . . . But when, in the name of affirmative action for racial equality, the deliberately unequal treatment of races is introduced, we suffer from a national epidemic of doublespeak. . . . The very term "affirmative action" has lost its honor and has become, for most, a euphemism for racial preference.[16]

Besides berating the "one bad turn deserves another" logic, Cohen's comment also points out that affirmative action programs have taken several forms.

Three Types of Programs

Essentially there are three types of action to affirmatively reduce the results of historical discrimination. These can be ordered in terms of the length of time required for an effective solution. First, there are programs aimed at establishing and distributing to disadvantaged individuals the information and skills required to effectively compete for and acquire desired social positions. Such initiatives include special recruitment programs, information campaigns, schooling op-

portunities, and the like. Although the content of these undertakings is diverse, they all require a comparatively long time to produce a social order free of the marks signifying its discriminatory past.

Other affirmative action enterprises recommend a swifter pursuit of social change. Included among the more vigorous brands are those proposals to establish timetables and goals by which to mark the pace of progress toward their objectives.

Finally, there are those programs that seek immediate rectification of the inequalities produced by the previous discrimination. Such actions usually involve the establishment of quotas in various institutions to be exclusively and immediately filled by members of those groups identified as victims of historical discrimination. Although these types of affirmative action share a concern with doing something about the effects of discrimination and are similar in that they require giving special treatment to members of certain groups, they are viewed differently by their supporters and critics. This is not surprising since the "stronger" varieties—which propose immediate solutions—require forceful impositions and are therefore more antagonizing. But this should not blur the underlying similarities of objective and theme common to all affirmative action initiatives.[17]

Common goals

A review of the recent affirmative action literature reveals a common set of goals.[18] First, and to some minds foremost, such programs serve the important symbolic function of publicly recognizing that previous social practices have been racist, sexist, or in some other fashion, discriminatory. The principal orientation of this outlook is historical; it serves to reduce collective guilt by admitting past wrongs.[19] A second commonly recited goal of affirmative action is to increase the opportunities of those previously subjected to discrimination. This consideration is future directed, for when attained, the recipients serve as role models; this, hopefully, will encourage other members of their community. Thirdly, affirmative action policies share a goal whose benefits are embedded in the present. This objective involves the more or less immediate rectification of social and economic inequalities thought to have been produced by previous discrimination.

These three central objectives are knit together with a common thread; they thus share a pattern that is recognizable and interpretable as a quest for "social justice." This theme is so pervasive and so essential to the justification of these programs that it deserves to be singled out for discussion.

Social Justice

"Social justice" is a highly emotional phrase. The concept is politically potent and has acquired a special status which is conferred on an idea when it represents a central value in our moral system and, as such, is deemed sacred. The idea and all it represents is then taken as instrinsically desirable. Who, for instance, would claim to be opposed to social justice?[20]

As an integral part of our governing ideology, the virtue of social justice, like other central values, is accepted more as a matter of faith than of argument.[21] However, this "taken for granted" character makes explication of the concept problematic. Nonetheless, such conceptual clarification is necessary for a clear vision of the moral foundation upon which affirmative action policies rest.

There are two fundamental approaches by which the meaning of any idea can be grasped, both of which must be taken for complete understanding. The first of these approaches is essentially abstract and asks what other ideas underlie the concept under consideration. Such definitions provide theoretical understanding. The second avenue is more concrete and focuses on the procedures undertaken to make the concept operational. The remainder of this section will highlight some of the major theoretical components of social justice and relate them to the notion of affirmative action. The important methodological issues involved in concretizing the concept of social justice will be left for the following section.

Principled or lawful action

As Nettler[22] points out, although the concept of social justice is multi-dimensional and therefore involves multiple referents, alternative conceptions share a common idea that is essential to *any* notion of justice. This binding consideration is that just action involves *principled action*: to whit, social justice is the result of actions that follow clearly stated rules or laws. Now, of course, it is clear that not all ruleful action is just, for the idea of justice stresses that the rules must be of a particular type, namely "principled" rules. The major principle embodied in the concept of justice is that of *fairness*, and fairness is achieved when rewards and punishments are distributed according to what is "deserved."[23]

It is at this juncture that disputes over the meaning of social justice occur. Such conceptual disparities occur because, as Perelman correctly concludes, it is impossible to deduce a set of rational, universally acceptable criteria by which to judge the fairness of rules and regulations; thus, "in the end one will always come up against a

certain irreducible vision of the world expressing nonrational values and aspirations."[24] In short, our conceptions of social justice are necessarily culture-bound because different groups hold different visions of utopia and, consequently, derive different principles by which to rule and judge themselves.

Different visions of which ideals are worth pursuing exist within societies as well as between them. This is especially evident as regards "equality," which has a long and cherished tradition in the western world and whose interpretation is essential to understanding the relationship between affirmative action and social justice.

Equality

In modern times two central conceptualizations of "equality" exist, and although the distinction between these interpretations is simple, their implications for social policy are profound. One meaning stresses equality of *treatment* while the other focuses on equality of *result*. This is not the place to go into the historical development of these differing viewpoints,[25] but it is worth noting that these interpretations have been, and must be, in perennial opposition, for, in effect, they amount to distinct visions of what constitutes a "just society."

Equality of treatment is based on the idea that justice is accomplished when individuals are presented with similar opportunities. The fairness of this structure resides in treating all persons in a similar manner. Of course, when individuals of varying aptitude and interest are provided with similar opportunities, large disparities will result. This outcome does not negate that justice has been done from this perspective. From another point of view, however, it is precisely these inequalities of result that deserve attention if a just state of affairs is to preside. Advocates of equality of result emphasize fairness of consequences rather than equality of opportunity. In taking this orientation they commit themselves to treating unequal individuals unequally so that similar results can be obtained.

Summary

Affirmative action programs employ a vision of social justice both to motivate and to justify their intervention in social affairs. Social justice involves acting on rules that are thought to be fair, where fairness suggests some form of equality. But the nature of equality is differentially conceived, and this brings about different policies. Equality of treatment sees fairness and justice being done when individuals are provided with equal opportunities. If one believes

that equal opportunities presently exist in society, then a state of fairness and justice also prevails and affirmative action is unnecessary. However, if the goal of equal individual treatment is not met under existing social arrangements, then affirmative action becomes justifiable as a means of providing equality of access.

Quite a different prescription is offered from the vantage point of equality of result. If the present system does not produce the type of equality embedded in this vision, policies that will produce this result are thereby justified. Under such circumstances affirmative action necessitates treating individuals or groups quite differently.

It should be clear that both mild and strong forms of affirmative action are derived from these differing conceptions of what constitutes "social justice." Also, these different conceptions of social justice express alternative values about what constitutes a desirable society. Arguments for and against various types of affirmative action can therefore be expected to be fuelled by the passion which comes from moral commitment. One mark of such ideologically based arguments is the disinterest their advocates show in considering competing positions.[26] But if social policy is to be guided more by reasoned debate than by moral zeal each course of action should be considered dispassionately.

SOME POTENTIAL PITFALLS

Ideologies are value-filled belief systems and, as such, they provide us with goals which motivate, justify, and sustain our attitudes and interventions. Unfortunately, in their expression of ultimates, ideologies rarely indicate the clear paths or means by which we are to achieve our desired objectives. Although Alexander Pope counselled that order is heaven's first law, the creation of a utopia on earth is hardly a simple task and, more than likely, such an undertaking will become disorderly and problem filled. The lesson is that good intentions do not ensure good results.[27]

This section criticizes affirmative action without analyzing the justifications for these programs. It is not implied, however, that these policies cannot be justified. Usually these rationalizations take one of the forms mentioned previously or, as often, are implicit in the quality of the proponent's intentions. But our objective is to provide a means by which critical public discussion of affirmative action can be generated. We therefore concentrate on the negative side of the debate.

Not all of the difficulties or criticisms mentioned here apply equally to every affirmative action program. This is the case since, as we have shown, widely different types of programs share this label.

It should be clear that every affirmative action program must be judged on its own merits and with regard to the needs of a particular situation.

The critical issues presented here are grouped into four categories: pragmatic problems of implementation, moral issues, unanticipated problems, and finally, the political ramifications.

Implementation Problems

The first step is to clearly define discrimination. This is necessary if "discriminatory" activity is to be rectified, for effective implementation of a program rests upon clear objectives, and clear objectives require clear language. Unfortunately, a functional definition of this central term is not readily available. Since every definitional difficulty involves conceptual and/or operational problems,[28] these issues are discussed in turn as they relate to defining discrimination.

"Discrimination" is clearly a colored word; the term generally connotes repugnance. In fact, such practices are not entirely pejorative; legitimate or warranted discrimination does exist.[29] Nonetheless, illegitimate discrimination is also practised, and this is identifiable as action that does not meet one or both of two criteria: (1) that the rules used to distribute rewards must be legitimate, i.e., relevant to the successful performance of the task, and (2) that the set of standards used to dispense rewards must be impartially applied. Using these criteria, it can be demonstrated, for example, that an injustice was done to Canadian natives and women prior to their enfranchisement. Race and sex are not legitimate grounds for denying voting privileges. Consequently, Canadian society became more just when such discriminatory treatment ceased.

There is substantial agreement that unwarranted discrimination should be eliminated. However, there are problems in identifying such practices. The greatest difficulty involves demonstrating the legitimacy of the rules used to distribute wealth and position. In short, the key to understanding unwarranted discrimination lies in the establishment of valid selection criteria.

Traditionally, since all criteria are developed within a sociohistorical context, the legitimacy of selection criteria has been assessed by consensus.[30] But consensuses are, at the best of times, somewhat precarious sets of agreements, and as social complexity has increased, so has the difficulty in achieving general endorsement. Where affirmative action is desired, it has been governments who have stepped in to provide, or impose, criteria used to identify unwarranted discrimination.

Government solutions are not the answer

Government supplied solutions to the establishment of legitimate selection criteria run into difficulty. This is vividly illustrated by the history of the "Employee Selection Procedures" established in the United States to guide affirmative action policies. These guidelines were instituted to assure that tests used in hiring did not illegitimately discriminate against various minorities. Glazer outlines the content of these regulations as well as their practical merit and concludes "that just about no test that shows differential achievement really can be validated: the requirements are simply too stringent."[31] *The Harvard Law Review*, analyzing the testing guidelines, asserts, "if applied literally they would raise the cost of testing for many employers beyond tolerable limits, forcing the abandonment of testing programs which, although they may be valid, cannot be validated at any cost. . . . It is possible to read the Guidelines so strictly as to make testing impossible. . . ."[32]

The lesson of this example is crudely ironic: in an attempt to eliminate discrimination based on illegitimate selection, government regulation has made it practically impossible to employ selection criteria based on merit.[33] This is a clear sacrifice of rationality and realism in a doomed quest for the perfect solution.

Redressing historical injustice

The problems in implementing legitimate selection criteria are minor in comparison to the problems associated with the core of affirmative action policies—which focus on redressing historical injustices resulting from unwarranted discrimination. In order to take affirmative action that will rectify the effects of historical injustices, the pragmatic problem of deciding *which* groups received *how much* unwarranted discrimination immediately arises. Only after answers based on reliable evidence are established can reparations be contemplated. Most persons can readily name groups they believe have been unjustly treated; however, to *demonstrate* such assertions is more difficult. Of course, governments can, and do, make policies only on the basis of such beliefs. However, for purposes of legitimation, civil servants often feel obliged to provide evidence of historical discrimination. Most commonly such evidence is sought through comparison of *proportionate group representation*.

As Glazer[34] and other observers have noted, the use of comparative proportions of sexes or ethnic groups or races in various occupations or schools or other settings has arisen from the enormous difficulty in documenting *particular* cases of unwarranted dis-

crimination that have occurred. Those encouraging proportionate group representation indicators of historical discrimination begin with the implicit assumption of a history of sexist, racist, or other discriminatory practices.[35] Because there are no relevant genetic group differences operating, the substantial under-representation of various groups in various educational and vocational sectors is given as evidence of this deplorable heritage. In short, as one advocate of this position proclaims: "Absent discrimination, one would expect a nearly random distribution of women or other minorities in all jobs."[36]

Quotas are patently spurious

The use of proportions as indicators of historical discrimination involves a spurious argument, for there is no reason to believe that even without discrimination a random distribution of different groups would be evident in various sectors of our society. Clearly, there are many other variables—such as education, location, religion, and culture—that can and do effect differential outcomes for both individuals and groups.[37] In short, there are many competing explanations to account for the representation of various ethnic, minority, and sexual groups that presently exist.

To challenge the use of comparative group representation as a measure of historical discrimination is not to claim that such unpleasant practices did not, and do not, occur. However, *identifying* the existence of such practices for use in the formation of public policy is highly problematic.

There are also substantial problems in deciding *who* are members of groups that have received unwarranted discrimination. The implementation problems this poses are by no means trivial; if persons from non-discriminated groups are incorrectly compensated, then such programs will increase injustice rather than reduce it.

For example, a recent American review of policies toward native Indians, including affirmative action, points out the obstacles to identifying natives who deserve compensatory treatment: "no clear cut, generally accepted definition of an Indian exists."[38] In Canada, the shifting definition of "Indian" depending on treaty, non-treaty, or Metis status, and the complexities associated with female out-marriage disenfranchisement, can be expected to cause similar identification difficulties.[39]

Then there is the related puzzle of deciding *which* groups deserve affirmative action. Once legitimate definitions have been established, it will be evident that not one but several groups have suffered historical discrimination. The relevant policy question again be-

comes: What criteria shall be used? The present situation in Canada and the United States suggests it is largely those groups whose historical injustices have been popularized (women and natives) that are singled out for attention. However, if affirmative action is going to work toward its espoused objectives of social justice, it is surely necessary to take action on behalf of *all* groups victimized by historical discrimination. Examples like the history of black slavery in Nova Scotia or the shameful treatment of the Japanese in British Columbia during the 1940s come to mind.[40] Otherwise, it will appear as if affirmative action policies are practising a type of selective attention similar to that which they renounce.

Finally, we must look at the extent to which the good intentions of policy makers are distorted by the bureaucrats assigned to the task of implementation. Glazer identifies the root of this concern:

> It is the fate of any social reform . . . that, instituted by enthusiasts, men of vision, politicians, statesmen, it is soon put into the keeping of full-time professionals. This has two consequences. On the one hand, the job is done well. The enthusiasts move on to new causes while the professionals continue working in the area of reform left behind public attention. But there is a second consequence. The professionals, concentrating on their own area of reform, may become more and more remote from public opinion and, indeed, from common sense. They end up at a point that seems perfectly logical and necessary to them—but which seems perfectly outrageous to almost everyone else.[41]

In short, it is possible that the form and effects of affirmative action programs when they reach implementation may be substantially different from what the initiators intended.[42]

Adelson expresses this point by noting that the "rapid conversion of 'affirmative action' into bureaucratically mandated quotas has taken place despite specific congressional intentions to the contrary, despite its overwhelming rejection in public opinion polls, despite the solemn disavowals by President Carter both before and after his election, and despite the body of legal doctrine presumably removing race as an acceptable criterion for preferment."[43] The following example illustrates an extreme bureaucratic stupidity:

> At one Ivy League University, representatives of the regional HEW demanded an explanation of why there are no women or minority students in the Graduate Department of Religious Studies. They were told that a reading knowledge of Hebrew or

> Greek was presupposed. Whereupon the representatives of HEW advised orally: 'Then end those old fashioned programs that require irrelevant languages. And start up programs on relevant things which minority group students can study without learning languages.'[44]

Moral Questions

Affirmative action policies present more than just pragmatic problems of implementation. Since they are dedicated to the pursuit of social justice, they have a clear moral commitment. In this quest such programs become inevitably and inextricably bound to moral concerns.[45]

The central moral principle challenged by affirmative action is as follows: In a socially just state, individuals have a right to equal treatment. From this principle it follows that if historical discrimination has resulted in members of various sexes, races, or ethnicities being treated unequally, then their rights have been violated and compensation should be forthcoming. In other words, affirmative action challenges the principle of valuing *achievement* over *ascription*, where achieved status is based on individual performance and ascribed status is based on some collective characteristic, like skin color, sex or family membership.[46]

Moral considerations based on achievement criteria suggest that when a person has been the unjust victim of discrimination, that *individual*, and no one else, deserves compensatory treatment. Moreover, the costs should be borne only by those who practised, and therefore gained by, discriminating against others. Such conclusions are entirely consistent with widely acclaimed beliefs in freedom and equality that continue as the dominant ideology of Canadians.[47]

Most affirmative action programs, however, violate these ethical principles in two fundamental respects. First, action is directed towards *groups*, not individuals. Those compensated by affirmative action qualify because of some *collective characteristic* they share, not because of a demonstration that they (as *individuals*) were victims of unwarranted discrimination. By treating individuals on the basis of ascribed characteristics, rather than on personal merit, affirmative action programs are ironically open to the charge of racism or sexism, as the case may be.[48] Affirmative action is also ethically problematic in that it is initiated by the government—with monies derived from broad-based taxation. Individual taxpayers are thus forced to pay for rectifying the consequences of discriminatory

treatment that many did not commit. In other words, payment (punishment) is exacted from innocent individuals.[49] Certainly this is an untenable moral position.

The magnitude of the ethical problems associated with affirmative action varies with the stringency of their measures. As well, one value may be traded off against another. For instance, it may be argued that sacrificing the freedom of (relatively) innocent persons, although absolutely undesirable, is worth the cost if equality of result is a cherished value. However, since affirmative action desires to achieve moral goals, exponents ought to be concerned with the ethical implications of their own policies. Perhaps exponents of these programs should be required to make explicit the ethical implications of their policies and to justify their ranking of ethical imperatives.

Unintended Harmful Consequences to Minorities

"Unintended consequences" refer to the unanticipated policy effects that occur from instituting social programs in complex environments. Such results occur because available knowledge is always incomplete and, consequently, outcomes cannot be predicted with certainty.[50] This factor should encourage prudent action on the part of policy makers, for the potential always exists for well-intentioned programs to be counterproductive.[51]

The unintended consequences of affirmative action are of two general types. The first is socio-psychological and focuses on the self-images of program recipients. The second is concerned with the results these programs may have on intergroup relations. These two types of effects are considered in turn.

Within the constituency of every group that has encountered discrimination, there are individuals who, for whatever reasons, are able to overcome the disadvantageous effects. These persons demonstrate the capability of acquiring the relevant qualifications and achieving better social positions. In a system where affirmative action is practised, such competent and qualified individuals can be significantly harmed in several ways.

Harm to the highly competent minority person

First, competent individuals can be deprived of ever clearly knowing whether their social position was achieved because of their own merit or the benevolence of others. In a society that values personal achievement, the gratification that accompanies self-initiated im-

provement will be denied them. This is not insignificant for personal self-image.[52]

Even if a competent minority group member appreciates his own abilities, his peers may not. Van den Haag agrees that minority group members "will not know whether they were hired because they were qualified or because they were female or black; *nor will others*."[53] The perception others have of us is an important determinant of our self-image and well being.[54] Therefore, for competent minority group members to have peers who do not fully appreciate their abilities can be damaging. Evans supports this concern with respect to the American situation when he states that "the lowering of standards required by affirmative action hiring will taint the many legitimate achievements of black scholars."[55]

Paradoxically, competent minority group members may even be prevented from achieving positions for which they are qualified. Havender notes that this has occurred since affirmative action, in the form of quotas, was instituted at Harvard Medical School. The quota for minorities specified social class background as well as race. Employing these criteria "minority applicants with excellent academic records but middle class origins were initially *denied* admission while much more poorly prepared minority applicants from the 'proper' social background—the ghetto—were being recommended." As a result, "what is so elevatingly called an affirmation of social responsibility boils down in practice to setting aside in many cases manifest academic talent in the ranking of minority students *even against each other*. . . ."[56]

Harm to the unqualified minority person

Under affirmative action, under-qualified as well as competent persons from the target population may be the beneficiaries of enhanced social standing. But like the qualified individual, the under-qualified person runs the risk of experiencing harmful consequences.

Many affirmative action programs hire or promote people on the basis of ascriptive criteria, like race or sex, and not because they possess the relevant abilities. For those who do not possess the proper qualifications, affirmative action will serve as a form of self-deception. Individuals will be encouraged to accept new positions and statuses for which they may not be qualified. When such self-deception is discovered, the damage to self-concept can be considerable. This occurs because most elevations in status require increased performance. When under-qualified individuals are allowed to occupy demanding positions, some will inevitably perform incompe-

tently. In time, even the under-qualified minority group members themselves will be unable to evade or overlook the fact that they are unable to perform adequately.[57]

Does affirmative action promote the unqualified?

Some advocates of affirmative action claim that *only* qualified members of minority groups will benefit from the programs. Ideally this should be the case, and most affirmative action policy statements are phrased as if this was their aim. But at least two factors prevent the realization of this goal.

The use of quotas is a first obstacle. Quota assignment may well force recruiting agencies to admit less than completely qualified persons in order to fill the required allotment. True, many affirmative action programs do not specify quotas. Nonetheless, even under these programs there is the risk of hiring under-qualified persons. This is because an incongruity often develops between the intentions of policy makers and the results of bureaucratic action. In his summary of affirmative action, van den Haag states this point bluntly: "Despite the clear language of the [affirmative action] memoranda, the bureaucracy has perverted the intent of the legislation."[58]

Although not much empirical work has been devoted to the qualification question, there is some evidence available. Havender has recently investigated the case at Harvard Medical School where, since 1968, 20 percent of the admissions have been reserved for members of "disadvantaged" minority groups. In discussing the entrance requirements for these minority group applicants, he notes that "for them the *usual* requirements of high grades and MCAT scores were *greatly relaxed*."[59] Similarly, at the University of California Medical School, a recent examination of the entrance requirements of minority group members admitted under the affirmative action program concluded that the grades of these students were "lower than the minimum required for white applicants."[60]

Harm to the excluded minority person

As affirmative action becomes well known, members of the recipient population can become persuaded that special treatment is their right.[61] Moreover, though present social arrangements may no longer be discriminatory, the mere existence of compensatory programs is capable of heightening the recipient group's awareness of unjustified ancestral discrimination. As a result, minority group members who, for whatever reason, are not granted what they perceive as their rightful allotment of extra benefits will feel that they are

the objects of continuing discriminatory treatment. Besides the frustration produced by such a set of circumstances, affirmative action policies—when based on ascription rather than merit—will not motivate under-qualified individuals to improve themselves.

In short, affirmative action may foster a set of circumstances in which minority group members believe that, independent of their qualifications, they have the right to a better social standing simply because their ancestors were subject to discriminatory treatment. If such better social standing is not immediately forthcoming, their sense of frustration and sense of unjust treatment may well be increased and their desire to acquire marketable skills reduced.

Intergroup Relations Exacerbated

Among persons from groups who do not receive preferential treatment, affirmative action may engender resentment toward those who do. Indignation can be fostered since the majority of the non-beneficiaries have had to struggle to acquire their positions. When other, often less qualified, individuals from a distinctive social group are unjustly awarded similar status, resentment is created.

One reason displeasure will be directed from majority to minority group members is because the acceptance of the under-qualified to any status category serves to devalue the worth of that social position. Understandably, those who feel they paid the full price of membership have a vested interest in maintaining the value of their position. They resent attempts to undermine their achievement. To say the least, affirmative action challenges these vested interests. It thus fosters a negative stereotype of the recipient groups in the eyes of the majority and, consequently, strains intergroup relations.

This stereotype is unfair, since many of the labelled population will actually be competent, and others will not even receive benefits. Nonetheless, such stereotyping is probably unavoidable since the compensatory practices plant the kernel of fact that makes stereotypes intractable.[62] Let only some under-qualified individuals be promoted and manifest their incompetence, and any prejudice that the non-recipients had toward the beneficiary group will be legitimized and reinforced.

Breaking down traditional amity

Affirmative action goes even further toward damaging intergroup relations. It has even promoted cleavages between traditionally allied ethnic groups. Lekachman describes the situation as it exists in the Unites States, where the advantages of affirmative action have

been provided for one set of victims of historical discrimination, but not another:

> In the light of their communal histories, Jews and blacks were fated to quarrel over "goals" (good word) or "quotas" (bad even if prefaced by "benign"). . . . Nevertheless, what embittered the quarrel and all but dissolved ancient alliances between blacks and Jews was the perception that the brass rings of success are much scarcer than they used to be. Only so many people can hope to become affluent physicians or even skilled craftsmen.[63]

This illustrates another unanticipated problem: "in the allocation of scarce goods may one's race count in one's favor? If ever, when?"[64]

Another source of potential friction relates to obvious extensions of the affirmative action rationale. If it is admitted that public and private agencies can be permitted to establish quotas of women, natives, or other social categories, does not this open the way for consideration of restrictive, regressive programs aimed at other groups? One could argue with as much reason that such practices would equalize proportionate group representation. Such a fear is already evident among Jewish groups in America who believe that the reasoning behind affirmative action could lead to a return to the "quotas that were once used to limit their numbers in certain schools, clubs, or employment."[65]

Affirmative action increases social inequity

Finally, two additional unanticipated consequences deserve mention. The first is ironic and suggests that such policies may actually *increase* the amount of apparent inequality in the public sector. Supporting evidence is available for the case of women's income in the United States, where affirmative action helped bring more women with limited skills into comparatively low-paying jobs. This increased the income inequality apparent in the marketplace[66] and, in so doing, added fuel to the fire. Such fuel is then used to promote additional affirmative action programs.

The other unintended result concerns the issue of who benefits from affirmative action programs. Recent evidence suggests that by attending to group characteristics rather than individual qualifications, such policies have aided minorities not intended to receive assistance.[67] For example, several observers have noted that affirmative action benefits have accrued to Oriental Americans who are already better educated, richer, and more highly employed than most other groups. On the same point, other authors have suggested that

many of the beneficiaries of affirmative action policies are bureaucrats who have a vested interest in the expansion of such programs.[68]

Some Political Considerations

Near to the heart of any liberal-democratic system is the question, "Do these affirmative action programs have the support of the people?" It is by no means clear, in Canada or the United States, that they do. For example, inter-racial busing in the United States has elicited fervent reactions and demonstrations.[69] Moreover, recent evidence suggests that not even the beneficiaries of these programs wholeheartedly support them. For example, Bolce and Gray report that blacks in New York City do not strongly support affirmative action. Fifty-three percent disapproved of legally mandated preferential treatment in busing and college admissions, while only 40 percent approved. Furthermore, 52 percent believed that "busing school children across district lines makes relations between races worse."[70] Sowell reports that "public opinion polls have repeatedly shown most blacks opposed to preferential treatment either in jobs or college admissions. . . . The Gallup breakdown of the U.S. population by race, sex, income, education, etc., found that 'not a single population group supports affirmative action.'"[71] Of course, legislators may retort that their job is to make social policy as they see fit and face the consequences at election time. Although this might be an acceptable rationale, it is no excuse for not considering the problems associated with policy decisions at the time they are taken.

There is also a second, more general political problem associated with affirmative action which concerns the continuing crises in the credibility of western governments.[72] At least in North America it can be argued that governments do not have the support of the people that they once enjoyed. The lower voter turnouts in most elections are only one manifestation of this phenomenon. Although there are undoubtedly many reasons for this waning of popular support, one plausible cause is that governments have not fulfilled their promised policies as efficiently or effectively as was expected. Under such circumstances, people are prone to lose "faith" in their government's credibility. But governments have several important, indeed crucial, roles to play in modern democracies, the successful performance of which largely depends on maintaining authority. Under present circumstances, where government credibility is both essential and precarious, it is important that they not act so as to lessen their legitimacy.

If the issues raised in this section are not adequately addressed by

policy makers then affirmative action may create more problems than it solves. Such an outcome will add to the roster of government ineptness, a demonstration that can only exacerbate declining public support.

SOME CANADIAN ILLUSTRATIONS[73]

Francophones and the Public Service

The case of Francophones in the public service of Canada illustrates the initiation and existence of affirmative action before the formal apparatus justifying such policies was in place.

The issue of French Canadian representation in the public service was a concern at least as early as 1962, when the Royal Commission on Government Organization investigated their underrepresentation. It was clear that during this time French Canadians did not hold government jobs in proportion to their numbers, and the jobs they did hold were clustered in lower paying positions.[74] The Royal Commissioners concluded that French Canadian citizens were probably not receiving adequate service from government officials and that, therefore, steps should be taken to increase their representation at all levels of government.

The importance of creating greater French Canadian representation in the federal civil service was a theme reiterated by the Royal Commission on Bilingualism and Biculturalism.[75] Here the idea of affirmative action (though not the label) took a prominent place in federal government policy. In arguing the need to recruit and promote more Francophones, the Commission used comparisons of civil service representation to population proportions as a rough guide.[76] Moreover, the Commission also suggested that the principle of merit, the cornerstone of effective and efficient bureaucracies everywhere, be changed in several respects—supposedly to permit the desired increase in Francophone participation.

A change in the rules

Among the changes envisaged were the procedures for appointing senior civil servants. It was suggested that the non-partisan criteria of merit and service be replaced by ones which would ensure "effectively balanced participation." As well, the Commission recommended shifting the criteria for acquisition and advancement in government employment. "Generalized" abilities were to replace

the more traditional "specialized expertise." This suggestion was made with the full knowledge that Francophone graduates were more likely to come from Quebec schools, which emphasized a classical liberal arts orientation over the business, science, and engineering education provided elsewhere. The following quotation from the Commission's report captures the nature of the suggested changes:

> We think greater efforts should be made by the Public Service Commission and Departmental teams to evaluate Francophones in their own language and in accordance with their own cultural characteristics. We recommend . . . that the process of testing and selecting candidates for federal departments, Crown corporations, and other agencies take into account the differing linguistic and cultural attributes of Francophone and Anglophone applicants.[77]

Furthermore, the Commission recommended, and in 1971 the Liberal government instituted, special French language units within the civil service. It was anticipated that these units would provide Francophones with greater opportunities for movement up the civil service ladder.[78]

Although the Bilingualism and Biculturalism Commission was the principal promoter of policies based on these ideas, it was not the only agent. The Public Service Commission also focused on kindred concerns and, by the 1970s, had demonstrated its commitment to affirmative action principles for Francophones. Beginning in the 1960s, the annual reports of the Public Service Commission openly report proportionate compositions as indicators of "progress" toward a justly representative civil service. The same sentiment was voiced by the Commissioner of Official Languages in his reports:

> The participation of French speakers in Canada's public service has advanced even more strikingly. . . . Likewise, French speakers in the public service have held, since 1975, nearly their "fair" share of federal jobs (with 27% of Canada's population)—about one in four—even though proportionately, they do not yet hold enough officer jobs.[79]

Proportional representation, not merit

The affirmative action criterion of proportionate population representation was not adopted in isolation. In order to achieve the desired proportions rapidly, the principle of merit inevitably had to be challenged as the sole criterion for selecting and promoting gov-

ernment officials. In 1971 the Public Service Commission advanced this challenge:

> But the Commission has been taking a longer look at the concept of merit in recent years. To be sure, it has given us a top quality public service and one which Canada and Canadians are proud of. But the existing application of the merit system has failed in one respect. It has not given us a representative civil service. . . .
>
> The question we have been asking ourselves recently is this: Is a public service that does not fully represent the people it serves the best possible public service? And if not, how can we ensure that there is true equality of opportunity for all peoples?
>
> The answer may be found in a dynamic concept of merit, one which is able to adapt to the real conditions and the changing values of the society at large. It is this philosophy that lies behind the recent introduction of special recruitment programs for French-speaking Canadians, of programs aimed at improving the opportunities for female public servants, and our newly launched native employment program. It is a pre-occupation we will be increasingly facing in the future.[80]

Throughout the remainder of the 1970s, the Public Service Commission became increasingly attentive to affirmative action ideals. So much so that when their 1978 report was tabled, merit was only one of five principles designed for staffing and promotion. Included were several notably ambiguous criteria: efficiency and effectiveness; public sensitivity and responsiveness; equity; and equality of access to Public Service Employment. The explanation provided for the "equality of access" criterion illustrates how embedded affirmative action had become: "All Canadians should have equality of access to employment in the Public Service, except where preferential treatment for certain groups is required or permitted by legislation."[81] Note the qualified phrasing of this justification for greater Francophone representation. It suggests that the advocates wanted affirmative action policies without wishing to declare openly their conflict with traditional selection and promotion criteria. Moreover, the qualified interpretation of "equality of access" represents the type of manoeuvre required for the legitimation of affirmative action initiatives. Such justifications had to be soft peddled since they were among the first endeavours of this kind. However, with the ratification of the Human Rights Act of 1978, affirmative action gained

the backing of law—and justifications became more a matter of course than qualified argument and assertion.

Human Rights Act

Where talk of affirmative action was carefully guarded before March 1, 1978, it gained legitimacy and openness afterward, for on this date the Canadian Human Rights Act received royal assent. The Act's orientation is noble:

> . . . every individual should have an equal opportunity with other individuals to make for himself or herself the life that he or she is able and wishes to have, consistent with his or her duties and obligations as a member of society, without being hindered in or prevented from doing so by discriminatory practices based on race, national or ethnic origin, color, religion, age, sex or marital status, or conviction for any offense for which pardon has been granted or by discriminatory employment practices based on physical handicap.[82]

This well-intentioned piece of legislation, on the whole, expresses sentiments worthy of immediate acceptance. However, for our purposes, section 15 of the Act deserves critical scrutiny, for it is here that affirmative action gains the force of law.

> It is not a discriminatory practice for a person to adopt or carry out a special program, plan or arrangement designed to prevent disadvantages that are likely to be suffered by, or to eliminate or reduce disadvantages that are suffered by, any group of individuals when those disadvantages would be or are based on or related to the race, national or ethnic origin, color, religion, age, sex, marital status or physical handicap of members of that group, by improving opportunities respecting goods, services, facilities, accommodation, or employment in relation to that group.
>
> . . . The Canadian Human Rights Commission established by section 21 may at any time (a) make general recommendations concerning desirable objectives for special programs, plans or arrangements referred to in subsection (1); and (b) on application, give such advice and assistance with respect to the adoption or carrying out of a special program, plan or arrangement referred to in subsection (1) as will serve to aid in the achievement of the objectives the program, plan or arrangement was designed to achieve.[83]

The essence of this legalistic phrasing is to define a particular type of discrimination, based on ascribed characteristics, and sometimes called "affirmative action," as "non-discriminatory."[84]

Now unless one accepts an Alice-in-Wonderland worldview, where something is whatever those in power define it to be, then a glaring contradiction is apparent within the Human Rights Act between its commitment to non-discrimination (section 2) *and* to affirmative action ideas (section 15). In other words, while attempting to produce a just state of affairs, the Human Rights Act lends support to programs that challenge the principles of its existence. As pointed out previously, such considerations of definition and logic are not merely theoretical or abstractly technical, the risks of affirmative action initiatives are real. That the Human Rights Act gives legitimacy to such actions while contradicting itself only complicates the reality. However, one thing is clear: The Human Rights Act has given birth to new affirmative action programs and provided a source of justification for those already in existence. Policies toward native people amply illustrate the realization of programs backed by the Human Rights Act.

The Case of Native Peoples

With the "raising of consciousness" that occurred during the 1960s, the deplorable situation of Canadian native people gained greater public attention. This general public awareness was reflected by those charged with staffing and administering the civil service. Throughout the 1970s, such concerns were acted upon by the Public Service Commission. For example, progressively greater numbers of staff were devoted to native issues until an entire office, the Office of Native Employment, was established. The Public Service Commission also reported regularly on the proportion of government positions filled by natives.

In November 1978, shortly after the passage of the Human Rights Act, the Liberal government announced its initiation of affirmative action plans for native people. Robert Andras, the minister delegated to explain these undertakings, emphasized two objectives. The first was to increase native employment generally, and the second was to ensure their "adequate" representation in government programs directed at natives. The operative term "adequate" was defined as that sufficient to "reflect client needs." In the government's own terms:

> The need for specific measures to prevent, eliminate, or redress disadvantages experienced by specific groups of employees or

> citizens is recognized in legislation. The government has acknowledged that there is a critical lack of participation and representation of Indian, Metis, Non-Status Indian, and Inuit people in the Public Service and has decided to take action to provide for and actively encourage greater participation, at all levels, particularly at the middle and senior management and advisory levels.[85]

With these words and the backing of the Human Rights legislation, the first full-scale government affirmative action plan was under way.

Traditional job selection criteria under attack

The specific programs that followed this general decree included information and training campaigns. But the policy also involved a reassessment of the relevance of traditional job selection criteria as they were applied to natives. On this point government departments were required to:

> . . . review their existing practices governing the design of jobs, recruitment and selection, training and career development of employees, in order to identify and systematically eliminate any such practices which discriminate against and/or present barriers to indigenous persons who are public servants or are candidates for positions in the Public Service.[86]

This directive illustrates the ambiguous language often characteristic of affirmative action. The nature of "discrimination" remains unclear, as does the meaning of practices that "present barriers" to natives. Notwithstanding the best intentions, imprecision in these concepts opens the door to interpretations that could promote racist and foolish actions. In places, however, affirmative action directives concerning natives are quite specific in their guidelines, which include identifying:

> . . . positions that require knowledge of the client group's culture, needs, aspirations, and interests, [formulating] qualifications for positions identified [as such], and establishing criteria, in consultation with the Public Service Commission and representatives of the national associations regarding participation of indigenous peoples on screening and selection boards for positions.[87]

It is evident that these directives represent guidelines that are to clearly favor native applicants.

But the tailoring of relevant qualification criteria is not the only

distinguishing feature of the government's native affirmative action policies, for the use of proportionate representation as an indicator of "progress" toward desired objectives is also encouraged. Specifically, government departments are encouraged to:

> . . . develop annually specific action plans to meet the objectives of the policy and report annually to the Treasury Board on the results of these, with particular respect to increases in the number of indigenous persons employed by occupational group and level. Action plans . . . will include proposed goals for increasing quantitative and qualitative participation of Indian, Metis, non-status Indian, and Inuit peoples. They will be reviewed jointly by the Treasury Board Secretariat, the PSC, and the national associations of indigenous peoples.[88]

Equal Rights for Women

Another important undertaking is the Equal Opportunities for Women programs in the federal civil service. Like most affirmative action initiatives, these were established as a response to the questions raised during the activist 1960s. During this decade the Royal Commissions on Government Organization and Management and on the Status of Women, as well as several related reports, all pressed for direct government action to improve the representation of women in the public service.

The government responded to these pressures in a number of ways. In 1971 it made several changes recommended by the Royal Commission, while the creation of an Equal Opportunities for Women bureau was also sanctioned. The following year the Cabinet directed all government departments and agencies to "take steps to encourage the assignment and advancement of more women into middle and upper echelon positions."[89] In 1975, during International Women's Year, even more detailed programs and policies were set forth.[90]

Like any other broad-based program, those for establishing equal opportunities for women should not all be tarred with the same brush. The activities undertaken under its auspices range from unassailable attempts to reduce unwarranted sex-based discrimination to more debatable actions like redefining job selection and promotion criteria. However, affirmative action is an important theme in the programs for women. This is clear in the Treasury Board's 1975 statement outlining the importance of achieving proportionate sex representation in all occupational groups and levels—an objective doggedly followed ever since.[91]

Additional Illustrations

While the equal opportunities for women programs illustrate another general affirmative action theme, the Native Law Student initiative exemplifies a specific case. This program, developed during the 1960s, was motivated by gross under-representation of native lawyers relative to their population. Although centered at the University of Saskatchewan, the program involves many law faculties of major Canadian universities. Behind the program was an attempt to increase the proportion of native lawyers by persuading law schools to modify their regular admission criteria. As MacLean documents,[92] this program was more successful at persuading law schools to change their admission criteria than it was in achieving an increase in the number of native lawyers, a result which is given closer attention in the next section.

Other affirmative action programs dot the Canadian social landscape. For example, Saskatchewan's socialist N.D.P. government recently gave its Human Rights Commission the power "to approve or order comprehensive affirmative action programs designed to assist equality in employment and education" because "the individual case by case approach to discrimination is woefully inadequate" in dealing with "institutionalized discrimination."[93]

Universities are playing their part in promoting these programs as well. For instance, the Faculty of Medicine at the University of Manitoba has recently established a "special premedical studies program . . . to help native people qualify for admission to medicine."[94] And the College of Cape Breton has undertaken a university-wide policy to use affirmative action and other measures in the "Decade for Action to Combat Racism and Racial Discrimination."

As well, various professional associations have passed motions with affirmative action intentions, like one from the Canadian Association of Sociologists and Anthropologists which moved "that the hiring of women in departments of sociology and anthropology should result in a proportion of women faculty of at least 20 percent. This quota should be met within a three year period."[95]

These illustrations show that affirmative action is no isolated, abstract collection of theoretical ideas but, on the contrary, constitutes a set of lively initiatives within Canadian social policy. However one judges their desirability, it is clear that they constitute an important policy theme.

Affirmative action programs are expanding in Canada without much public understanding or discussion. They are almost taken for

granted.[96] But on the basis of the criticism levelled against them, it seems reasonable to suggest that such policies deserve additional consideration. A call for a re-examination of the legitimacy of affirmative action may, of course, be met with the following retort: It has yet to be demonstrated that such policies do *not* work, so why treat criticism of such policies seriously? The following two sections will be directed toward answering this question. The first addresses the effectiveness of affirmative action programs, while the concluding section explores some policy guidelines that follow from our discussion.

EVALUATING AFFIRMATIVE ACTION

Does affirmative action work? Unfortunately, no one can adequately answer this as presently stated, for at least two reasons. First, the query is too broad to be meaningfully addressed. As pointed out previously, "affirmative action" includes a wide variety of programs ranging from information campaigns to quota systems. Because a yardstick that might measure the effectiveness of information campaigns directed toward disadvantaged minorities is not the same as that which would gauge the consequences of quotas, a global assessment is not feasible. Secondly, all programs "work" in the sense that they have some effect, but whether these are the desired effects and, more importantly, whether benefits outweigh costs is another matter. In short, what is meant by "work" has to be clearly specified in order for an adequate assessment to be made.

There are no studies which adequately assess the effectiveness of affirmative action as a general social policy. Nor is there research which properly evaluates many of the affirmative action programs in Canada. Since no adequate overall assessments of affirmative action exist, it is important to appreciate what a satisfactory evaluation would entail. First, such an undertaking must make a comparison of both the individual and social costs and benefits of the program. It is insufficient, but all too common, to merely investigate and record achievements. Such a consideration of benefits, without an assessment of both the anticipated and unanticipated costs, provides only a biased account. Secondly, any adequate evaluation must clearly establish that the observed results occurred because of the particular program, and not for some other reason.[97]

Since no Canadian evaluation even comes close to satisfying these desiderata, it is worth asking why? One reason is that only recently have critics begun compiling a roster of possible costs and benefits of affirmative action programs. Without this knowledge, it is

hardly surprising that thorough measurements have not previously been taken. Even where such a list of anticipated effects exists, there are considerable problems in constructing adequate measures. How, for example, might one calibrate the subtle but significant changes in intergroup tension, or self-concept, let alone the public's perception of government credibility? For many of these important issues social scientists have only crude indicators, if any. But our inability to quantify such effects does not deny their existence. In fact, this should make us even more aware of their importance, for without such sensitivity these effects are likely to go unrecognized.

There is a third possible reason why very few evaluations of affirmative action programs are conducted; this reason is ideological.[98] Although difficulties exist, there are several areas of affirmative action that could be empirically evaluated, yet little has been done.[99] Moreover, investigators attempting to obtain information relevant to such assessments regularly complain of the unwillingness of administrators to release it.[100] The fact that few researchers seem interested in evaluating affirmative action (where just the opposite is the case for most social programs), and that those who wish to do so have unusual difficulty obtaining the relevant information, suggests that there is an ideological motive at work. Affirmative action programs are political interventions and, as such, necessarily carry the moral commitments associated with any such activity.

It should not be surprising that there may be an ideological motive underlying the lack of evaluation of affirmative action programs. Values influence our selection of social goals.[101] Values also affect our interpretation of evidence assessing social programs.[102] Where strong commitment exists to a goal like social justice, all attempts to achieve this goal are praised. Concurrently, motivation to evaluate programs aimed at this goal is reduced, for such assessments risk dampening enthusiasm by documenting disparities between ideals and reality. While appreciating the ideological and other constraints on the availability of evidence assessing affirmative action, some tentative conclusions may be drawn from available data.

Anticipated Outcomes Have Not Been Achieved

The goals of affirmative action include the rectification of social and economic inequalities. It is also expected that the resulting minority group members in upper status positions will serve as positive role models for others. It is thus anticipated that affirmative action will immediately promote greater equality and increase the likelihood of even greater equality in the future. If these two results were

achieved, they would constitute a strong argument in favor of these programs; unfortunately, the evidence suggests that these assertions are more expressions of hope than fact.

Data collected on Canada's affirmative action for women in the public service is a case in point. Since its inception, the Office of Equal Opportunities for Women has been reporting the proportion of women in various sectors and levels of the public service. But the 1976 survey stated:

> A study of the classification level distribution by sex for ten significant groups demonstrates that the employment status of women in the federal public services has not appreciably changed between 1974 and 1976.[103]

Moreover, by the time the 1979 report was issued, the situation was still not encouraging:

> From a general perspective, the number of women has increased at a much higher rate than the number of men . . . however, this large increase in the number of women results in an improvement of only 3.1 percent of the proportion of women to men since 1974. . . . there are higher rates of increase in the number of women at the intermediate and senior levels, but the proportion of women to men remains discouragingly low, especially at the senior levels.[104]

We must conclude, along with the authors of these reports, that affirmative action programs for women are not working at a satisfactory rate.[105] And it is not only the present rate of success that appears discouraging, but future developments as well. For instance, MacLean[106] reports that "the Carnegie Commission on Higher Education estimated that affirmative action programs might take 50 years to achieve the goal of eliminating discrimination and disadvantage."

Misinterpretation of educational data

Several observers searching for encouraging signs of success point to the increases in minority educational enrollments. Although available data do indeed bear out this claim, it will be some time before such figures deserve the optimistic interpretation presently imputed, for increases in *enrollment* tell us little about changes in *graduation*. In America, Adelson[107] has pointed out that the attrition rates of minorities benefiting from affirmative action are much higher than for others.[108] In Canada, MacLean reports on the failure of native law students admitted through such programs:

> By 1976, the Department of Justice had been funding the program for three years. It had expended $116,780 (a figure which does not include Departmental costs in administering the program). During that time the failure rate of students it supported had been high. Of the fifteen students, two had failed at the pre-law program and nine at least once in law school. Only four were likely to graduate. The cost of the program seemed inordinately high in relation to its outcome.[109]

It is clear, then, that affirmative action programs are not expediently achieving their "equality of result" goals. This has serious repercussions on the creation of desirable role models. First, fewer role models than anticipated are being produced (a disappointment) and, secondly, a substantial proportion of the modelling effect will be focused on "failures" (a misdirection). Nonetheless, there is some limited support for the modelling effect. For instance, MacLean[110] reports that many students in the native law program thought they could be important role models for others, and three-quarters claimed they intended to work with native people when they graduate. However, even the interpretation of these encouraging intentions must be tempered, for "students who had worked with native people were more uncertain about working with them after graduation than students who had never worked in the native community or had begun to do so only since starting law school."[111]

Unanticipated Outcomes Have Been Negative—And Serious

When affirmative action was initiated, advocates claimed these programs would only benefit "qualified" members of minority groups. Mounting evidence suggests that a high proportion of affirmative action recipients are more accurately described as "under-qualified" or, at best, marginal.[112] For example, Sherman says "[University] Deans estimated that 80 percent of their black law students [admitted through affirmative action] would not have been admitted in open competition with whites" and that ". . . black enrollments would drop sharply, perhaps by 50 or 60 percent, in the absence of preference."[113] Adelson, in commenting on the *Bakke* case, notes: "The minority students admitted to the Davis medical school were at the very bottom of the grade distribution."[114] Similarly, in Canada, MacLean[115] shows that affirmative action has justified the admission of patently under-qualified natives into law schools.

Evidence also confirms that the admission of dubious candi-

dates through affirmative action does considerable harm to the self-image since, as drop-out rates indicate, these candidates are often destined to acquire the stigma of failure.[116] MacLean presents the reflections of two native law students who were admitted by affirmative action and met with unanticipated difficulties:

> I had difficulty because of a shortage of experience in the academic setting. With more experience, I would have been more confident. I should have been told to take another year of university.
>
> If you have four years of university, you have the techniques to succeed. With only one year of university, as is my case, going to law school is pretty difficult. I feel that I should have been required to take another few years of university.[117]

Kicking the downtrodden

Sowell documents an even sadder situation: that of capable minority students who were promoted through affirmative action into positions where they usually perform incompetently:

> The extremely high admissions standards of these [Ivy League] institutions usually cannot be met by minority students—just as most students in general cannot meet them. But in order to have a certain minority body count, these schools bend (or disregard) their usual standards. The net result is that thousands of minority students who would normally qualify for good, non-prestigious colleges where they could succeed are now enrolled in famous institutions where they fail.[118]

In societies where there is justifiable concern about real disadvantages experienced by minorities, surely policies that socially construct "failures" deserve reconsideration.

Evidence supporting the existence of unanticipated outcomes is not confined to harm suffered by individuals; broader social effects, as suggested earlier, are evident as well. Majority group members who achieve their status have increasingly come to resent minority group members who have equivalent advantages bestowed upon them, reinforcing prejudices and stereotypes and increasing intergroup tensions. In Sowell's words: "The message that comes through loud and clear [from affirmative action policies] is that minorities are losers who will never have anything unless someone gives it to them."[119]

Resentment and tension can apparently develop even where

milder forms of affirmative action are practised, like in the Canadian native law school admissions program investigated by MacLean:

> The study showed that there have been murmurings of discontent against native special admissions at some of the law schools.
>
> Students who were not admitted to law school complained that although they worked "harder" than the native students and had higher marks and LSAT scores, they were not admitted. Even among those who were admitted to law school, there was still some resentment to the native students who were able to gain admittance with less work.[120]

And the range of hostility that can be induced is great, as the following report illustrates:

> Imperial Wizard Bill Wilkinson, of Danham Springs, Louisiana, asked why his group (one of three major Klan organizations) has gained in membership, said without hesitation: "Affirmative action programs, and the *Weber* decision by the Supreme Court has done more to make a race war possible in this country than anything the Klan has done."[121]

A Cautionary Conclusion

It deserves reiteration that there is a lack of adequate evidence to construct a definitive statement about the efficacy of affirmative action. However, there are enough indicators to justify a skeptical attitude toward such programs, for many of them are not producing the anticipated effects as efficiently or effectively as expected and, for those who have bothered to look, there appear to be strong negative unanticipated consequences. What is clear is that affirmative action programs are not an unmitigated means of producing social justice.

POLICY IMPLICATIONS

The theme guiding our discussion of affirmative action is that ideas do have consequences and that the ideas necessary for an intelligent discussion of these policies in Canada must be put before the reader. In pursuing this objective we have discussed the nature and forms of affirmative action and its relation to the idea of social justice; we have listed a number of pragmatic, political, moral, and unanticipated effects associated with such programs; finally, we have documented the existence of such policies in the Canadian social fabric and

illustrated the reality of the problems associated with these undertakings.

We have argued that affirmative action contradicts its espoused aim of establishing social justice since it perpetuates social discrimination based on ascribed characteristics and, moreover, is apparently neither efficient nor effective.

We have advanced a second theme: that policy makers ought to *know* what they are doing, where knowing what one is doing implies the ability to estimate outcomes. Having a generally accepted goal may be necessary for policy planning, but it is far from sufficient. Unanticipated consequences arise and confound the initial expectations; values cloud the perception of negative evidence and accentuate positive outcomes, all to the detriment of the accurate reporting and assessment of policy. Our discussion also has shown that little public effort has been made to discuss the pros and cons of these programs. The negative impact has not even been considered, let alone dealt with. The program has been based on the faith that "something must be done" and that our best efforts will necessarily yield desirable results.[122] A satisfactory evaluation of these programs has yet to be made by the public authorities. In short, there is very little evidence to suggest that policy makers recognize the consequences of their advocacy.

This leads us to a prudent, though perturbing conclusion: No one knows how to quantify either the amount of unwarranted historical discrimination practised against a particular group, or how to translate such unfortunate histories into effective systems of compensation. We simply do not know how to atone justly for past injustices.

What Is To Be Done?

What ought ot be done about affirmative action programs in Canada? Since solid evidence of the range of consequences of such policies is lacking, it seems reasonable that suggestions about the future of affirmative action in Canada should not be extreme. From our limited knowledge of comparative costs and benefits it seems unwise to suggest that all affirmative action programs and policies be abolished. On the other hand, there is not sufficient ground for a wholesale acceptance of these initiatives. Nonetheless, it is our judgement that the present state of affairs reflects more or less uncritical acceptance of affirmative action. The proliferation of these programs, their entrenchment in the Human Rights Act, and the general lack of public discussion or evaluation, are all cases in point. Given this situation, what is clearly required is a swing of the pen-

dulum back toward moderation.

It is not our contention that affirmative action programs should never be instituted in Canada. Rather we suggest that they be approached tentatively. This would involve separate consideration of each affirmative action program on its merits, rather than a blanket orientation toward the whole idea.

Specifically, the following might be recommended for inclusion as part of a systematic, prudent approach. First, detailed arguments justifying any suggested program ought to be made public. Next, clear statements about the anticipated effects of the particular program should be made. These procedures would provide interested members of the public with the opportunity to understand these policies and to voice their approval or disapproval. Such a process would also encourage those responsible for policy development to consider carefully the rationale and effects of their proposals.

A Modest Proposal

Assuming that a particular affirmative action program was endorsed, there are two further recommendations about its implementation. Before a large program is initiated, a pilot project should be introduced and evaluated. This small scale test would supply some empirical base from which to judge the efficiency of program design and its effectiveness in achieving stated goals. Only after the pilot model had been satisfactorily adjusted would a larger scale affirmative action program be initiated. The adequacy of both the theoretical and empirical structure on which to base a full scale affirmative action program would thus be enhanced. However, it cannot be assumed that a large affirmative action program will be successful even after careful preparation has been done. Unforeseen contingencies can always occur. Therefore, regular evaluations must be made of every ongoing affirmative action program.

To those who support affirmative action these suggestions may seem overbearing. This is an understandable attitude since the present climate encourages such policies. In contrast, our recommendations place the burden of proof on those who desire to implement such arrangements in the first place. This alternate orientation is based on a skeptical attitude toward government intervention. State intrusions into social lives have at best an unproven record as instruments of social welfare.

The issues surrounding affirmative action appear sufficiently problematic to justify a conservative outlook. Policies aimed at rectifying injustices created by historical discrimination will not succeed with good motives alone. By contrast, much more vigorous

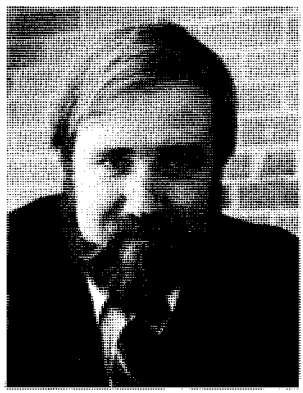
support can be given, on both pragmatic and moral grounds, for programs and policies aimed at the elimination of discrimination based on ascriptive criteria generally, whether these involve pejorative discrimination of the old-fashioned type or of the currently fashionable affirmative action variety.

Chapter 6

When is Imbalance not Discrimination?

CARL HOFFMANN AND JOHN REED

Respectively President, Hoffmann Research Associates and Professor of Sociology, University of North Carolina



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When is Imbalance not Discrimination?

CARL HOFFMANN AND JOHN REED

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Group differences in occupational success are a stubborn fact of American life. The legislative attack on discrimination which culminated in the federal civil rights legislation of the 1960s was intended to remove that component of these differences brought about by systematic discrimination against individuals on the grounds of race, sex, religion, and other group memberships. But it remains the case that, in many situations, members of some groups are still more often hired, retained, and promoted than others. Consequently there has been a shift of emphasis from equality of opportunity to equality of result, adumbrated in Lyndon Johnson's Howard University speech of 1965, which has led to the emergence of two distinct schools of thought regarding the remaining differences between what have come to be called "protected groups" and everyone else. Nowhere has the contrast between these two views been sharper, or the debate more heated, than with regard to the occupational status of women.

THE TWO SCHOOLS OF THOUGHT

On the one hand, some argue that the persisting imbalances result from continuing bias and discrimination on the part of employers, more subtle than the simple refusal to reward qualified women, to be sure—perhaps even unintended. Such less-than-rational ways of doing business as seniority systems, or fixed lines of progression

An abridged version of this study appeared in *The Public Interest* 62 (Winter 1981), under the title "Sex Discrimination?—The XYZ Affair"—ed.

with no opportunity for transfer between lines, or irrelevant requirements of education or prior experience may well put unjustifiable barriers to advancement in the way of groups of employees or would-be employees, groups which may be disproportionately female. This school argues further that there exists subtle and continuing discrimination in the treatment of female employees and that low representation in upper levels of corporations indicates its continuing existence. We cannot, they argue, know to what extent parity would result from market processes until, in fact, parity is established, as the fact that women are not in higher level positions inhibits their obtaining those positions. Differences in the attitudes and behaviors of men and women are seen as reflecting women's perceptions that the opportunity structure is closed for them. Affirmative action, "goals," and quotas are necessary to undo the "effects of past discrimination" and begin again on an equal footing. The implicit assumption is that, thereafter, equality of result should follow.

Another view, however, has it that even after all discrimination, blatant and subtle, is eliminated, "imbalances" will persist for some time as a result of the tendency of men and women to make different choices—even when given the same range of alternatives to choose from. Women, in other words, are likely voluntarily to seek out and to remain in different sorts of jobs than men. Those who argue this position point to one or more of three factors (though seldom to all three) to support their conclusion.

There is a difference

In the first place, there are biological differences between men and women. Such differences explain why no women play for the Pittsburgh Steelers and none ever will (except perhaps as a placekicker). It is at least possible that other occupations are wholly or partially closed to women for similar reasons, although the burden of proof should no doubt rest with someone who wants to assert that there is a performance-related innate difference between men and women.*

A second factor sometimes adduced is that the early socialization of men and women tends to prepare them for different sorts of occupations. This may be deplored, but few would deny that it is, and always has been, a fact. For the time being at least, sex-role socialization includes a strong occupational component: men and women

*It is considerably easier to demonstrate—or to assume without challenge—that the social fact of gender is job-related than that the biological fact of sex is.

consequently enter the labor market with different abilities and aspirations (although this may be changing).

Finally, some point to the effect of traditional family roles on the job-related attitudes and behavior of husbands and wives (or those who expect to become husbands and wives). The traditional division of labor in the home will handicap even highly motivated and well-trained women, while it gives their husbands the freedom—indeed, the obligation—to seek occupational success. Particularly in a home where the husband is the only breadwinner, he is expected to succeed, and his wife is expected to support his efforts to acquire training and advancement.

Child care

These differences are especially acute when children are present. "Parenting" is a compelling social function for women, which competes with the demands of the job. Although this role is available to men, they are less likely (whether for biological or social reasons) to accept primary responsibility for it, and are more likely to be regarded as deviant if they do. *Their* responsibility to their children is likely to be seen and felt as one of providing for their material well-being, a responsibility quite consistent with striving for occupational success.

Whatever the basis for this view—whether it emphasizes biology, socialization, or current family roles—its policy implications are quite different from those of the view that sees most imbalance as resulting from discrimination of some sort. It implies that it is unreasonable to expect occupational parity between men and women soon, if ever. It also implies that policy should strive for equal treatment of individuals rather than equal results for men and for women. In particular, goals and timetables and all the rest will be and remain unwise and, in fact, illiberal. They will not have the desired effects, even in the very long run; they will undermine the economic foundation of the organization of enterprise, by rewarding ascription rather than achievement; they will force employers to disregard not only their own interests but the desires of individual employees—desires the employer had nothing to do with producing.

Where active discrimination has been demonstrated, quotas and timetables should be used to rectify imbalances and make individuals whole. Quotas should not be used in neutral situations or where malice has not been demonstrated. Rather than stress quotas, the law should open opportunities and expand the range of choices for individuals—not interfere with business practice, individual decisions, or the fundamental institutions of society.

THE POLICY DEBATE

Clearly, in one view, employers are responsible for existing imbalances, even when active disparate treatment does not exist; they ought to do something about them; and they *can* do something, without more than temporary and limited ill effects. In the other view, the situation results from factors outside employers' control and (remediation aside) there is little employers can do that does not involve considerable and lasting cost to them and injustice both to them and to individual employees. Obviously, it is important to know which view is more nearly correct more often.

The Equal Employment Opportunity Commission and the Office of Federal Contract Compliance Programs, the two federal agencies principally responsible for enforcing the law, have in effect assumed an answer. Their original and continuing interpretation of the law has been to require parity of results in hiring, promotion, pay, and so forth—even when no wrongful action has been demonstrated. If, for instance, the proportion of women among a company's supervisors is significantly lower than the proportion of women among the groups from whom they are drawn, a *prima facie* case for discrimination exists, and the employer can be obligated to demonstrate either that the statistics are inaccurate or that the imbalance results from differences in other factors such as education or prior experience. This last demonstration has sometimes been challenged successfully on the grounds that these "other factors" are not actually related to job performance.

In general, the courts have upheld the legality of this procedure, and have appeared to agree with the view that parity is the "normal" outcome of a fair process involving two equally qualified groups, both through approving the application of affirmative action procedures and through giving massive injunctive relief to aggrieved employees, requiring organizational and procedural changes on the part of their employers. On the other hand, the courts have recently upheld in some cases segmented labor forces, seniority systems, and the loose and amorphous standard of "business necessity"—decisions rightly seen as setbacks in the struggle for parity, as well as equal opportunity.

A natural laboratory

Whatever the position of the federal agencies and the courts, however, it is not at all clear what measure of imbalance, if any, can reasonably be expected once all vestiges of illegal discrimination are removed. Will it be negligible, as their implementation of the law

implies? Or will it be substantial, as several other lines of thought suggest?

It is difficult to answer the question empirically in even a single case, for the advocates of affirmative action are quite correct in their assertion that most companies have organizational features and practices that allow at least the *possibility* of discrimination against women. Few companies have internal labor markets with complete freedom of lateral movement: most put employees into operative, clerical, professional, or management tracks and expect them to stay there; others have union agreements to this same effect. Even fewer companies feel obliged to inform all employees of all openings within the company. Fewer still hire on the grounds of basic skills and potential ability, without regard to formal education or previous experience. And very, very few hire only at the bottom and fill all management positions from below, with people who began in clerical or operative positions.

An ideal experiment

If a company could be found whose structure does not perpetuate discrimination, and whose practices provide equal treatment and opportunity, then the contentions of the two schools could be put to the test. If men and women advance in the company at different rates, if they are found in different proportions at different levels, then it must be the case that this results from differences they bring to their employment, not from discrimination.

As it happens, we have just such a company, and have conducted just such a test.

In August 1978, the XYZ Corporation,* a Fortune 500 company, approached Hoffmann Research Associates,† a North Carolina consulting firm, to conduct a study of its personnel practices. The company's motive was not altruistic: a sex discrimination suit had been filed in one of its divisions, and it stood to lose a lot of money.

The research problem

The division of XYZ in question was one with considerable sales and clerical responsibility. It employed roughly 6,000 persons, of whom

*The company has asked that it not be identified. Otherwise, no restrictions have been placed on our analysis or our reporting of it.

†Carl Hoffmann is the president of Hoffmann Research Associates. John Shelton Reed served as a consultant to HRA during the later stages of data analysis and during the writing of the report.

5,500 were in entry level clerical positions and 500 in supervisory and management positions, ranging from assistant supervisor to senior vice president.

The charges of discrimination had been filed by several female clerks, who pointed to the fact that while 82 percent of the entry level jobs were filled by women between 1971 and 1978, female clerks were only 74 percent of those promoted in 1978 and only 61 percent of those promoted in earlier years. Promotion at XYZ was always from one level to the next. Men were far more likely to be promoted to first level supervisor although, from that point on, promotions to each higher level were made in accordance with availability.

XYZ made no attempt to dispute these figures, but its management could not explain them. Discrimination was forbidden—an entire district supervisory staff had once been dismissed for such practice; XYZ's management was convinced employees were treated fairly. There were no differences in education, training, or experience that could explain the differences, and seniority was not a factor. Management insisted that only knowledge of the job, performance, and leadership played a part in promotion, and never asserted that there were differences between men and women in these respects. The president of the company had started in an entry level job in this particular division. The management of XYZ was genuinely puzzled.

Their choice of Hoffmann Research Associates to conduct the study may speak to their belief in their own innocence. HRA came to the attention of XYZ because of its work for plaintiffs—in support of cases very much like the one against XYZ. HRA's task was to determine the reasons for the lower rate of promotion for female than for male clerks, and to study another pattern that management had noticed, that of women being less likely than men to apply for lateral transfers within the company.

Trained interviewers conducted private, personal interviews, on company time, with independent samples of 363 female clerks, 283 male clerks, and 204 supervisors (102 male and 102 female). The samples were drawn randomly and proportionately from some twenty offices in all parts of the continental United States.* The questions of particular interest to HRA were embedded in a lengthy "job satisfaction" questionnaire.

*Possible sampling error of ±5 percent should be allowed for the samples of clerks, and somewhat more for the samples of supervisors. Additional methodological information is available on request from the first author.

PROMOTION-SEEKING BEHAVIOR

Somewhat to the researchers' surprise, data analysis quickly made it clear that male and female clerks at XYZ were promoted in almost exactly the same proportions as they expressed interest in promotion. On the face of it, the difference in promotion rates for men and women did not result from practices and policies that discriminated against women, but from a pattern of behaviors and attitudes that led male clerks more often than female clerks to seek and accept promotion.

In the year prior to the survey, twice as many men as women (28 percent compared to 14 percent) had asked to be promoted, and the company's response was, if anything, more positive toward the women who asked than toward the men (see Table 1—the difference is not statistically significant). Similarly, equal proportions of men and of women had been asked if they were interested in promotion, but among those asked, men were nearly twice as likely as women to have indicated that they were interested. Altogether, 39 percent of the male clerks had indicated, one way or another, that they would like to be promoted; only 21 percent of the female clerks had done so.

In earlier years, the difference had been even greater: among those who had been in XYZ in 1977 and before, 46 percent of the men and 19 percent of the women said they had indicated their interest between 1971 and 1977.

TABLE 1
SELF-REPORTED PROMOTION-SEEKING BEHAVIOR

	1978		*1977 or before**	
	Men	*Women*	*Men*	*Women*
Percent who requested promotion	28%	14%	30%	11%
Of those, percent reporting positive response	55%	70%	51%	55%
Percent who were asked if interested in promotion	36%	34%	41%	33%
Of those, percent who expressed interest	74%	43%	69%	35%
Percent who indicated interest, either method	39%	21%	46%	19%
(N)	(283)	(363)	(218)	(226)

*Asked only of respondents employed before 1978.

The data

These ratios predict almost perfectly the relative rates of promotion for men and for women. Thirty-five percent of the clerks who expressed interest in promotion before 1978 were male, compared to 39 percent of those who were promoted; in 1978, 29 percent of those who expressed interest in promotion, and 26 percent of those who were promoted, were men. For both periods, the differences are small and well within expected sampling error.

It seems reasonable to suppose that promotions will be offered more often to those who have indicated their availability, or at least not indicated that they are not interested, and, in fact, those who reported that they had sought promotion were twice as likely as the others to report that they had actually been offered promotion at some point.

When interviewers asked whether respondents would accept a promotion to assistant supervisor (the first step up from clerk), men were somewhat more likely than women (66 percent to 52 percent) to say they would. Previous differences in promotion-seeking behavior could have been used to predict this (see Table 2). Among those clerks who had not indicated interest in promotion, there is very little difference between men and women; only about half of each group would accept the modest promotion if it were offered. Eighty-four percent of the clerks who *had* indicated an interest in promotion would accept (although interested men were more likely than interested women to "follow through," a recurrent pattern we shall come back to below).

TABLE 2
ACCEPTANCE OF HYPOTHETICAL PROMOTION TO ASSISTANT SUPERVISOR, BY SELF-REPORTED PROMOTION-SEEKING BEHAVIOR

	(N)	
	Men	*Women*
Has expressed interest	90% (108)	77% (77)
Has not expressed interest	51% (169)	46% (282)
TOTAL	66% (277)	52% (359)

More responsibillity

We have one other indication of the behavior patterns that led to the observed differences in promotion. Ambitious clerks might well stay informed about opportunities for lateral transfers, some of which offer more pay, responsibility, or opportunity. At XYZ, notices of openings are posted, and employees are encouraged to "bid" on those that interest them. Twenty-five percent of the male clerks, compared to 10 percent of the female clerks, indicated that they followed the posted openings closely. If actual bidding practices reflected this ratio of interest, we would expect roughly 35 percent of all bids to have been from males. In fact, between 1973 and 1978, according to company records, 36 percent of the 5,708 bids by clerks were from men.

It appears, then, that male clerks at XYZ were promoted more often than female clerks to the same extent that they more often exhibited interest in promotion and engaged in promotion-seeking behavior.

Perceptions of discrimination

Perceptions of discrimination can, of course, vary independently of actual practices. It would not be unprecedented to find a situation where some category of workers was subjected to systematic discrimination without being aware of it. Nor, in the present case, would it be surprising to find a widespread belief that female clerks were being discriminated against, particularly given the undeniable and striking difference in promotion rates and the present litigious climate.

But, as Table 3 shows, although a good many respondents of both sexes were dissatisfied with various aspects of their jobs, only a negligible proportion complained about discrimination of any sort—race, sex, religious, or age—and males were more likely than females to complain. Female clerks were less likely than males to indicate that their own individual chances for promotion were "excellent" or "good," but when asked why they had not, in fact, been offered promotion, they were much more likely than males to indicate that they were known to be uninterested or that they were not qualified.

These data do not in themselves establish the absence of discrimination—no more than would widespread perceptions of discrimination establish its existence. But they do reinforce the evidence of even-handed treatment in the earlier analysis. Further

TABLE 3
RATINGS OF XYZ PROMOTION POLICIES AND PERCEIVED REASONS FOR NOT BEING OFFERED PROMOTION

Percent saying "good" or "excellent"—	*Men*	*Women*
Transfer policy	72%	80%
Policy of promoting from within	68%	70%
"An individual's" promotion chances	43%	42%
Own promotion chances	34%	29%
(N)	(281)	(360)
Reason for not being offered promotion—		
Discrimination	3%	1%
Known not to be interested	27%	41%
Personality, personal history	19%	10%
Not qualified	14%	25%
(N)*	(230)	(300)

*Asked only of those not offered promotion in 1978.

promotions after first level supervisor were in proportion to female availability at the higher levels, and as we have seen, encouragement to advance was equally apportioned.

ASPIRATIONS AND MOTIVATION

If, as we believe we have demonstrated, the difference in promotion rates between male and female clerks was not due to company policy or practice, it remains to explain the difference in behavior which did produce the different rates. The explanation appears to lie in the fact that female clerks were likely to have lower aspirations than male clerks, less likely to have had the time or to have felt they had the ability for higher level positions, more likely to have seen their employment as a "job" rather than as a stage in a career, and more likely to have sought better working conditions rather than advancement.

Table 4 presents some of the evidence on aspirations. Female clerks, it appears, were more likely than male clerks to have sought a clerical job specifically. Men were more likely to report that they were ready to accept any position that was open, evidently viewing their first position as simply an entree to the company. Men were also

more likely to indicate an initial interest in a marketing job, while those women who did not seek to be clerks were often looking for positions as secretaries or service workers. Men were somewhat more likely to desire to move from their present positions, and they thought of such moves in terms of promotion, while more than half of those women who wanted a change preferred to move laterally, to a position as a clerk of some other sort.

TABLE 4
PAST AND PRESENT ASPIRATIONS OF MALE AND FEMALE CLERKS

	Men	*Women*
Originally sought present position	45%	66%
Would not like different position	67%	57%
Other clerical position	10%	24%
Supervisor, assistant supervisor, market representative	42%	22%
Ultimate aspirations		
Present position	21%	39%
Supervisor, assistant supervisor	12%	27%
Chief supervisor, manager	25%	9%
Executive	21%	5%
Other, don't know	20%	20%

When we ask what these clerks' ultimate ambitions were, we find that women were twice as likely as men to be content with their present positions, and those who did aspire to higher positions set their sights lower than men: only 14 percent sought positions above the level of supervisor, compared to nearly half the men.

In short, the women's ambitions, both for immediate advancement and long term success, were more limited than the men's. This difference was present when they were hired: it was not something the company created.

Resource commitment and career

For most clerks, the first step up is promotion to assistant supervisor, a position which carries a modest increase in salary ($65 a month at the time of the survey), longer hours, rotating shifts, and a considerable increase in responsibility. Male and female clerks agreed (see Table 5) that such a promotion would impose a number of burdens that they did not have to carry in their present positions. Unless one sees it as a step toward higher, and substantially more rewarding,

TABLE 5
WHAT PROMOTION TO SUPERVISOR WOULD MEAN

	Men	*Women*
Would have to work more hours	63%	62%
Flexibility of hours would decrease	53%	54%
Harder to find someone to cover hours	73%	70%
Less access to desired shifts	47%	44%

positions—or unless one has few other commitments—there would seem to be little incentive to accept such a promotion if it were offered. We have seen already that men are more likely to see promotion in this light; it appears also that they are likely to view their other commitments as less inhibiting.

Table 6 shows a number of attitudes and behaviors which bear on this question. Male clerks were willing or able to give up more, in general, to obtain a promotion. They would have been more likely to accept a transfer, more likely to give up an optimal shift assignment. They were more likely to indicate that they had the time to devote to

TABLE 6
TRADE-OFFS AGAINST PROMOTION, FOR MALE AND FEMALE CLERKS

	Men	*Women*
Would prefer optimal shift assignment to promotion	33%	45%
Would not accept transfer to obtain promotion	12%	28%
Would prefer to have part-time job, if possible	18%	44%
Do not have time needed for chief supervisor's position	12%	30%
Expect to leave labor force for significant time before retirement	4%	10%
Worked less than 10 hours overtime per month last year	71%	83%
Voluntarily out of labor market for significant time in past	5%	13%
Do not have ability for chief supervisor's position	8%	26%
Composite index of motivation (see text)—"highly motivated"	61%	31%
(N, range)	(279-283)	(354-363)

the job. While nearly half of the women said they would prefer to work only part-time, if that were possible, only 18 percent of the men shared that view; male agents were more likely actually to have worked substantial amounts of overtime.

Promotion is sometimes academic

For many more female than male clerks, the question of promotion was of little importance, because they did not intend to remain employed. Although the great majority of both male and female clerks planned to remain in the labor force, and had been in it without interruption, female clerks were significantly more likely to plan to drop out, at least for a while, and more likely actually to have done so in the past. The most frequent reason given by men who had dropped out or planned to do so was to obtain additional education or training; a majority of the women indicated that their past or anticipated withdrawal from the labor force was for "family reasons."

Women, more than men, were unwilling or unable to make a number of sacrifices which, they recognized, career advancement requires. Moreover, a pattern of discontinuous employment, reflecting commitments other than to one's career, was more common among women than among men.

Finally, women were substantially more likely than men to believe they lacked the ability to fill higher level positions (see Table 6). While the perceptions of female clerks—or, for that matter, those of male clerks—may be inaccurate, they can have the same effects as a real difference in abilities.

Table 6 also shows a composite index of motivation: those who reported that they aspire to higher level management, that they would give up a preferred shift schedule for promotion, and that they have the time and ability to be a chief supervisor are labelled "highly motivated." Men fell in this category twice as often as women: 61 percent compared to 31 percent.

This difference in motivation goes a long way toward explaining the observed difference in promotion-seeking behavior. As Table 7 shows, there was no difference between men and women with low motivation: neither group was likely to have sought promotion. Those men and women with high motivation were much more likely to have done so—twice as likely if they were women, three times as likely if they were men.

TABLE 7
PROMOTION-SEEKING BEHAVIOR BY MOTIVATION, FOR MALE AND FEMALE CLERKS

	(N)	
	Men	*Women*
Low motivation	16% (111)	16% (249)
Unmarried	14% (65)	20% (127)
Married	20% (46)	12% (122)
High motivation	53% (172)	33% (114)
Unmarried	47% (88)	36% (61)
Married	60% (84)	30% (53)

Effects of marriage and parenthood

But just as women who sought promotion were less ready than men to accept it when it was offered, albeit hypothetically, so those who were apparently motivated to seek it were less likely than men actually to have done so. Why is this?

The breakdowns by marital status in the table suggest an answer. The differences between unmotivated men and women were relatively small, as were those between highly motivated, *unmarried* men and women. The largest difference between men and women in the table is that between highly motivated married men and highly motivated married women. Marriage appears to increase promotion-seeking among highly motivated men and to decrease it among highly motivated women.

The male and female respondents were about equally likely to be married: 47 percent and 48 percent, respectively, were. But while 21 percent of the males were married men with dependent children, only 10 percent of the women were married with children at home. Evidently, female clerks were more likely either to have deferred child-bearing or to have dropped out of the labor force while they had dependent children. It may well be that the effects of marriage and parenthood on women would be even more pronounced than they appear to be if the sample of mothers were not self-selected to

comprise those most committed to their jobs or most able to cope with the conflicting demands of job and family.

For nearly all of our measures of motivation, commitment, promotion-seeking, and perceived ability to meet the demands of a new position, the effect of marriage—marriage *per se*, without the added complications of child-rearing—was to reduce the likelihood of promotion for women, on the average, and to increase that for men. Nevertheless, the company appears to have enquired about interest in promotion with an even hand: among the unmarried, 32 percent of both male and female clerks reported that they were asked whether they were interested; among the married, who tended to be older and more experienced, 40 percent of the men and 36 percent of the women reported enquiries.

OCCUPATIONAL PRIMACY WITHIN THE FAMILY

One implication of this analysis is that married male clerks were more likely than married female clerks to come from households where their job was seen as the principal career within the family. Table 8 confirms this. The demands of male clerk's jobs were usually seen as determinative; female clerks had more often to compromise between the demands of their jobs, on the one hand, and those of their husbands' jobs, and their own household responsibilities, on the other.

These women were most often economic co-equals with their husbands, while their male colleagues usually had *the* economically

TABLE 8
OCCUPATIONAL PRIMACY WITHIN FAMILY, MARRIED RESPONDENTS ONLY

	Men	*Women*
Would give up XYZ job if spouse's job required a move	4%	53%
Spouse would give up job if respondent's job required a move	92%	55%
Respondent's job more important to family than spouse's	90%	34%
Spouse's job more important	4%	50%
Respondent's job primary (see text)	78%	22%
Mixed, intermediate	22%	57%
Respondent's job secondary	0%	21%

important jobs in their families.

Thus, while practically none of the male clerks would have given up his job with XYZ if his spouses's career required a move, roughly half of the female clerks would have (but not all, by any means). Similarly, nearly all of the male clerks would expect their wives to follow them, if their XYZ jobs required a move; about half of the female clerks (but by no means none) would expect their husbands to move with them. While nine out of ten male clerks said that their job was the most important in the family, female clerks were more evenly divided, and more volunteered that their jobs and their husbands' were equally important.

The summary index at the bottom of Table 8 shows the pattern clearly: four out of five male clerks indicated on all three questions that their jobs were more important than their wives', and none consistently allowed that his job was less important. Female clerks, on the other hand, typically fell into the middle category, and they were no more likely to rate their relative position as one of primacy than to rate it as secondary. They were much more likely than their male co-workers to have to weigh, balance, and compromise.

The data confirmed

These impressionistic data are confirmed by a look at income figures. Female clerks, on the average, earned only slighly less than their husbands (about $400 a year) and 45 percent earn more. But 92 percent of the male clerks earned more than their wives, and the average income difference was substantial—especially, of course, for the 34 percent whose wives are not in the paid labor force at all. (Less than 1 percent of the married female clerks had husbands who were not in the paid labor force.) Obviously, the size of one's economic contribution has something to do with the perceived importance of his or her occupation, and 87 percent of the respondents who consistently said theirs was the more important career earned more than their spouses, while 76 percent of those who indicated consistently that theirs was the less important job earned less.

Marriage tends to mean different things for male and female clerks. Most often, a married male clerk finds himself with a household primarily or even completely dependent on his present and future earnings. He usually expects that his family will adjust to the demands of his career. Those demands are in a strong position in the competition for his time and attention, and he faces no choice between his family role and his job: to a large extent, his family role *is* his job. But female clerks showed no consistent pattern of either primacy or subordination in the economic lives of their families. Their

career decisions often required compromise, which need not go against their career interests, but would not necessarily favor them either.

Although male clerks tended to be in a better position to respond to the demands of their jobs, the women had higher *family* incomes, on the average, since their spouses were more likely to be employed.

Consequences of parenthood

In general, the effects of parenthood were like those of marriage, only more so. It increased men's desires for promotion and their efforts to achieve it, and decreased both among women. The male and female clerks in our sample did not differ in their desire for additional children: 43 percent of the women and 42 percent of the men intended to have them. But the effects would be quite different: 17 percent of the women who planned to have children did not intend to remain in the labor force until retirement; only 4 percent of the men who planned to have children expressed an intention to leave, a figure virtually identical to those for male and female clerks who did not plan to have more children. Similarly, 28 percent of the female clerks who had children had been out of the labor force in the past, compared to 3 percent of the fathers in our sample. As Table 9 shows, childless female clerks, and male clerks whether they had children or not, were likely to have worked overtime and to report that they were available for any shift assignment, while mothers of children under eighteen, not surprisingly, reported less flexibility.

TABLE 9
PARENTHOOD AND TIME CONSTRAINTS

	No children under 18		*Children under 18*	
	Men	*Women*	*Men*	*Women*
Not available for certain hours	3%	5%	7%	28%
Have not worked overtime in past year	9%	12%	5%	30%

While parenthood, like marriage, means added responsibilities for both men and women, the responsibilities of wives and mothers conflict with their on-the-job behavior in ways that those of husbands and fathers do not. In this case, it limited women's ability to devote extra time, perhaps at unusual hours, to their jobs—an ability which these clerks recognized is required of supervisors.

FEMALE SUPERVISORS

Many female clerks resolve the conflict between their household responsibilities and their husbands' careers, on the one hand, and their own careers, on the other, by lowering their levels of aspiration and by avoiding the added responsibilities that would accompany promotion. Another possibility, of course, would be to remain single or childless. Many female supervisors had apparently done so. Although they were roughly the same age as male supervisors, only 46 percent were married, compared to 81 percent of the men, and only 9 percent had children under five years old, compared to 34 percent of the men.

Married female supervisors were much more likely than married female clerks to report that their job was the more important one in their household. Although only 22 percent of the female clerks consistently reported that their jobs were more important than their spouses', 42 percent of the female supervisors did so (compared to 78 percent and 77 percent of male clerks and supervisors, respectively). Sixty percent of the female supervisors earned more than their spouses, compared to 45 percent of the female clerks (and 92 percent and 94 percent of male clerks and supervisors, respectively). Six percent reported that their husbands are full-time homemakers, a response given by only one of 175 married female clerks.

In these respects, male clerks, in general, already "looked like" male supervisors: nearly all of both groups came from households where their economic responsibility was both psychologically and in fact the principal one. Female clerks, as we have seen, were much less likely to be in that situation. Female supervisors, though, fell somewhere in between.

Motivation is crucial

The pattern is repeated when we look at Table 10. In nearly every respect, supervisors differed from clerks of the same sex in those characteristics that we have identified as important to predict promotion, characteristics that male clerks were more likely to display than female clerks. But notice two things about the table: in the first place, male clerks thought and behaved more like supervisors than did female clerks, by and large (an implication of our earlier analysis). In the second place, and importantly, female supervisors differed relatively little from male supervisors. They displayed comparable levels of motivation, similar attitudes, and similar behaviors—and they had been rewarded for that with promotion.

Some, as we have noted, did this by avoiding marriage and

TABLE 10
PROMOTION-RELATED CHARACTERISTICS AMONG CLERKS AND SUPERVISORS

	Clerks		*Supervisors*	
	Men	*Women*	*Men*	*Women*
Prefer promotion to desired shift	67%	54%	88%	86%
Aspire to higher management	79%	60%	88%	82%
Summary index of motivation "high"	61%	31%	75%	75%
Would not prefer part-time job	82%	56%	75%	78%
Household responsibilities do not restrict hours available	96%	92%	95%	98%
Worked overtime in past year	91%	86%	91%	93%
Have expressed interest in promotion	39%	21%	63%	61%
Follow postings of transfers	25%	10%	21%	6%
Would accept promotion to assistant supervisor	66%	52%	—	—

parenthood, others by entering into marriages where the principal economic responsibility was theirs. In general, data not presented here show that the effects of marriage on the attitudes and behaviors of female supervisors were usually negligible, and as often in the direction of increasing motivation and promotion-seeking behavior as of decreasing it—a striking contrast to the situation for female clerks.

In short, those women who sought and accepted promotion at XYZ were disproportionately women who—whether willingly or through force of circumstances—had avoided the pattern of aspirations, values, and behavior which led many of their female co-workers to choose not to compete for promotion. They displayed characteristics which resembled those of male clerks and supervisors, and which set them off from many female clerks. In part, this is because many had remained unmarried, and few of the married women had small children. But even those who had married showed high levels of the promotion-related characteristics we have been examining: marriage simply appears to have had less of an inhibiting effect on their aspirations and behaviors than on those of female clerks generally. The reason seems to be that they were more likely to have a household division of labor like that of their male co-workers, in which their occupational success played an important, even a primary, part.

Imbalance, not discrimination

Did the relatively low proportion of women among those promoted reflect discrimination? Clearly the answer, from our survey, is no. It reflected differences in the behaviors and attitudes of male and female clerks—differences the company and its policies had no part in producing. These differences decrease as one moves up the organizational ladder, reflecting self-selection at each step: those women who are prepared to seek and accept responsibility are promoted like men who behave in the same way.

Even at the supervisory level, though, some of the differences persisted, as we have seen. It should come as no surprise to learn, then, that XYZ's records show a much higher rate of voluntary self-demotion among female supervisors than among their male colleagues, and that the reasons given by women usually involve family demands or moves to a new locale required by their husbands' jobs.

If this survey had not been conducted, XYZ would almost certainly have lost the lawsuit, paid damages in the area of a million dollars, and been subjected to injunctive procedures setting up goals and timetables for the elimination of discrimination. If that had happened, it would have had unfortunate consequences for nearly everyone concerned.

In the first place, and obviously, male clerks who otherwise would have been promoted would have been passed over. Perhaps less obviously, female clerks who neither sought nor desired promotion might have faced pressure to accept it, resulting either in inadequate performance in higher level positions or in stresses and forced changes in their family lives.

From the company's point of view, perhaps the worst feature of such an outcome would be the resulting deformation of its present structure of opportunity and rewards. XYZ Corporation has been the most successful company in its industry for years despite—or because of—the fact that it does not have a "management track." The excellence of its management depends on a screening process at all levels of the organization that identifies talented people, committed to long hours of work and to the company, and rewards them for initiative, leadership, knowledge of the job, and competitive spirit. Promoting people on the basis of group membership would be as alien to the company's way (and, management believes, as damaging to morale) as promotion on the basis of seniority, or other artificial standards.

A sorry mess

If, as a result of the suit, XYZ were obliged to promote women less committed than those employees who are now promoted, it might be necessary either to lower standards for all supervisors or for female supervisors separately—inviting either an overall deterioration of performance or difficulties when promoting out of the ranks of first level supervisors. If it maintained its present standards for supervisors, it would find either much higher rates of voluntary demotion among women (aggravating a pattern that already exists) or it would be necessary to invite another lawsuit by demoting women involuntarily. A sorry mess all around.

Whatever happened, the consumers of XYZ's services would face higher prices to pay for the settlement and would pay for the injunctive relief through the deterioration of service, if not through higher prices.

In short, equality of opportunity and equality of result appear to be antithetical at XYZ Corporation. Those who argue for the latter rather than the former are eager to tamper with a complex, competitive system, and their search for simple solutions to complex problems may upset the engine of our prosperity—which relies on individual initiative and competition for rewards. In the long run, family structure, sex-role socialization, and child-rearing practices may change to accommodate women's participation as equals in the paid labor force. If so, they may attain equality of position, power, and reward in the economy. But while the family, socialization, and child-rearing may eventually change, scarcity and competition and the need for economic growth and increased productivity will not temporarily abate while social structure is artificially changed to accommodate one group's desires.

Quotas are not in the public interest

We are not arguing against the application of the Civil Rights Act where discrimination exists, nor denying that it does. We argue here against the criteria for discrimination applied by the EEOC and OFCCP, the agencies charged with enforcing the Act. A criterion of parity, the insistence that a category of individuals is entitled to rewards proportionate to its numbers and not to its members' performance, is not in the public interest. It is, in fact, antithetical to the social contract, implicit in the western democratic tradition: an individual is entitled to the fruits of his labor, and that membership in a group—whether nobility of earlier ages or protected classes—does not provide benefits to the individual. This argument against the

ideology of quotas is not new; it has been put better by others before, but it does not seem to be prevailing. It should.

What is a company's obligation to its female employees? It is obliged to offer them the same opportunities as men, and to reward them in proportion to their productivity. No more. But it should be the requirement of companies to provide opportunity to all its members at all levels. It cannot, indeed *should* not, compensate women—or anyone else—for effort expended in the service of other commitments. Even if those external commitments fall more heavily on women, the inequities (if such they are) of early socialization or of the division of labor in the household are not the responsibility nor the business, in any sense of that word, of an employer.

If a company is so moved, however, it might reasonably seek to rationalize both its internal labor market and its relations to the external market—examining its seniority systems, lines of progression, training programs, and so forth. In these areas, employers may find that they can serve the interests of their employees from "protected groups" while serving their own as well, by expanding the range of opportunities for *individuals*, and rewarding those who seize them.

APPENDIX

METHODOLOGY OF THE STUDY

Before I present my findings from the survey, I will describe what was done to ensure that the procedures used to collect the data would produce an accurate, unbiased, and representative picture of this department of XYZ Corporation. First, I will describe the sampling method and design, then explain briefly the sample chosen, the sampling method used, the sizes of the samples, and the degree of accuracy the sample sizes produce. I will describe what measures were used to ensure that the questions and responses were unambiguous, that the questionnaire did not build in any bias, that the respondent took the interview seriously, and also that the questions were answered with candor. I will then briefly state why I feel I have an accurate and consistent pattern of responses that define conditions at XYZ Corporation. Finally, I will set out what tests and assurances were given that what I have measured in 1978 is indicative of a process which transcends the point in time in which it was observed.

Samples

As has already been stated, three distinct samples were drawn. These three sample groups were female clerks, male clerks, and male and female supervisory personnel. This was done in order to be able to generalize to these groups and examine them separately. I wished to establish a profile of how these three groups of individuals behave and then compare the groups. Male and female clerks and supervisors were drawn from 3 functional areas, and 363 female clerks, 283 male clerks, and 204 supervisors (divided equally between males and females) were interviewed. The sample sizes for male clerks and female clerks were selected to be, and are, large enough to ensure that I have measured the population accurately enough to be within 5 percent of a population mean. The sampling error for the supervisory groups was only slightly larger. This sample size was also drawn to detect substantive differences, and not merely statistical differences which would have been artifacts of larger samples. As samples become large, the difference in groups which produce statistical differences become small.

The individuals were drawn randomly from each city of XYZ Corporation, and numbers of clerks and supervisors from each site were drawn in accordance with the representation of each group at that site. This allowed all geographic locations of XYZ Corporation to be represented and avoided the possibility that the results are biased by over-representing one area or another. Each XYZ office has its own character, developed in part by local management and its interaction with the local labor market. By stratifying on site and selecting samples that proportionately represented the site, I ensured that I would accurately reflect the make-up of this department of XYZ Corporation.

Furthermore, to determine if I actually obtained a representative sample, I compared the results of the sample against facts known about the population of the department, such as age and length of service. In making this comparison, I found that the sample reflected such characteristics of the clerks and supervisory personnel with a great deal of statistical confidence. I therefore feel that the samples are representative.

Seriousness

How do we know that the answers were well thought out and not glib or flip? Survey techniques are often viewed as shallow and not able to obtain answers which are at the depth of an individual's feelings and thoughts. In order to assure that serious responses would be ob-

tained, several standard measures were taken. First, twenty interviewers were selected who were experienced in clinical social work, counselling, psychology, or other human services. Most of the interviewers had advanced degrees, all had experience of the type of interpersonal interaction that centered around quickly obtaining important, personal information that was required to help individuals. In short, they were individuals who could quickly develop a rapport with respondents. Secondly, we designed the survey in the language of the interviewee. This was done by studying the personnel system in the department and custom designing the survey to this group, instead of adapting an existing instrument. By doing so, the instrument was made relevant to the interviewee. I further ensured the relevance of the questionnaire to the interviewees by extensive pretesting. In order to make the questions appropriate, I decided against an omnibus survey that would have included another department. Too broad a population would have resulted in many of the questions being too non-specific or irrelevant. Finally, the survey was presented as being a personnel survey designed to improve working conditions at XYZ Corporation. Hence there was genuine incentive for the individuals to participate.

The evidence which leads one to believe that most individuals took the effort seriously comes from several facts. First, the interviewers reported that employees actively and willingly participated. Interviewees were very talkative and often answered at length. There is a genuine desire by employees at XYZ to discuss working conditions and their relationship to XYZ. There was a genuine belief by interviewees that XYZ would respond positively to suggestions. The interviewers received very few glib responses. This indicates that few individuals seemed not to take the survey seriously. Oftentimes, the interviewers reported that great emotional release was observed in the survey. It was not unusual for a respondent to overtly exhibit frustration, hope, anger, or joy.

Candor

The interviewers, because of their previous experience, were very good at recognizing candor. I personally debriefed the interviewers after they returned from the field to assess their success. In each case, they reported that there were few signs that individuals hesitated in their answers or were inconsistent. Furthermore, enough repetition was designed in the questionnaire to cross-check the consistency of responses. As we saw in the body of the report, there exist consistent responses to complementary questions.

In order to ensure candor, each person was interviewed in pri-

vate, totally segregated from all other individuals. At the interview session the interviewee was guaranteed confidentiality and anonymity in written form. The interviewee was read a document that requested participation and specifically made these confidentiality guarantees. The interviewer signed the two copies, asked the interviewee to sign both, and allowed the interviewee to keep a copy. Thus, it was ensured that there was no reason to be untruthful.

Finally, as we will see, the individual did freely criticize the company in ways which, by the individual's own estimation, could affect the employee's career. Examples of these responses can be found in the code book which is provided in the sample, especially with respect to open-ended responses to questions.

Ambiguity

It is vitally important to communicate clearly in an interview. The questions must be clearly stated, and the answers must be clearly understood. A great deal of effort was made to eliminate ambiguity from the questionnaire. One must be precise. One must be conversational without saying so much that it is misleading. The respondent must be allowed to answer fully and yet the response must be summarized in the space allowed in the questionnaire.

To ensure that ambiguity was reduced to a minimum, careful attention was paid to the design of the questionnaire and the training of the interviewers. I summarize these steps below.

After the areas of the questions were first chosen, I interviewed six former clerks in one XYZ office who had not worked in the department within the last six months. This time qualification was established to minimize the communication these individuals had with clerks and thus prevent contamination of any clerks in the department. These six individuals were extensively questioned in an open-ended fashion to determine the language of the questionnaire. After each session, I discussed the questions with each individual to see how they could be improved. We also discussed what the employee thought the nature of the survey was. In no case, even with the rough structure and heavily directed questioning about discrimination, did any individual guess the purpose of the survey.

After the final questions were drafted, an extensive pretest was conducted in two other XYZ cities to test the questions and procedures that would be used in the main survey. After this test, some adjustments were made to clarify some of the close-ended responses and presentation of questions. This pretest demonstrated that we had a reliable instrument for obtaining truthful answers about important facts.

In structuring the questionnaire, so as to eliminate ambiguous responses, one usually asks for close-ended, clearly defined responses. In a survey in which one wishes to examine the possibility of discriminatory actions by a company, it is important to allow the individuals to express that concept in their own words, i.e., why they may feel unfairly treated. Where appropriate, the close-ended questions were followed by open-ended questions which allowed the individual to do just this. This second part allows the individual a defined range of response and gives the respondent further definition of the meaning of the question.

Again, in order to avoid ambiguity in the meaning of open-ended questions, the interviewers were instructed to write down the response and read it back to the respondent. After the question was reread the interviewer asked the respondent whether the recorded answer was correct. In this way, ambiguities and errors were minimized.

Computing

When this information was coded or put into a form to be entered into the computer, interviewers were used extensively as coders in order to ensure that coders understood the context in which answers were given. Not until clear patterns or groups of responses were established were individual responses grouped into coding categories. By allowing the patterns to emerge from the data, we avoided imposing any prejudice on the responses.

Another way to check for ambiguity is to repeat questions or develop sets of questions which are interrelated. If there is consistency in responses, one can be assured of the meaning of each question. A further measure would be to combine closely related questions into a scale, which has more validity than the individual questions by themselves. While each individual response to a question may be subject to some error, the pattern of many questions may be very consistent. Combinations of questions are extensively used in the report. Finally, the meaning of a question or a series of questions can also be known in relationship to other more distinct questions, or in relation to the construction of a predictive model. For example, education and various measures of education are by themselves interesting abstract concepts. Tests may measure intelligence or inquisitiveness. However, when various measures are related to income, and education is shown to be related to income, we interpret education as an adaptive measure. Education in this relationship is viewed as providing earning power. Hence it becomes a saleable commodity. How well education predicts other variables is part of a

definition of education. Predictive models of this type are extensively used in the text to establish the meaning of variables.

Bias

Extensive care was taken to ensure that the results of the survey would not be biased. Design of each question, the placement of each question, the pretesting, the training of the interviewer, the instruction given to the respondent, the setting of the interview, and the basic work with XYZ Corporation were all designed to eliminate bias.

The wording of each question was examined closely so as not to lead the interviewee to a specific answer. For instance, instead of asking what the respondent's spouse's occupation was, we asked "What is your spouse presently doing?" Asking the former question would have encouraged the respondent to make up an occupation for the spouse, even if the spouse was not presently involved in an occupation. There is strong pressure in our society for individuals to have an occupation. There is also a strong tendency for our society not to view housework and child care as an occupation. There is special prejudice against admitting that housework is an occupation for a man. For these reasons, we avoided the word "occupation" and substituted "presently doing." Similar thought was given to the phrasing of each question. The structure and ordering of the questionnaire was such that no bias would develop from the order in which the questions were asked. The questionnaire was designed to encourage individuals to think about their relationship with XYZ Corporation but not to direct that thought.

The interviewers were individuals who had experience with non-directed interviewing techniques. They were sensitive to an individual's desire to please the interviewer. They are by experience and training knowledgeable in how to avoid giving clues as to what the appropriate responses are. The interviewers were adept at allowing the interviewees to express their ideas. In the days of training, extensive work was undertaken to further develop the interviewers' skills in avoiding directing answers. Furthermore, at no time were interviewers informed of the nature or purpose of the survey. Because they were blind to the purpose of the survey, they had no predisposition as to what were or were not appropriate answers. They were told only that this was a personnel survey. No individuals were chosen who had had previous contact with XYZ Corporation.

Ignorance

Individual respondents did not know the nature of the survey and, as mentioned, were told only that they were participating in a personnel survey. Managers of department offices were informed only two days in advance that the interviewing parties were coming. Managers were told only that it was a personnel survey. Consequently, the managers too did not know the purpose of the survey. Managers were instructed not to tell the clerks about the interview until the morning of the day on which interviewing would begin.

The interview was privately conducted in a room removed from the individual's work area with no other individuals present. Extensive thought was given to what form the interview should take, whether in person, by mailed questionnaire, or telephone. Consideration was also given to the site of the interview, whether it should occur at the work site or at home. The length of the questionnaire made a telephone interview impossible as it is difficult to hold an individual's attention for more than 30 minutes on the phone. It is even more difficult to ask complex contingency questions on the phone. Mailed questionnaires made it impossible to control the circumstances under which the individual filled out the questionnaire. There was no guarantee that their answers would have been done in private without consultation. Worse yet was the possibility of group responses or a group of respondents agreeing to answers. Personal interviews at home were eliminated because it was believed that our interviewers would be intrusive in a private setting and irritate the individual. Home interviews would also extend the time our survey would require in the field because fewer could be done in a day. Extension of the time would increase maturation effects and bias that comes from discussion among interviewed individuals and those yet to be interviewed. Finally, in early pretests it was stated by interviewees that they would feel most comfortable interviewed on site by interviewers who came from outside the company and were clearly in charge of the process.

As a final check that the company had not interfered, my interviewers were instructed to begin by asking what the individual had learned about the survey, when and how. In all cases the interviewees knew little and had found out what they knew by standard procedures. This was largely due to the speed with which the survey was organized and managed in the field. Home office personnel were informed of the date of the survey only a week to ten days before the large scale survey entered the field.

Coding and cleaning

After data was collected, answers to each question on the questionnaire were transcribed to code sheets for entry onto a computer-readable medium. As we have said, the coding or transcription of the data was done mostly by interviewers. This was done to utilize their knowledge of the responses and the context in which the responses were given. Even though we used individuals familiar with the questionnaire, we still trained coders for a day before they were allowed to code. All open-ended responses to questions were coded uniquely until a pattern in responses emerged, then at periodic meetings of the coding staff with me and their supervisor, these response categories were formally defined. No coder was allowed to work independently. Thus, as codes were defined, each individual was made aware of the new code as it occurred. Consensus would have to be achieved for the creation of a new code before it was written into the code book. At first, every coded question was checked until the coders arrived at an acceptable reliability. After that, every fifth questionnaire was check coded. At all times, questionnaires and code sheets were kept at the offices of Hoffmann Research Associates, specifically in the coding room. Finally, coders were not aware of the nature of the survey, and they did not know that the survey was litigation related.

After coding, the code sheets were taken to Data Services, Inc., Durham, North Carolina. There each sheet was keyed onto tape and verified.

After this the data were extensively cleaned with range and contingency checks performed to see if all responses fell into allowable ranges, and to see that no person was asked questions that he or she should not have been asked, given previous answers. For example, the individual must say that he or she is married in order to be asked questions about his or her spouse. We feel that the error rate is random and has been computed to be less than 1 percent when we reverified the computer file with the questionnaire.

Analysis

The analysis does not depend on any single question but rather on a pattern which develops from these questions. The strength of our findings is demonstrated by the consistent view that develops from the questionnaire. The interrelationships of these findings elaborates a social structure which is reasonable in relation to what we know of the world. The model of human behavior established by the survey demonstrates that female socialization and the structural relation-

ship that females find themselves in—marriage—severely affect their behavior with respect to promotion. In order to state the findings in a manner easily interpretable to the public, tabulations and cross-tabulations are used solely.

This report explains differences in promotion rates in terms of the desire and ability of male and female clerks to seek and accept promotion. The structural position which female clerks find themselves in as well as their view of their employment are the reasons for the differing promotion rates. A career-oriented female in our society must break the constraints that marriage, family, and prior socialization place on her.

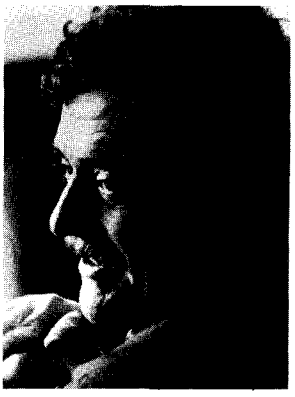
At no time do we state that female clerks are generally less qualified or would not perform as well as supervisors.

Part 4

A Literary Treatment of Equality

Chapter 7
Harrison Bergeron

KURT VONNEGUT, JR.



KURT VONNEGUT, JR.

Kurt Vonnegut, Jr., well-known novelist and playwright, was born in 1922 in Indianapolis, Indiana, and attended Cornell University, the Carnegie Institute of Technology, and the University of Chicago. During World War II he served as an infantry scout in the European theatre. He was subsequently captured by the Germans in the Battle of the Bulge and assigned to a prisoner-of-war group in Dresden. Between 1947 and 1950 he worked as a police reporter in Chicago and as a public relations man in Schenectady, New York. It was at this time that he turned to a career of writing. In the last thirty years he has authored nine novels, several of which became best-sellers: *Player Piano*; *The Sirens of Titan*; *Mother Night*; *God Bless You, Mr. Rosewater*; *Cat's Cradle*; *Slaughterhouse-Five*; *Breakfast of Champions*; *Slapstick or Lonesome No More*; and *Jailbird*. He is also the author of two plays—*Happy Birthday, Wanda June* and *Between Time and Timbuktu*—and two collections of short stories—*Welcome to the Monkey House*, from which his piece "Harrison Bergeron" is reproduced, and *Wampeters, Foma and Granfalloons*. Mr. Vonnegut is considered to be, as Graham Greene stated, "one of the best living American writers."

Harrison Bergeron

KURT VONNEGUT, JR.

The year was 2081, and everybody was finally equal. They weren't only equal before God and the law. They were equal every which way. Nobody was smarter than anybody else. Nobody was better looking than anybody else. Nobody was stronger or quicker than anybody else. All this equality was due to the 211th, 212th, and 213th Amendments to the Constitution, and to the unceasing vigilance of agents of the United States Handicapper General.

Some things about living still weren't quite right, though. April, for instance, still drove people crazy by not being springtime. And it was in that clammy month that the H-G men took George and Hazel Bergeron's fourteen-year-old son, Harrison, away.

It was tragic, all right, but George and Hazel couldn't think about it very hard. Hazel had a perfectly average intelligence, which meant she couldn't think about anything except in short bursts. And George, while his intelligence was way above normal, had a little mental handicap radio in his ear. He was required by law to wear it at all times. It was tuned to a government transmitter. Every twenty seconds or so, the transmitter would send out some sharp noise to keep people like George from taking unfair advantage of their brains.

George and Hazel were watching television. There were tears on Hazel's cheeks, but she'd forgotten for the moment what they were about.

Permission to reprint "Harrison Bergeron" from *Welcome to the Monkey House* by Kurt Vonnegut, Jr., is hereby gratefully acknowledged. We thank the publisher, Delacorte Press, and the author, Kurt Vonnegut, Jr.

On the television screen were ballerinas.

A buzzer sounded in George's head. His thoughts fled in panic, like bandits from a burglar alarm.

"That was a real pretty dance, that dance they just did," said Hazel.

"Huh?" said George.

"The dance—it was nice," said Hazel.

"Yup," said George. He tried to think a little about the ballerinas. They weren't really very good—no better than anybody else would have been, anyway. They were burdened with sashweights and bags of birdshot, and their faces were masked, so that no one, seeing a free and graceful gesture or a pretty face, would feel like something the cat drug in. George was toying with the vague notion that maybe dancers shouldn't be handicapped. But he didn't get very far with it before another noise in his ear radio scattered his thoughts.

George winced. So did two out of the eight ballerinas.

Hazel saw him wince. Having no mental handicap herself, she had to ask George what the latest sound had been.

"Sounded like someone hitting a milk bottle with a ball peen hammer," said George.

"I'd think it would be real interesting, hearing all the different sounds," said Hazel, a little envious. "All the things they think up."

"Um," said George.

"Only, if I was Handicapper General, you know what I would do?" said Hazel. Hazel, as a matter of fact, bore a strong resemblance to the Handicapper General, a woman named Diana Moon Glampers. "If I was Diana Moon Glampers," said Hazel, "I'd have chimes on Sunday—just chimes. Kind of in honor of religion."

"I could think, if it was just chimes," said George.

"Well—maybe make 'em real loud," said Hazel. "I think I'd make a good Handicapper General."

"Good as anybody else," said George.

"Who knows better'n I do what normal is?" said Hazel.

"Right," said George. He began to think glimmeringly about his abnormal son who was now in jail, about Harrison, but a twenty-one-gun salute in his head stopped that.

"Boy!" said Hazel, "that was a doozy, wasn't it?"

It was such a doozy that George was white and trembling, and tears stood on the rims of his red eyes. Two of the eight ballerinas had collapsed to the studio floor, were holding their temples.

"All of a sudden you look so tired," said Hazel. "Why don't you stretch out on the sofa, so's you can rest your handicap bag on the

pillows, honeybunch." She was referring to the forty-seven pounds of birdshot in a canvas bag, which was padlocked around George's neck. "Go on and rest the bag for a little while," she said. "I don't care if you're not equal to me for a while."

George weighed the bag with his hands. "I don't mind it," he said. "I don't notice it any more. It's just a part of me."

"You've been so tired lately—kind of wore out," said Hazel. "If there was just some way we could make a little hole in the bottom of the bag, and just take out a few of them lead balls. Just a few."

"Two years in prison and two thousand dollars fine for every ball I took out," said George. "I don't call that a bargain."

"If you could just take a few out when you came home from work," said Hazel. "I mean—you don't compete with anybody around here. You just sit around."

"If I tried to get away with it," said George, "then other people'd get away with it—and pretty soon we'd be right back to the dark ages again, with everybody competing against everybody else. You wouldn't like that, would you?"

"I'd hate it," said Hazel.

"There you are," said George. "The minute people start cheating on laws, what do you think happens to society?"

If Hazel hadn't been able to come up with an answer to this question, George couldn't have supplied one. A siren was going off in his head.

"Reckon it'd fall all apart," said Hazel.

"What would?" said George blankly.

"Society," said Hazel uncertainly. "Wasn't that what you just said?"

"Who knows?" said George.

The television program was suddenly interrupted for a news bulletin. It wasn't clear at first as to what the bulletin was about, since the announcer, like all announcers, had a serious speech impediment. For about half a minute, and in a state of high excitement, the announcer tried to say, "Ladies and gentlemen—"

He finally gave up, handed the bulletin to a ballerina to read.

"That's all right—" Hazel said of the announcer, "he tried. That's the big thing. He tried to do the best he could with what God gave him. He should get a nice raise for trying so hard."

"Ladies and gentlemen—" said the ballerina, reading the bulletin. She must have been extraordinarily beautiful, because the mask she wore was hideous. And it was easy to see that she was the strongest and most graceful of the dancers, for her handicap bags were as big as those worn by two-hundred-pound men.

And she had to apologize at once for her voice, which was a very unfair voice for a woman to use. Her voice was a warm, luminous, timeless melody. "Excuse me—" she said, and she began again, making her voice absolutely uncompetitive.

"Harrison Bergeron, age fourteen," she said in a grackle squawk, "has just escaped from jail, where he was held on suspicion of plotting to overthrow the government. He is a genius and an athlete, is under-handicapped, and should be regarded as extremely dangerous."

A police photograph of Harrison Bergeron was flashed on the screen—upside down, then sideways, upside down again, then right side up. The picture showed the full length of Harrison against a background calibrated in feet and inches. He was exactly seven feet tall.

The rest of Harrison's appearance was Halloween and hardware. Nobody had ever borne heavier handicaps. He had outgrown hindrances faster than the H-G men could think them up. Instead of a little ear radio for a mental handicap, he wore a tremendous pair of earphones, and spectacles with thick wavy lenses. The spectacles were intended to make him not only half blind, but to give him whanging headaches besides.

Scrap metal was hung all over him. Ordinarily, there was a certain symmetry, a military neatness to the handicaps issued to strong people, but Harrison looked like a walking junkyard. In the race of life, Harrison carried three hundred pounds.

And to offset his good looks, the H-G men required that he wear at all times a red rubber ball for a nose, keep his eyebrows shaved off, and cover his even white teeth with black caps at snaggle-tooth random.

"If you see this boy," said the ballerina, "do not—repeat, do not—try to reason with him."

There was the shriek of a door being torn from its hinges.

Screams and barking cries of consternation came from the television set. The photograph of Harrison Bergeron on the screen jumped again and again, as though dancing to the tune of an earthquake.

George Bergeron correctly identified the earthquake, and well he might have—for many was the time his own home had danced to the same crashing tune. "My God—" said George, "that must be Harrison!"

The realization was blasted from his mind instantly by the sound of an automobile collision in his head.

When George could open his eyes again, the photograph of

Harrison was gone. A living, breathing Harrison filled the screen.

Clanking, clownish, and huge, Harrison stood in the center of the studio. The knob of the uprooted studio door was still in his hand. Ballerinas, technicians, musicians, and announcers cowered on their knees before him, expecting to die.

"I am the Emperor!" cried Harrison. "Do you hear? I am the Emperor! Everybody must do what I say at once!" He stamped his foot and the studio shook.

"Even as I stand here—" he bellowed, "crippled, hobbled, sickened—I am a greater ruler than any man who ever lived! Now watch me become what I *can* become!"

Harrison tore the straps of his handicap harness like wet tissue paper, tore straps guaranteed to support five thousand pounds.

Harrison's scrap-iron handicaps crashed to the floor.

Harrison thrust his thumbs under the bar of the padlock that secured his head harness. The bar snapped like celery. Harrison smashed his headphones and spectacles against the wall.

He flung away his rubber-ball nose, revealed a man that would have awed Thor, the god of thunder.

"I shall now select my Empress!" he said, looking down on the cowering people. "Let the first woman who dares rise to her feet claim her mate and her throne!"

A moment passed, and then a ballerina arose, swaying like a willow.

Harrison plucked the mental handicap from her ear, snapped off her physical handicaps with marvelous delicacy. Last of all, he removed her mask.

She was blindingly beautiful.

"Now—" said Harrison, taking her hand, "shall we show the people the meaning of the word dance? Music!" he commanded.

The musicians scrambled back into their chairs, and Harrison stripped them of their handicaps, too. "Play your best," he told them, "and I'll make you barons and dukes and earls."

The music began. It was normal at first—cheap, silly, false. But Harrison snatched two musicians from their chairs, waved them like batons as he sang the music as he wanted it played. He slammed them back into their chairs.

The music began again and was much improved.

Harrison and his Empress merely listened to the music for a while—listened gravely, as though synchronizing their heartbeats with it.

They shifted their weights to their toes.

Harrison placed his big hands on the girl's tiny waist, letting her

sense the weightlessness that would soon be hers.

And then, in an explosion of joy and grace, into the air they sprang!

Not only were the laws of the land abandoned, but the law of gravity and the laws of motion as well.

They reeled, whirled, swiveled, flounced, capered, gamboled, and spun.

They leaped like deer on the moon.

The studio ceiling was thirty feet high, but each leap brought the dancers nearer to it.

It became their obvious intention to kiss the ceiling.

They kissed it.

And then, neutralizing gravity with love and pure will, they remained suspended in air inches below the ceiling, and they kissed each other for a long, long time.

It was then that Diana Moon Glampers, the Handicapper General, came into the studio with a double-barreled ten-gauge shotgun. She fired twice, and the Emperor and the Empress were dead before they hit the floor.

Diana Moon Glampers loaded the gun again. She aimed it at the musicians and told them they had ten seconds to get their handicaps back on.

It was then that the Bergeron's television tube burned out.

Hazel turned to comment about the blackout to George. But George had gone out into the kitchen for a can of beer.

George came back in with the beer, paused while a handicap signal shook him up. And then he sat down again. "You been crying?" he said to Hazel.

"Yup," she said.

"What about?" he said.

"I forget," she said. "Something real sad on television."

"What was it?" he said.

"It's all kind of mixed up in my mind," said Hazel.

"Forget sad things," said George.

"I always do," said Hazel.

"That's my girl," said George. He winced. There was the sound of a rivetting gun in his head.

"Gee—I could tell that one was a doozy," said Hazel.

"You can say that again," said George.

"Gee—" said Hazel, "I could tell that one was a doozy."

(1961)

Notes

Notes

NOTES TO INTRODUCTION

1 It is doubtless true that quotas will ensure equal employment opportunities as well. For example, a law compelling all large companies to hire redheads in proportion to their percentage of the general population can be expected to accomplish this. But there are serious difficulties. First, as we have seen, a group must become politically powerful enough to ensure this (even homosexuals, with their heavy political clout, have not so far been able to enforce employment quotas on their own behalf). In contrast, in the marketplace, no political power at all is needed. Secondly, as is shown by the contributions to this book of Lance Roberts and Walter Williams, quotas have strong negative unintended consequences for those minority groups who are "protected" by them. Thirdly, affirmative action programs are very *costly*. Estimates for the U.S. in fiscal 1976 came to $329,296,367. This Congressional Research figure includes the costs of the federal government *alone*—completely ignoring other government levels and impacts on the private sector. (See John H. Bunzel, "Affirmative Action, Negative Results," Hoover Institute Reprint #30, originally in *Encounter* [November 1979].)

2 It is important to realize that this painstaking, step-by-step bidding process up from $300 is only a mental experiment to show the underlying economic principles. In the real world, were prejudice against redheads to manifest itself, their wages would in all probability rise quickly to the $400 level or, even more likely, not fall much below $400 in the first place.

3 James Buchanan and Gordon Tullock, *The Calculus of Consent: The Logical Foundation of Constitutional Democracy* (Ann Arbor: Univ. of Mich. Press, 1971); Ludwig von Mises, *The Clash of Group Interests and Other Essays* (New York: Center for Libertarian Studies, 1978); Murray N. Rothbard, *For a New Liberty* (New York: Collier-Macmillan, 1978), pp. 206-207.

4 Constance Baker Motley, "The Legal Status of the Black American," in *The Black American Reference Book*, ed. Mabel M. Smythe (Englewood Cliffs, New Jersey: Prentice-Hall, 1976), pp. 101-102; Jack Greenberg, *Race Relations and American Law* (New York: Columbia Univ. Press. 1959), pp. 80-86 and Appendix, p. 372. See also Act of the General Assembly of the State of Louisiana Providing for Separate Railway Carriages for the White and Colored Races #111, 1890, p. 152; and *Plessey* v. *Ferguson*, 163 U.S. 537 (1896), wherein the U.S. Supreme Court *upheld* this State of Louisiana legislative enactment.

5 See, for example, Motor Carrier Act of British Columbia, 1960, Chapter 252, consolidated on September 21, 1978, sections 5-17; Louisiana, Public Utilities Revised Statute 33: 4403, 4404, 1948; South Carolina, Motor Vehicle Carriers, 1940, Chapter 23, article 15; New York State Transportation Corporations Law, 1926, Chapter 63, article 5. See also "Negro Group Is Ordered to Halt Bus Service Here," *New York Times* (January 3, 1968), p. 36; "Negro Group Seeks to Buy City Buses," *New York Times* (January 4, 1968), p. 27, which describes the plight of the National Economic Growth and Reconstruction Organization (N.E.G.R.O.), which was ordered to stop operating an unfranchised bus service in Queens, New York; "Negro Bus Line Enjoined," *New York Times* (January 5, 1968), p. 32; "Where Blacks Own the Bus," *Business Week* (May 15, 1971), p. 78.

6 Armen A. Alchian and Reuben A. Kessel, "Competition, Monopoly and the Pursuit of Money," in *Aspects of Labour Economics*, National Bureau of Economic Research (Princeton: Princeton Univ. Press, 1962).

NOTES TO CHAPTER 1

1 *DeFunis* v. *Odergaard*, 416 U.S. 312 (1974); *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week* 4896 (1978); *United Steelworkers of America* v. *Brian F. Weber*, 47 *U.S. Law Week* 4851 (1979).

2 *United Steelworkers of America* v. *Brian F. Weber*, 47 *U.S. Law Week* 4851 (1979) at 4853; *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week* 4896 (1978) at 4933.

3 *United Steelworkers of America* v. *Brian F. Weber*, 47 *U.S. Law Week* 4851 (1979) at 4853; *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week* 4896 (1978) at 4934-4950.

4 National Labor Relations Act of 1935, section 10(c).

5 "The contractor will take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, creed, color, or national origin." U.S. Code, 87th Congress, 1st Session, 1961 (West Publishing Co., 1961), vol. 1, p. 1274.

6 U.S. Equal Employment Opportunity Commission, *Legislative History of Titles VII and XI of Civil Rights Act of 1964* (U.S. Government Printing Office, no date), p. 3005. Hereinafter cited as *Legislative History*.

7 Loc. cit.

8 Ibid., pp. 1007-1008.

9 Ibid., p. 1014.

10 Ibid., p. 3006.

11 Ibid., p. 3160.

12 Ibid., p. 3015.

13 Ibid., p. 3013.

14 Quoted in Nathan Glazer, *Affirmative Discrimination: Ethnic Inequality and Public Policy* (Basic Books, 1975), p. 45.

15 Ibid., p. 46.

16 *Legislative History*, p. 4.

17 Glazer, *Affirmative Discrimination*, pp. 46-49, *passim*.

18 Much semantic effort has gone into claiming that quotas are rigid requirements while "goals" under "affirmative action" are flexible. Historically, however, quotas have existed in sales, immigration, production, and other areas, sometimes referring to minima, sometimes to maxima, and with varying degrees of flexibility. The idea that "quota" implies rigidity is a recent redefinition. The objection to quotas is that they are quantitative rather than qualitative criteria, not that they are rigidly rather than flexibly quantitative.

19 Age differences among members of the labor force are less, but still substantial. See Thomas Sowell, ed., *Essays and Data on American Ethnic Groups* (Urban Institute, 1978), pp. 262, 280, 298, 316, 346, 365, 382, 400.

20 U.S. Bureau of the Census, *U.S. Census of Population, 1970*, Subjects Reports pc(2)-1B, p. 2; pc(2)-1F, p. 2; pc(2)-1G, pp. 2, 61; idem, *Current Population Reports*, p-20, no. 213, p. 6; p-20, no. 221, p. 4. "Russian American" age data are used here as a proxy for Jewish data, as is common in the literature, given that constitutional considerations

limit the Census Bureau's inquiries into religious groups.

21 Cf. Thomas Sowell, ed., *Essays and Data*, pp. 273-277, 291-295, 309-313, 327-331, 357-361, 369-372, 393-397, 411-415.

22 A median age of 18 means that half of these groups are no older than that.

23 Cf. U.S. Bureau of the Census, *Current Population Reports*, p-20, no. 213, p. 6; p-20, no. 221, p. 4, with "Russian Americans" in the latter serving as a proxy for Jews.

24 See Thomas Sowell, "Ethnicity in a Changing America," *Daedalus* (Winter 1978): pp. 220-225.

25 The average income of families headed by someone in the 45-54 year-old bracket was 94 percent higher than the average income of families headed by someone under 25 in 1974, while the average white income the same year was 62 percent higher than the average black income. See U.S. Bureau of the Census, *Social Indicators, 1976* (U.S. Government Printing Office, 1977), pp. 454, 455.

26 Sowell, ed., *Essays and Data*, pp. 365, 389.

27 U.S. Bureau of the Census, *Current Population Reports*, p-20, no. 224, p. 12.

28 Computed from tables in Sowell, ed., *Essays and Data*, pp. 278, 279, 280.

29 U.S. Bureau of the Census, *Current Population Reports*, p-20, no. 224, p. 12.

30 Computed from tables in Sowell, ed., *Essays and Data*, pp. 387, 388, 389.

31 Ibid., pp. 365, 389.

32 U.S. Bureau of the Census, *Historical Statistics of the United States, Colonial Times to 1970* (U.S. Government Printing Office, 1976), pp. 243-245, 289-295.

33 U.S. Bureau of the Census, *U.S. Census of Population, 1970*, Subject Reports pc(2)-1B, pp. 149, 150; pc(2)-1C, pp. 170, 171; pc(2)-1F, pp. 158-163.

34 Sowell, "Ethnicity in a Changing America," pp. 225-226.

35 Thomas Sowell, *Race and Economics* (David McKay, 1975), p. 152.

36 Simon Kuznets, "Immigration of Russian Jews to the United States: Background and Structure," *Perspectives in American History*, vol. IX (1975), pp. 76, 79.

37 Kathleen Neils Conzen, *Immigrant Milwaukee, 1836-1860* (Harvard Univ. Press, 1976), pp. 103-105.

38 Nathan Glazer and Daniel Patrick Moynihan, *Beyond the Melting Pot*, (M.I.T. Press, 1964), pp. 223-238.

39 Diane Ravitch, *The Great School Wars* (Basic Books, 1974), p. 178.

40 Stephan Thernstrom, *The Other Bostonians* (Harvard Univ. Press, 1973), p. 173.

41 Robert M. Yerkes, ed., *Psychological Examining in the United States Army*, Memoirs of the National Academy of Sciences, volume XI (U.S. Government Printing Office, 1921), chapter 6. The relevant categories under "Nativity" are Ireland, on the one hand, and either Russia or Poland, on the other, since most Russian-born Americans at that time were Jewish, as were at least half the Polish born.

42 Data on the 1969 family incomes of Americans of Japanese, Chinese,

Filipino, West Indian, Puerto Rican, black, and American Indian background were compiled from the 1970 Census Public Use Sample, and published in Sowell, ed., *Essays and Data*, pp. 257-258. These family incomes were then taken as a percentage of the national average family income generated by applying the same computer program specifications to the whole Public Use Sample as were used to generate the individual ethnic data. Data on 1969 family incomes of Americans of Polish, Italian, Irish, German, and Mexican ancestry were not directly available from the U.S. Bureau of the Census, but their 1968 and 1970 incomes were available from the U.S. Bureau of the Census, *Current Population Reports*, p-20, nos. 213, 221, 224, 249, and an arithmetic average of the percentage that these two family incomes were of the national averages as reported in these respective publications was used as their percent of the national average family income. Data on the 1969 incomes of Jewish families are unavailable from the Census, because of constitutional limitations on government studies of religious groups. The data here were obtained from a private survey, the National Jewish Population Survey, compiled for the same year as the Census data.

43 U.S. Bureau of the Census, *Current Population Reports*, p-20, no. 221, p. 1; p-20, no. 249, p. 1.

44 Ibid., p-20, no. 249, p. 19. Persons of "English, Scottish, and Welsh" ancestry are used here as a proxy for Anglo-Saxons.

45 Peter Uhlenberg, "Demographic Correlates of Group Achievement: Contrasting Patterns of Mexican-Americans and Japanese-Americans," in *Race, Creed, Color, and National Origin*, ed. Robert K. Yin (F.E. Peacock Publishers, 1973), p. 91.

46 Lester C. Thurow, *Poverty and Discrimination* (Brookings Institution, 1969), p. 2.

47 See, for example, Thomas Sowell, "Three Black Histories," in *Essays and Data*, pp. 41-48.

48 Ibid., pp. 257-258.

49 Ibid., p. 44; U.S. Bureau of the Census, *Current Population Reports*, p-20, no. 221, p. 22 ("English" as proxy for Anglo-Saxon ancestry); p-20, no. 249, p. 34 (1971) (income of "English, Scottish, Welsh" as proxy for Anglo-Saxon ancestry).

50 Sowell, "Three Black Histories," pp. 44, 257; U.S. Bureau of the Census, *Current Population Reports*, p-20, no. 221, p. 23.

51 Richard B. Freeman, *Black Elite* (McGraw-Hill, 1976), chapter 4, especially pp. 98-99, 107.

52 Ibid., pp. 88, 110.

53 Sowell, "Three Black Histories," pp. 43-48.

54 John B. Parrish, "Professional Womanpower as a National Resource," *Quarterly Review of Economics & Business* 1(1) (February 1961): 56-58.

55 James Gwartney and Richard Stroup, "Measurement of Employment Discrimination According to Sex," *Southern Economic Journal* 39(4) (April 1973): p. 583.

56 Parrish, "Professional Womanpower," p. 59; Jessie Bernard, *Academic Women* (Pennsylvania State Univ. Press, 1964), pp. 39, 62, 74, 215.

57 Thomas Sowell, *Affirmative Action Reconsidered* (American Enterprise Institute, 1975), p. 41.
58 Ibid., p. 28.
59 Helen S. Astin, "Career Profiles of Women Doctorates," *Academic Women on the Move*, eds. Alice S. Ross and Ann Calderwood (Russell Faye Foundation, 1973), p. 153; Sowell, *Affirmative Action Reconsidered*, pp. 31, 33.
60 Sowell, *Affirmative Action Reconsidered*, p. 32.
61 Ibid., p. 24.
62 Glazer, *Affirmative Discrimination*, pp. 57-58.
63 Ibid., p. 57.
64 James P. Smith and Finis Welch, *Race Differences in Earnings: A Survey and New Evidence* (Rand Corporation, 1978), pp. ix, 20-21, 24, 49; Orley Ashenfelter, "Comments," *Frontiers of Quantitative Economics*, ed. M.D. Intriligator and D.A. Kendrick (North-Holland Publishing Company, 1974), vol. 2, p. 558; Sowell, *Affirmative Action Reconsidered*, p. 23.
65 Smith and Welch, *Race Differences*, p. 49.
66 Sowell, *Affirmative Action Reconsidered*, pp. 15-20.
67 Smith and Welch, *Race Differences*, p. vii.
68 Ibid., p. 46.
69 Ibid., p. 19.
70 Sowell, *Affirmative Action Reconsidered*, pp. 16, 18, 19, 20.
71 Loc. cit.
72 Richard B. Freeman, "Discrimination in the Academic Marketplace," in *Essays and Data*, p. 175.
73 46 *U.S. Law Week*, 4901.
74 Ibid., 4905.
75 Ibid., footnote 40.
76 Ibid., 4905.
77 Ibid., 4903.
78 Ibid., 4903, footnote 34.
79 Ibid., 4903.
80 Loc. cit.
81 Ibid.
82 Ibid., 4936.
83 Ibid., 4934-4936.
84 Ibid., 4936.
85 "A Congress careful enough to provide that existing private causes of action would be preserved (in Titles III and IV) would not leave for inference a vast new extension at private enforcement power. . . . Significantly, in at least three instances legislators who played a major role in the passage of Title VI explicitly stated that a private right of action under Title VI does not exist." Ibid., 4927.
86 Ibid., 4934.
87 Above, notes 6, 7.
88 *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week*, 4896 (1978) at 4933.
89 Ibid., 4912.

90 Ibid., 4915, footnote 17.
91 *Legislative History*, pp. 3005, 3015, 3092, 3129, 3131, 3134, 3160-3161, 3187, 3189, 3246.
92 *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week* 4896 (1978) at 4917.
93 Ibid., 4919.
94 "If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice charged in the complaint, the court may enjoin the respondent . . ." *Legislative History*, p. 1014.
95 *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week* 4896 (1978) at 4917.
96 Glazer, *Affirmative Discrimination*, pp. 57-58.
97 *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week* 4896 (1978) at 4919.
98 Loc. cit.
99 Ibid., 4904-4906.
100 *United Steelworkers of America* v. *Brian F. Weber*, 47 *U.S. Law Week* 4851 (1979) at 4853.
101 Loc. cit.
102 Cited ibid., 4859, footnote 2. See also 4856.
103 Ibid., 4853.
104 Ibid., 4855.
105 Ibid., 4859.
106 Ibid., 4861-4865.
107 *United Steelworkers of America* v. *Brian F. Weber*, 47 *U.S. Law Week* 4851 (1979) at 4856, note.
108 *Regents of the University of California* v. *Allan Bakke*, 46 *U.S. Law Week* 4896 (1978) at 4922.
109 Ibid., 4924, note 58.
110 Ibid., pp. 4911-12, 4927-4931; *United Steelworkers of America* v. *Brian F. Weber*, 47 *U.S. Law Week* 4851 (1979) at 4853-4854.
111 See Sowell, ed., *Essays and Data*, pp. 216, 223, 257, 258, 283, 385.
112 *Gallup Opinion Index* (June 1977), Report 143, p. 23.

NOTES TO CHAPTER 2

1 Kenneth J. Arrow, "Models of Job Discrimination," in *Racial Discrimination in Economic Life*, ed. Anthony Pascal (D.C. Heath & Co., 1972), pp. 85-86.

2 Finis Welch, "Labor-Market Discrimination: An Interpretation of Income Differences in the Rural South," *Journal of Political Economy* (June 1967): 226.

3 Ibid., p. 235. Welch's study finds that the coefficient of discrimination against black labor is 0.19 and that against black education is 0.72.

4 These findings are even more interesting in light of the fact that black and white female professionals work nearly identical number of weeks per year (47.2 and 46.6 weeks respectively). Further, 42.5 percent of black female professionals and 42 percent of white female professionals work 50 to 52 weeks per year. See *U.S. Census of Population, 1970*: Occupational Characteristics.

5 There would still be the important question of why groups differ by race within occupations. Answers could cover the range from entry restrictions to group preferences.

6 The Kendall coefficient (tau) is a widely used measure of the degree of association of correlation between two sets of data.

7 When data consists of frequencies in discrete categories, the chi-square test can be used to determine the significance of the differences between two independent groups. Roughly speaking, the larger the chi-square the more likely it is that we can reject the hypothesis that the two groups differ with respect to the frequency in which they fall into the several occupational categories: the larger the chi-square, the more similar is the occupational distribution.

8 Richard B. Freeman, *Black Economic Progress after 1964: Who Has Gained*, employs "new" background variables such as the presence in the household of such things as newspapers, magazines, and library cards. If these factors have an effect on educational attainment, as Freeman suggests, and ultimately on earnings, then the showing of black females suggests that they may have secreted these items from black males.

9 Joseph E. Stiglitz, "Approaches to the Economics of Discrimination," *American Economic Review* (May 1973): 290. Italics added.

10 Kenneth Arrow, "The Theory of Discrimination," in *Discrimination in Labor Markets*, eds. Orley Ashenfelter and Albert Rees (Princeton: Princeton Univ. Press, 1973), p. 6. Italics added.

11 Orley Ashenfelter, "Discrimination and Trade Unions," ibid., p. 88. Italics added.

12 Arrow, "Models of Job Discrimination," p. 96. Italics added.

13 Freeman, *Black Economic Progress After 1964*, pp. 24-26. Italics added.

14 A similar argument can be made about the analysis of racial differences in other areas of economic life. In the poor-pay-more issue of the 1960s, experimentors conducted tests similar to that suggested by Freeman to determine whether there was racial discrimination in the sale of consumer durables and credit terms by having couples shop for credit who differed only by race. See Walter E. Williams, "Why the Poor Pay

More: An Alternative Explanation," *Social Science Quarterly* (September 1973): 375-379.

15 See Walter Williams, "Racial Reasoning in Unfree Markets," *Regulation* (March/April 1979): 34-48.

16 Given this line of reasoning, prejudiced behavior cannot have normative content. Most often in the racial discrimination literature, prejudiced behavior is used pejoratively in reference to individuals whose optimal amount of information is relatively small (in our opinion). But we have seen that the quantity decision is individual and there can be no meaning attached to "socially" optimal quantities of information for a decision.

17 Arrow, "Models of Job Discrimination"; Edmund Phelps, "The Statistical Theory of Racism and Sexism," *American Economic Review* (September 1972): 659-661; John J. McCall, "The Simple Mathematics of Information, Job Search and Prejudice," in *Racial Discrimination in Economic Life*, ed. Pascal; Joseph E. Stiglitz, "Approaches to the Economics of Discrimination," pp. 287-295; Michael J. Spence, "Job Market Signaling," *Quarterly Journal of Economics* (August 1973): 355-374.

18 It is assumed that employers are legally free to make these adjustments.

19 See Philip Nelson, "Information and Consumer Behavior," *Journal of Political Economy* 78(2) (March/April 1970): 311-329.

20 Gary Becker, *The Economics of Discrimination*, 2nd ed. (Chicago: Univ. of Chicago Press, 1971), p. 155.

21 The reasoning here is quite consistent with the new literature on market signalling. See Spence, "Job Market Signaling," pp. 355-374.

22 Anthony Pascal and Leonard Rapping, "The Economics of Racial Discrimination in Organized Baseball," in *Racial Discrimination in Economic Life*, ed. Pascal, p. 149.

23 Factors thought to influence "quality" are: quality of institution where degree was earned, scholarly publications, experience and age, highest degree earned, and so forth. See Richard B. Freeman, *Black Elite: The New Market for Highly Educated Black Americans* (New York: McGraw-Hill, 1976), pp. 201-213.

24 For similar comparisons between white and black academics, see Thomas Sowell, "Affirmative Action: Reconsidered," *The Public Interest* (Winter 1976): 47-65.

25 SEO data shows that only 27 percent of non-white craftsmen and 35 percent of non-white laborers in the construction industry reported union membership.

26 Another undesirable effect of the Davis-Bacon Act is that it hampers government efforts to stimulate the production of low and moderate income housing through its extension providing coverage for federally assisted housing, i.e., the higher labor costs often offset the interest subsidy granted by the government.

27 For an interesting summary of the effects of the Davis-Bacon Act, see John P. Gould, "Davis-Bacon Act: The Economics of Prevailing Wage Laws" (Washington. D.C.: American Enterprise Institute, 1972).

28 Interstate Commerce Commission, Office of Policy and Analysis, *Economic Impact of New Motor Carrier Entry for the Transportation*

of Government Traffic (Washington, D.C.: Interstate Commerce Commission, March 1979).

29 The cost of a licence in the district is $100. Approximately, 80 percent of the taxis are owned by blacks. Compare this with Philadelphia, Pa., for example, where less than 2 percent of taxis are owned by blacks.

30 Gary Becker, *Human Capital: A Theoretical and Empirical Analysis with Special Reference to Education* (New York: National Bureau of Economic Research, 1964).

31 Some of the investment is for direct consumption such as the pure fun of being educated—education for the sake of education.

32 Test scores indicate that deficiencies are just as bad in other academic areas such as quantitative skills and abstract reasoning.

33 J.W. Foster, "Race and Truth at Harvard," *The New Republic* (July 17, 1976): 16-20.

34 Ibid., p. 17.

35 It accomplishes nothing to point to the fact of the presence of incompetent white doctors. Whites do not have to live down a history of racial stereotypes and racial discrimination.

36 For a fuller description, see Milton Friedman, *Capitalism and Freedom* (Chicago: Univ. of Chicago Press, 1962), pp. 85-107.

37 Essentially vouchers would redirect the self-interest of school administrators and teachers. Teachers' and administrators' livelihoods would depend critically on pleasing parents. As it is now, teachers and administrators receive their pay, and raises, whether or not students can read and write. Vouchers would change all that—which may explain the resistance to vouchers by the educational establishment.

38 Admittedly such discretion provides the opportunity for various forms of discrimination. But discipline is a concrete problem in inner city schools, and ways must be devised to help those who want an education and those who do not.

39 It is more difficult to conceive how schools could become more racially homogeneous. Further, the quality of education received by a child does not depend on the race of the child sitting next to him.

40 Even in areas completely under their own control, such as recreational activities, childrearing practices, and diets, different ethnic groups exhibit many different patterns of behavior.

41 These statistics are taken from Thomas Sowell, "Affirmative Action: Reconsidered," 47-65.

42 Unemployment among Ph.D.s is not a serious problem for blacks.

43 Richard L. Rowan and Lester Rubin, *Opening the Skilled Construction Trades to Blacks* (Philadelphia: Univ. of Pennsylvania Press, 1972).

44 Herbert Hammerman, "Minority Workers in Construction Referral Unions," *Monthly Labor Review* (May 1972).

45 John M. Mattila and Peter Mattila, "Construction Apprenticeship in the Detroit Labor Market," *Industrial Relations* (February 1976): 99-106.

46 See James J. Heckman and Kenneth I. Wolpin, "Does the Contract Compliance Program Work: An Analysis of Chicago Data?" Working Paper, Univ. of Chicago, November 1975; Orvil V. Adams, *Toward Fair Employment and the EEOC: A Study of Compliance Procedures* (Washington, D.C.: U.S. Government Printing Office, 1973); Benjamin

J. Wolkinson, *Blacks, Unions and EEOC* (Mass.: D.C. Heath, 1973); Orley Ashenfelter and James Heckman, "Measuring the Effect of an Antidiscrimination Program," in *Evaluating the Labor Market Effects of Social Programs*, ed. Orley Ashenfelter, forthcoming.

NOTES TO CHAPTER 3

1 See E. Franklin Frazier, *The Negro in the United States* (New York: Macmillan, 1957); idem, *Negro Youth at the Crossways* (New York: Schocken, 1967); Leslie H. Fishel, Jr., and Benjamin Quarles, eds., *The Black American* (Glenview, Illinois: Scott Foresman, 1967); Franz Fanon, *The Wretched of the Earth* (New York: Grove Press, 1963); Henrietta Buckmaster, *Let My People Go* (Boston: Beacon Press, 1969), pp. 103-104; Timothy Thomas Fortune, *Black & White: Land, Labor & Politics in the South* (New York: Arno Press, 1969), pp. 30-31; Frances Fox Piven and Richard A. Cloward, *Regulating the Poor* (New York: Random House, 1971); William H. Grier and Price M. Cobbs, *Black Rage* (New York: Basic Books, 1968); Claude Brown, *Manchild in the Promised Land* (New York: New American Library, 1965).

2 U.S. Department of Labor figures, Bureau of Labor statistics, for 1948 and 1979. The figure of 33.5 percent is an underestimate of the real human tragedy, for it is based only on black teenagers who are "actively seeking work." But there are workers who are discouraged after having failed to obtain employment and leave the labour force. These people are ignored in the unemployment figures!

For more information on the unemployment effects of the minimum wage law, see the following: Walter Williams, "Government Sanctioned Restraints that Reduce Economic Opportunities for Minorities," *Policy Review* (Fall 1977): 1-24; idem, *Youth and Minority Unemployment*, commissioned by the U.S. Congress, Joint Economic Committee, 95th Congress, 1st Session (Washington, D.C.: Government Printing Office, 1977); idem, "The New Jim Crow Laws," *Reason* (August 1978): 16-23; idem, "Minimum Wage Maximum Folly," *Newsweek* (September 23, 1979), also in *Wall Street Journal* (September 13, 1979); idem, "The Shameful Roots of Minority Unemployment," *Readers Digest* (October 1979); Thomas Sowell, *Race and Economics* (New York: David McKay, 1975), pp. 184-186; Walter Block, *Defending the Undefendable* (New York: Fleet Press, 1976), pp. 227-236; Finis Welch, "Minimum Wage Legislation in the United States," *Economic Enquiry* 12(3) (September 1974): 258-318; Henry Hazlitt, *Economics in One Lesson* (New York: Harper & Row, 1946), chapter 18; Douglas K. Adie, "Teen-Age Unemployment and Real Federal Minimum Wages," *Journal of Political Economy*, 81(2), part 2 (March-April 1973): 435-441; Michael C. Lovell, "The Minimum Wage Reconsidered," *Western Economic Journal* 11(4) (December 1973): 529-537; Frank G. Steindl, "The Appeal of Minimum Wage Laws and the Invisible Hand in Government," *Public Choice* 14 (Spring 1973): 133-136; idem, "More on Minimum Wages and Political Clout," *Public Choice* 19 (Fall 1974): 137-138; Douglas K. Adie and Lowell Gallaway, "The Minimum Wage and Teenage Unemployment: A Comment," *Western Economic Journal* 11(4) (December 1973): 525-528; J. Houston McCulloch, "The Effect of a Minimum Wage Law in the Labour-Intensive Sector," *Canadian Journal of Economics* 7(2) (May 1974): 317-339; E.G. West, "Vote Earning versus Vote Losing Properties of Minimum Wage Laws," *Public Choice* 19 (Fall 1974): 133-137; E.G. West and Michael McKee, *Minimum Wages: The New Issues in Theory, Evidence, Policy and*

Politics (Economic Council of Canada and The Institute for Research on Public Policy, 1980).

3 See in this regard *Globe and Mail* (March 4, 1980), p. B2, also ibid. (March 7, 1980); Murray N. Rothbard, *Power and Market* (Menlo Park, California: Institute for Humane Studies, 1970), pp. 157-160; *Alston v. School Board of City of Norfolk*, 112F 2d 992 (4th Cir.), certiorari denied, 311 U.S. 693 (1940); *Financial Post* (May 15, 1980): 10.

4 The analogue of biology is compelling. "Mother nature" often grants otherwise weak organisms a saving grace which enables them to survive: the skunk has its smell, the deer fleetness of foot, the porcupine quills, the chameleon the ability to change its skin colour to blend in with the environment. It seems that "mother economics" has granted her weakest children (the ugly, the different, the scorned, the hated) a similar grace: this ability to be attractive to employers (and hence customers) *despite* all other drawbacks.

5 The government may then turn around and try to combat the rise in female unemployment (or unemployment) created by EPFEW. It may enact additional "equal opportunity" or "affirmative action" legislation enforcing hiring quotas on employers for women. If so, the felt need for such programs will have been brought about by its very own misguided EPFEW policies. As several of the essays in this book make clear, this "cure" may actually be worse than the "disease."

6 Leon Louw, "Free Enterprise and the South African Black" (Address to Barclay's Executive Women's Club, Johannesburg, South Africa, July 31, 1980), p. 4.

7 James Buchanan, *Cost & Choice* (Chicago: Markham Publishing, 1969), especially pp. 47-48; G.F. Thirlby, "Subjective Theory of Value and Accounting Cost," *Economica* XIII (February 1946): 32-49; Ludwig Von Mises, *Human Action*, 3rd ed. (Chicago: Regnery, 1963), pp. 242, 395.

8 A female/male income ratio of .485 can be derived from *Income Distributions by Size in Canada, 1979*, Catalogue 13-207, 1979, Statistics Canada, page 99.

9 Ratna Ray, *Women in the Labour Force: Facts and Figures* (Ottawa: Labour Canada, 1977, Catalogue L 38-30/1977-2), page i. Other economic studies of interest in this regard include: Alan S. Blinder, "Wage discrimination: reduced form and structural estimates," *Journal of Human Resources* 8 (1973): 436-455; Morley Gunderson, "Male-female wage differentials and the impact of equal pay legislation," *Review of Economics and Statistics* 57 (1975): 462-470; idem, "Work patterns," in *Opportunity for Choice: A Goal for Women in Canada*, ed. G. Cook (Ottawa: Statistics Canada, 1976); idem, "Time patterns of male-female wage differentials," *Relations Industrielles/Industrial Relations* 31 (1976): 57-71; R.A. Holmes, "Male-female earnings differentials in Canada," *Journal of Human Resources* 11 (1976): 109-117; Ronald Oaxaca, "Male-female wage differentials in urban labour markets," *International Economic Review* 14 (1973): 693-709; Roberta Edgecombe Robb, "Earnings differentials between males and females in Ontario, 1971," *The Canadian Journal of Economics* 11(2) (May 1978): 350-359; James E. Bennett and Pierre M. Loewe, *Women in Business*

(Toronto: Financial Post Books, 1975); Christina Maria Hill, "Women in the Canadian Economy," in *(Canada) Ltd.: The Political Economy of Dependency*, ed. Robert M. Laxer (Toronto: McClelland and Stewart, 1973), pp. 84-106; Lynn Mc Donald, "Wages of Work: A Widening Gap Between Women and Men," *Canadian Forum* (April/May 1975): 4-7; Neil MacLeod, "Female Earnings in Manufacturing: A Comparison with Male Earnings," Statistics Canada Notes on Labour Statistics, 1971 (Ottawa: Information Canada, 1972); Sylvia Ostry, "The Female Worker: Labour Force and Occupational Trends," in Changing Patterns in Women's Employment: Report of a Consultation Held March 18, 1966 (Ottawa: Dept. of Labour Women's Bureau, 1966), pp. 5-24. Tr. "Questions and Comments," pp. 25-31; idem, "The Female Worker in Canada," Dominion Bureau of Statistics Census Monograph (Ottawa: Queen's Printer, 1968); idem, "Labour Force Participation and Childbearing Status," in *Demography and Educational Planning*, Conference on the Implications of Demographic Factors for Educational Planning and Research, ed. Betty MacLeod, Monograph Series, 7 (Toronto: Ontario Institute for Studies in Education, 1970), pp. 143-156; R.A.H. Robson, "A Comparison of Men's and Women's Salaries in the Academic Profession," Report to the Royal Commission on the Status of Women, *C.A.U.T. Bulletin* 17 (1969): 50-75; R.A.H. Robson and Mireille Lapointe, "A Comparison of Men's and Women's Salaries and Employment Fringe Benefits in the Academic Profession," Canadian Association of University Teachers: Studies of the Royal Commission on the Status of Women in Canada, 1. (Ottawa: Information Canada, 1971); Gideon Rosenbluth, "The Structure of Academic Salaries in Canada," *C.A.U.T. Bulletin* 15 (1967): 19-27.

10 The average age of all employed Canadian men was 37 years in 1980. This placed the typical man in the *highest* male earnings age bracket (35-44 years old). The average age of all employed Canadian women was 34 years in 1980. This placed the typical woman in the *fourth* highest *male* earnings age bracket (25-34 years old). Source: *The Labour Force*, Statistics Canada, Catalogue 71-001, December 1980, page 75; and *Income Distributions by Size in Canada, 1979*, Statistics Canada, Catalogue 13-207, pp. 104-109.

11 Occupational segregation such as shown in the table below cannot properly be interpreted as the result of employer discrimination. After all, the employer cannot hire a nurse as a doctor, nor a person with secretarial training as an engineer or accountant.

	1971			*1978*		
	Earnings	*% Male*	*% Female*	*Earnings*	*% Male*	*% Female*
Doctors	$39,555	89.9	10.1	$53,422	90.3	9.7
Dentists	25,828	95.2	4.8	45,985	94.2	5.8
Lawyers and Notaries	27,862	95.2	4.8	40,587	90.0(4)	10.0(4)
Accountants	18,631	84.8	15.2	33,440	96.2(5)	3.8(5)

Architects and Engineers	21,648	98.4	1.6	30,825	99.4(6)	0.6(6)
University Instructors(1)	14,700	83.3	16.7	27,235	85.1	14.9
Elementary School Teachers(1)	7,043(2)	17.7(2)	82.3(2)	17,309	33.2	66.8
Nurses(3)	6,934	4.2	95.8	16,037	2.0	98.0

(1) School years 1970-1971 and 1977-1978.

(2) This information covers eight provinces of Canada, excluding Quebec and Ontario.

(3) Registered nurses employed as nurses.

(4) These figures are rough estimates of the breakdown by sex, and are for lawyers only.

(5) Figures on all self-employed accountants unavailable in 1978. Registered membership list in 1978 of the Society of Management Accountants was used instead.

(6) These figures are for engineers alone. Incomplete 1978 data on architects shows a breakdown by sex of 95.9 percent male, 4.1 percent female. Statistics for Ontario engineers in 1978 were unavailable; the 1981 count was used instead.

Sources: Earnings for self-employed doctors, dentists, lawyers and notaries, accountants, architects and engineers in 1971: *Taxation Statistics, 1973 Edition: Analyzing the Returns of Individuals for the 1971 Taxation Year*, Revenue Canada Taxation, Catalogue RV 44-1973, p. 13; in 1978: *Taxation Statistics 1980 Edition: Analyzing the Returns of Individuals for the 1978 Taxation Year*, Revenue Canada Taxation, Catalogue RV 44-1980, p. 13; percentages of doctors, dentists, lawyers and notaries, accountants, architects and engineers by sex in 1971: *Census of Canada 1971, Occupation by Sex for Canada & Provinces*, Statistics Canada, Catalogue 94-717, pp. 2-1, 2-3; doctors and dentists in 1978: Health Information Division, Department of National Health and Welfare, unpublished statistics received from Revenue Canada Taxation, September 1980; lawyers: *Demographic Survey, 1979* (Ottawa: Canadian Bar Association, Young Lawyers Section, 1979), p. 5; accountants: unpublished material from the Society of Management Accountants; engineers: unpublished material from the Canadian Council of Professional Engineers; architects: unpublished material from the Royal Architectural Institute of Canada; elementary school teacher's earnings and percentages of elementary school teachers by sex in 1971: *1971 Census*, Statistics Canada, Catalogue 94-717, pp. 2-3, Table 2; in 1978: *Salaries and Qualifications of Teachers in Public, Elementary and Secondary Schools 1977, 1978*, Statistics Canada, Catalogue 81-202, p. 35, Table 2; university teachers' earnings and percentages of university teachers by sex in

1971: *Salaries and Qualifications of Teachers in Universities and Colleges, 1970, 1971*, Statistics Canada, Catalogue 81-302, p. 27, Table 1; in 1978: *Teachers in Universities*, Statistics Canada, Catalogue 81-241, p. 27, Table 3; nurses' earnings and percentages of nurses by sex in 1978: *Nursing in Canada: Canadian Nursing Statistics*, 1978, Catalogue 83-226, pp. 37, 96-98; *Annual Salaries of Hospital Nursing Personnel, 1970*, Statistics Canada, Catalogue 83-218, pp. 18-20, Table 1.

The *private* employer will not, generally speaking, be able to occupationally segregate equally well-trained people on the basis of sex (or any other criteria). Were the employer to try to do so, he would set up profit opportunities which, when exploited, would forestall any such attempt at occupational segregation. (For a more complete explanation, see the analysis of discrimination against redheads—which applies to occupational segregation as well— in "The Plight of the Minority," pp. 9-11 in this volume.)

There are more plausible explanations for occupational segregation by sex than employer discrimination. These include differential ambitions, talents, tastes, attachments to the labour force, etc. A very interesting underlying explanation for *all* these phenomena is offered by Meredith M. Kimball, "Women and success: a basic conflict?" in *Women in Canada* ed. Marylee Stephenson (Don Mills, Ontario: General Publishing Co., 1978), p. 85, who says, "We found, as did Horner [see note 21, below], that fear of success imagery increases between grade eight and grade twelve for girls. Horner also found an increase between the first and last years of college. *Thus, in both high school and college years, fear of success is highest when women are making their most important occupational decisions.* The last year of high school is when the decision to go to college is finally made, and if a woman decides not to go to college, then she must decide between marriage or occupation or some combination of both. In college it is in the final year that decisions about graduate or professional school as well as kind of position must be made, again at a time that a woman often must also make a decision about marriage. It seems that it is not so much that women see no value in successful achievement, but rather that they see successful achievement as conflict-provoking, precisely because success is both desired and threatening" (emphasis added).

12 In 1978 the percentage of female Canadian union members was 28.7 percent; males comprised 71.3 percent of the membership. Source: *Corporations & Labour Unions Returns Act, Part II, Labour Unions*, Statistics Canada, Catalogue 71-202, p. 41. On the question of male/female productivity differentials, see Jacob Mincer and Solomon Polachek, "Family Investments in Human Capital: Earnings of Women," *Journal of Political Economy* 82(2), part 2 (March 1974):76-108.

13 In 1980, 94.1 percent of employed Canadian males worked full time, 5.9 percent worked part time; 76.2 percent of employed Canadian females worked full time, 23.8 percent worked part time. In 1979, 72.9 percent of employed Canadian males worked 50-52 weeks, 27.1 percent worked 1-49 weeks; 60.1 percent of Canadian females worked 50-52 weeks, 39.9 percent worked 1-49 weeks. Source: *The Labour Force*, Statistics Canada, December 1980, p. 105, Catalogue 71-001; *Income Distribu-*

tions by Size in Canada, 1979, op. cit., p. 112.

14 These figures are derived from computations based on data cited for elementary school teachers' earnings and percentages of teachers by sex: *Salaries and Qualifications of Teachers in Public, Elementary & Secondary Schools, 1979-80*, Statistics Canada, Catalogue 81-202, p. 25; university teachers' earnings and percentages of university teachers by sex: *Teachers in Universities, 1978-1979*, Statistics Canada, Catalogue 81-241, p. 57. Additional sources may be found in notes 10, 11, and 13 above. Note that while we have corrected the female/male income ratio for several phenomena not related to discrimination, a still more accurate assessment would have to normalize for *all* of these variables, *together*, and include other variables such as continuity of employment, earned degrees, labour force participation, location, industrial concentration, public or private employment, productivity, seniority, as well as such imponderables as motivation, "stick-to-itiveness," resourcefulness, ambition, expectations, etc.

15 Thomas Sowell. *Affirmative Action: Reconsidered* (Washington, D.C.: American Enterprise Institute, 1975), pp. 23-34.

16 Jesse Bernard, *Academic Women* (University Park, Pennsylvania: Pennsylvania State Univ. Press, 1964), pp. 220-226; idem, *The Future of Motherhood* (New York: Penguin Books, 1974), pp. 165-170; Bryan and Boring, *American Psychologist* 2 (January 1947): 18; Lee Rainwater, *And the Poor Get Children* (Chicago: Quadrangle Books, 1960), pp. 67-69; Wayne R. Bartz and Richard A. Rasor, *Surviving With Kids* (San Luis Obispo, California: Impact, 1978), p. 147; Martin Meissner, "Sexual Division of Labour and Inequality: Labour and Leisure," in *Women in Canada*, op. cit., pp. 166-174; Nancy Chodorow, "Being and Doing: A Cross Cultural Examination of the Socialization of Males and Females," in *Women in Sexist Society*, eds. Vivian Gornick and Barbara K. Moran (New York: Basic Books, 1971), pp. 183-184; Roslyn S. Willett, "Working in 'A Man's World': The Woman Executive," ibid., p. 368; Jean Tetterman, "Two Jobs: Women Who Work in Factories," in *Sisterhood is Powerful*, ed. Robin Morgan (New York: Random House, 1970), pp. 115, 121.

17 Gail C.A. Cook, "Opportunity for Choice: a Criterion," in *Opportunity for Choice: A Goal for Women in Canada*, ed. Gail C.A. Cook (Ottawa: Statistics Canada and C.D. Howe Research Institute, Catalogue IC 23-15/1976), p. 4; Gail C.A. Cook and Mary Eberts, "Policies Affecting Work," ibid., p. 145; Richard A. Lester, *Antibias Regulations of Universities* (New York: McGraw-Hill, 1974), p. 39; Roslyn S. Willett, "Working in 'A Man's World': The Woman Executive," in *Women in Sexist Society*, op. cit., p. 368; Pat Mainardi, "The Politics of Housework," in *Sisterhood Is Powerful*, op. cit., pp. 447-454; Jesse Bernard, *The Future of Motherhood*, op. cit., pp. 157-165; Kathryn E. Walker, "Time Used by Husbands for Household Work," *Family Economics Review* (June 1970): 8-10; M. Meisner, E.W. Humphries, S.M. Meis, and W.J. Scheu, "No Exit for Wives: Sexual Division of Labour and the Cumulation of Household Demands," *Canadian Review of Sociology and Anthropology* 12 (1975): 424-439.

18 Barbara B. Reagan, "Two Supply Curves for Economists? Implications of Mobility and Career Attachment of Women," *American*

Economic Review 65(2) (1975): 102; Jacquelyn S. Crawford, *Women in Middle Management* (Ridgewood, N.J.: Forkner Publishing Co., 1977), p. 63.

19 E.W. Burgess and Paul Wallin, *Engagement and Marriage* (New York: Lippincott, 1953), pp. 614, 618; Reagan, ibid., p. 104. See also Beth Neimi, "The Female-Male Differential in Unemployment Rates," *Industrial and Labour Relations Review* 27(3) (April 1974): 331-350.

20 Alan E. Bayer, "Marriage Plans and Educational Aspirations," *American Journal of Sociology* 75 (1969): 239-244; Reagan, op. cit., p. 103; Bernard, op. cit., pp. 91, 151, 181; Jean Tepperman, op. cit., p. 123; Betty Friedan, *The Feminine Mystique* (New York: Dell, 1974), p. 31; Meg Luxton, *More Than a Labour of Love: Three Generations of Women's Work in the Home* (Toronto: Women's Educational Press, 1980), p. 16; Margaret Luxton, "Urban Communes and Co-ops in Toronto," (M.Phil. dissertation, University of Toronto, 1973), cited in Luxton, ibid.; Ann Oakley, *Women's Work: The Housewife Past and Present* (New York: Vintage Books, 1976); Eli Zaretsky, *Capitalism, The Family and Personal Life* (New York: Harper & Row, 1976), p. 17; Simone de Beauvoir, *The Second Sex* (New York: Vintage Books, 1974), p. 482.

21 Let us imagine an experiment. We offer a large number of employed married couples the following option: jobs in city A, where the husband will earn $200,000 per year and the wife $150,000, or in city B, where the wife will earn $200,000 per year, and the husband $150,000. (The type of employment and the amenities of the cities are assumed to be identical in each case.) How many of the husbands would prefer city B? How many wives would prefer city A?

Although there is only casual evidence on this, since such an experiment has not yet been done, one may speculate that there will be more wives who will prefer city A than there will be husbands who will prefer city B. The motivations behind these choices may vary. Some husbands may feel "less of a man" if their wives earn more than they do; others may feel it is just "not fitting" that their incomes should be lower; some wives may feel less damaged psychologically from earning less than their spouses; others may subscribe to the societal pressures which teach, at a young age, that "nice girls don't outcompete boys." But whatever the reason, there is abundant anecdotal evidence that many women have great psychological and other personal difficulties in competing with men, and are thus, when married, more likely than men to purposefully keep their earnings below those of their spouses—with important implications for the low female/male earnings ratios for married people.

See, for example: Bernard, *Academic Women*, op. cit., p. 216, who speaks of "a determined effort" on the part of academic women "not to outshine [their] husband[s]"; Vivian Gorlick, "Why Women Fear Success," in *Essays in Feminism* (New York: Harper & Row, 1978), p. 87, who reports the typical response of a woman who "deliberately lower[s] her academic standing . . . while she does all she subtly can to help [her future husband]"; Dorothy Jongeward and Dru Scott, *Women as Winners* (London: Addison-Wesley, 1976), p. 15, who cites the following woman's statement about her and her husband as typical:

"I would never take a job where I earned more than Bob. If I start being really successful, that means I'm making him less of a man"; Betty Friedan, op. cit., pp. 29, 30, who discusses the contents of an early 1960s issue of *McCalls*, "the fastest growing of the women's magazines," which, in her opinion, "are a fairly accurate representation of the image of the American woman." The article in question describes a "nineteen-year-old girl sent to charm school to learn how to bat her eyelashes and *lose at tennis*" (emphasis added) by never "volleying to the backhand of male opponents." Betty Friedan also relates how she herself as a young woman gave up a graduate fellowship to study for a doctorate, upon being told by her male companion that "Nothing can come of this, between us. I'll never win a fellowship like yours" (pp. 62-63); Judith M. Bardwick and Elizabeth Douvan, "Ambivalence: The Socialization of Women," in *Women in Sexist Society*, op. cit., p. 150, who discuss social pressures which interfere with pubescent girls successfully competing against boys; Mary Ann Zasylycia-Coe, "Canadian Chief Librarians by Sex," *Canadian Library Journal* 38(3) (June 1981): 162, who points to the lower marriage rate of female than male chief librarians, and states, "this would seem to indicate that more females than males perceive marriage and a high level position as incompatible"; Margaret Hennig and Anne Jardim, *The Managerial Women* (New York: Simon & Schuster, 1976), p. 23, who cites the difficulties undergone by women students in participating in the case study method at the Harvard MBA program, and attributes this, in part, to "their own doubts as to whether they could or *even wanted to compete with the men in the class*" (emphasis added); Meredith M. Kimball, "Women and Success: a Basic Conflict?" in *Women in Canada*, op. cit., pp. 73, 74, who tells us that "girls are socialized, especially from early adolescence on, to see achievement as unfeminine . . . success for women has negative *as well as* positive value."

See also M.S. Horner, "Fail: Bright Women," *Psychology Today* 3 (November 1969): 36; idem, "Femininity and Successful Achievement: A Basic Inconsistency," in *Feminine Personality and Conflict*, eds. J.M. Bardwick *et al.* (Belmont, California: Wadsworth, 1970), p. 60; idem, "Sex Differences in Achievement Motivation and Performance in Competitive and Non-Competitive Situations," Ph.D. dissertation, University of Michigan, 1968 (cited in Meredith M. Kimball, "Women and Success: a Basic Conflict?" op. cit., p. 89); Roslyn S. Willett, op. cit., p. 369; Jacquelyn S. Crawford, op. cit., pp. 63-65. Lisa A. Serbin and K. Daniel O'Leary, "How Nursery Schools Teach Girls to Shut Up," pp. 183-187; Grace K. Baruch and Rosalind C. Barnett, "Implications and Applications of Recent Research on Feminine Development," pp. 188-199; Julia A. Sherman, "Social Values, Femininity, and the Development of Female Competence," pp. 200-211, all in *Psychology of Women*, ed. Juanita H. Williams (New York: W.W. Norton, 1979). V. O'Leary, "Some Attitudinal Barriers to Occupational Aspirations in Women," *Psychological Bulletin* 81 (1974): 809-826; A.H. Stein and M. Bailey, "The socialization of achievement motivation in females," *Psychological Bulletin* 80 (1973): 345-366; Juliet Mitchell, *Woman's Estate* (New York: Vintage Books, 1973), pp. 124-129;

Simone de Beauvoir, op. cit., pp. 368-372.

Many of these interferences with income earning capacities apply, of course, to never married women as well as to ever married women. That never married women have nevertheless been able to register at .992 income ratio with their male counterparts, despite these obstacles, is all the more evidence of their great earning capacity. True, never married women have slightly higher educational preparations than never married men (10.9 vs. 9.3 years—see Kuch and Haessel, reference cited in Table 3). But it is unlikely that this slight advantage would more than offset all the other psychological and sociological disadvantages to their income earning ability.

22 Unfortunately, only the "married" and "total" columns are widely published in official Canadian statistics. To say the least, this gives rather a biased account of the true state of the female/male earnings ratio, and of its basic cause (marital status and its widely diverging effects on males and females).

23 Not only does *marriage* have asymmetrical effects on earnings by sex, but it is reasonable to believe that so does "living together," or "cohabitation"—and for similar reasons. Moreover, this category has become more statistically significant in recent years, though actual data is lacking. Table 3, in distinguishing between the ever married and the never married, cannot separate those who have ever lived together—whether married or unmarried—from those who have never lived together. If cohabitation as well as ever married status could be controlled for, one would thus expect the female/male ratio to be *higher* than .992. There is also, however, a reason for believing that .992 may be somewhat of an *overestimate* of the "true" female/male earnings ratio: never married females are older than never married males (46.2 years vs. 43.7 years old), have more schooling (10.9 vs. 9.3 years), work more weeks (45.6 vs. 42.3 weeks), and work on a part-time basis to a lesser degree (10.6 percent vs. 11.8 percent). (All figures based on calculations made from data presented by Kuch and Haessel; see Table 3 for full citation.)

24 Some may argue that private discriminatory behaviour is immoral and ought to be prohibited by force of law. Others may hold that, while discrimination is a negative characteristic, each individual is nevertheless entitled to make whatever decision suits his conscience—whether in commercial dealings, employment practices, housing decisions, or personal relations—provided only that he not commit fraud upon, or initiate aggression against, minority group members. Whatever the solution to this philosophical question, both sides may perhaps take comfort from one of the findings in this volume: the tendency of the marketplace to financially penalize those who indulge in discriminatory practices and thus to reduce, over time, the scope of this activity.

25 There would appear to be numerous criteria upon which discrimination has, or is alleged to have, taken place, and upon which quotas, affirmative action, or preferential treatment are now demanded. Some of the grounds include: (1) obesity: see "Obese Are Victims of Bias: Professor," *Globe & Mail* (August 5, 1980), p. 13; (2) blindness: see "Group for Blind Suggests Job Quota," ibid. (August 21, 1980), p. 1, and "Blind Woman and Guide Dog Win Rights Fight," *Vancouver Sun* (August 18,

1980), p. 8; (3) residence: see "Stop Provinces Reserving Jobs for Residents, Rights Chief Says," *Globe & Mail* (June 4, 1980), p. 10; (4) "reverse" discrimination: see "Barring White in Native Class Is Ruled Illegal," ibid. (February 13, 1980), which tells of an Alberta Human Rights Commission finding against the University of Calgary for discriminating against a non-Indian woman by denying her admission to a special course specifically set up for native peoples; (5) ugliness: see "More to an Interview than Meets the Eye," ibid. (July 19, 1980), p. F3, which shows that persons of "unattractive appearance" (and even sometimes persons of beauty) are discriminated against in hiring practices; (6) political beliefs: see "They're Biting the Hand that Won't Feed Them," ibid. (August 9, 1980), p. 8, which tells of a Prince Edward Island Provincial Human Rights Commission finding that a public employee had been wrongfully dismissed for his political beliefs; (7) hirsuteness: see "Supreme Court Refuses a Motion to Force Grocery Clerk to Shave," ibid., (February 10, 1980), which tells of a Winnipeg employer who could not legally compel his grocery clerk to either shave his beard, work nights "out of the sight of customers," or fire him.

26 The situation with regard to discriminatory practices on the part of the government is a unique matter. It cannot be argued, as it could in the private case, that, no matter how morally reprehensible discrimination is, at least in the market sector it is done by an individual in his own name and with his own *money*.

When the government discriminates, it does so on *all* our behalf, and, adding insult to injury, with *all* our money, including that of the very persons who must bear the brunt of this practice. There can be few things more outrageous and galling than first forcing a minority group member to pay taxes for a public institution, and then allowing the public institution to turn around and refuse to hire or serve members of that very group.

In contrast, there is no such phenomena in the private sector. If A discriminates against B in the marketplace, he at least does it with his own (A's) money; he does not first force B to contribute to his (A's) bank account and then turn around and use his money (B's) against him. It is even possible to make out a case for the non-criminal status—if not the outright morality—of private discrimination. Such behaviour in the private sphere, it might be claimed, amounts to no more than a refusal to interact with another person. And the right to privacy would seem to justify the decision of one individual *not* to be involved with another. Such a case could hardly be made on behalf of government discrimination, however.

27 Although many people interpret prejudice or discriminatory behaviour as a willingness to engage in *physical aggression* against a despised person or group, this interpretation is about as far away as it is possible to get from a clear understanding. On the contrary, a sharp distinction must be made between *refusing to interact at all with a person*, and *threatening physical abuse against him*. The former is all that is done by a hermit, although on a larger scale; and if it is no crime to refuse to deal with *all* of humanity, then it might be argued that it can scarcely be a rights violation to avoid dealing with only *some* people.

Physical abuse, in contrast, is the act of a criminal; it is what murder, kidnapping, extortionism, and assault and battery all have in common. It is altogether *different*, in this view, than a mere refusal to interact with (some of) humanity.

Exception must be taken, then, to William Johnson's claim of a "continuity between getting upset about French on corn flake boxes [objecting to a law which compels bilingualism on commercial products] and attacking innocent campers" (several young Francophones, from Quebec, working in B.C. were viciously beaten by local hoodlums who uttered racist epithets). (See *Globe & Mail* [July 15, 1980], p. 8.) While some who engage in the former *may* engage in the latter as well, there is the world of difference between these two activities, and no necessary connection between them. "Getting upset," moreover, is a *right* of all citizens in a free country, while physically attacking innocent people is, and should always be, a crime, severely punishable to the full extent of the law.

28 Ludwig Von Mises, op. cit, p. 109.

29 *Globe & Mail* (April 14, 1980), p. 6. See also *Globe & Mail* (January 25, 1980).

30 See "Drea Tells Firm to Stop Questions" and the editorial "Wearing Nothing but a Seat Belt," both in *Globe & Mail* (July 31, 1980), pp. 5, 6.

31 These agencies include: the Federal Reserve Board, the Comptroller of the Currency, the Federal Deposit Insurance Corp., the Federal Home Loan Bank Board, and the National Credit Union Administration.

32 *Wall Street Journal* (June 22, 1978). On age bias, see also *Globe & Mail* (February 18, 1980), p. 5.

33 They cannot. Loansharks, black marketeers, usurers, and underworld lenders have not been driven out of business. With age-affirmative action for legitimate concerns, these alternatives would be given a new lease on life.

34 *Globe & Mail* (September 14, 1979).

35 Ibid. (July 1, 1980), p. 12.

36 Ralph Keyes, *The Height of Your Life* (Boston: Little, Brown & Co., 1980). Also *Globe & Mail* (July 10, 1980), p. 15.

37 *Globe & Mail* (March 26, 1980), pp. 5, 8.

38 True, laws can be passed prohibiting this latter alternative, but they are hard to police. Even if such a law decreases discriminatory activity on the basis of race, it is not likely to succeed. Government will have *first* unleashed a bout of discrimination upon the private sector, through its unwise rent control law, and only *then* have attempted to eradicate it. The net result will inevitably be an increase in discrimination compared to the situation in which government did not act at all. The government will, of course, take credit for its (secondary) efforts in "solving" the problem. It will be the rare individual who can follow the somewhat complex chain of reasoning necessary to see the government's true role. Anti-tenant discrimination legislation, moreover, will have unintended negative consequences similar to those created by affirmative action programs.

39 For an account of landlord discrimination, under rent control, against: (1) families with children, see "Choosey Landlords Targets of Coun-

cil," *Vancouver Sun* (September 24, 1980), p. A8; (2) male college students, see "Report Biased Landlords, Male Students Are Urged," *Globe & Mail* (August 18, 1980), p. 9, and "Preferred," ibid., p. 6; (3) the handicapped, see "Landlords Won't Rent to Man in Wheelchair," *Vancouver Sun* (October 25, 1980), p. A3, and "Landlords Close Doors to Thalidomide Victim: Deformity Makes Her an Unwanted Tenant," ibid. (January 14, 1981), p. B1. Whether these landlords are allegedly discriminating on their own account, or in behalf of tenants, however, is by no means clear.

40 Laws which make it more difficult for legitimate lenders to legally repossess their funds upon default of the loan have a similar effect.

41 Leon Leow, op. cit., p. 3.

42 According to anecdotal evidence, interest charges demanded (and received!) by loansharks varies from 2 percent to 5 percent to 20 percent per *week*, depending on the time period of the loan, and the creditworthiness of the borrower. See in this regard "Joey," with Dave Fisher, *Killer: Autobiography of a Mafia Hit Man* (New York: Simon and Schuster, Pocket Book, 1974), p. 86.

43 See Walter Block, ed., *Zoning: Its Costs and Relevance for the 1980s* (Vancouver: The Fraser Institute, 1980).

44 The truth seems to be that the juxtaposition of many supposed "incompatible uses" is perceived by some as a benefit but by others as a harm. See *Zoning*, ibid., pp. 35, 36.

45 Louw, op. cit., p. 3

46 Bernard H. Seigan, *Land Use Without Zoning* (Toronto: Lexington Books, 1972), p. 29.

47 Loc. cit. This does not imply, of course, that each voter does an intensive cost-benefit analysis of the effect of such legislation on his or her pocketbook. But it does indicate a rough way that people correctly perceive their self interest in zoning.

NOTES TO CHAPTER 4

1 Many references can be cited for definitions of this kind. In a discussion of the problems involved in defining prejudice, Gordon Allport arrives at this definition: "Ethnic prejudice is an antipathy based upon a faulty and inflexible generalization" (see his *The Nature of Prejudice* [Cambridge, Mass.: Addison-Wesley Press, 1955], p. 9).

2 The distinction drawn by Allport and others is that those discriminating against Negroes give "erroneous" answers to various questions about Negroes, while those asked about Hollywood actresses do not. Let us waive the problem of determining whether some answers are erroneous and probe this distinction from another direction. Suppose that the answers given about Negroes violate no known facts, while those given about Hollywood actresses are in blatant conflict with the facts. Would persons drawing this distinction now agree that the preference for whites is not, and that for actresses is, discrimination?

3 Allport makes a distinction between negative and positive prejudice that is identical with my distinction between a taste for discrimination and a taste for nepotism. He agrees that negative prejudice is usually the motivating force behind behavior considered to be discriminatory (*The Nature of Prejudice*, pp. 6 and 7). He asserts later (p. 25) that "we hear so little about love [positive] prejudice" because "prejudices of this sort create no social problem." In this he is mistaken, since the social and economic implications of positive prejudice or nepotism are very similar to those of negative prejudice or discrimination.

4 Many prejudiced people often erroneously answer questions about groups they discriminate against; their "ignorance" about these groups, however, is of secondary importance for understanding and combatting their discrimination, since their behavior is independent of all attempts to give them the facts.

5 Some advertisements are primarily devoted to spreading knowledge, while others are aimed at changing preferences or prejudices by creating pleasant, although logically irrelevant, associations with their products. Likewise, some organizations try to change tastes for discrimination by creating unpleasant, although similarly irrelevant, associations with discrimination.

6 That is, $\text{MDC} = \pi_w/\pi_n - \pi_w^0/\pi_n^0$, where π_w^0 and π_n^0 are the equilibrium wage rates without discrimination.

7 If W wants to discriminate, exported capital must receive a higher equilibrium money return than domestically used capital, to compensate for working with N labor. However, if all W has the same taste for discrimination, the equilibrium net return must be the same for all W capital. Net and money returns to domestic capital are identical, since there are no psychic costs to working with W labor; therefore, the equilibrium money return to domestic capital can be used as the equilibrium net return to all W capital. The money and net returns to all W labor are the same, since it works only with W capital.

8 See the appendix to chapter 2 of G.S. Becker, *The Economics of Discrimination* (Univ. of Chicago Press, 1957).

9 If we compare discrimination with tariffs, we find that, although some of their effects are similar, other effects are quite different. Discrimina-

tion always decreases both societies' net incomes, while a tariff of the appropriate size can, as Bickerdike long ago pointed out, increase the levying society's net income. A tariff operates by driving a wedge between the price a society pays for imported goods and the price each individual member pays; it does not create any distinction between net income and total command over goods. Discrimination does create such a distinction and does not drive a wedge between private and social prices. Discrimination has more in common with transportation costs than with tariffs.

10 Saenger, a psychologist, said: "Discriminatory practices appear to be of definite advantage for the representatives of management in a competitive economic system" (*The Social Psychology of Prejudice* [New York: Harper & Bros., 1953] p. 96). Allport, another psychologist, likewise said: "We conclude, therefore, that the Marxist theory of prejudice is far too simple, even though it points a sure finger at *one* of the factors involved in prejudice, viz., rationalized self-interest of the upper classes" (*The Nature of Prejudice*, [Cambridge, Mass.: Addison-Wesley Press, 1955], p. 210). Similar statements can be found in A. Rose, *The Costs of Prejudice* (Paris: UNESCO, 1951), p. 7; and throughout O.C. Cox, *Caste, Class and Race* (Garden City: Doubleday & Co., 1948); J. Dollard, *Caste and Class in a Southern Town* (New Haven: Yale Univ. Press, 1937); C. McWilliams, *A Mask for Privilege: Anti-Semitism in America* (Boston: Little, Brown & Co., 1948); H. Aptheker, *The Negro Problem in America* (New York: International Publishers, 1946); and many other books as well.

11 D.A. Wilkinson, in his Introduction to Aptheker's book, said: "Precisely this same relationship between material interests and Negro oppression exists today. . . . The per capita annual income of southern Negro tenant farmers and day laborers in 1930 was about $71, as compared with $97 for similar white workers. Multiply this difference of $26 by the 1,205,000 Negro tenants and day laborers on southern farms in 1930, and it is seen that planters 'saved' approximately $31,000,000 by the simple device of paying Negro workers less than they paid white workers" (Aptheker, op. cit., p. 10).

12 R.K. Merton realized that discrimination is not an "all or none" decision, and he has tried to formulate an analysis with quantitative and qualitative differences in "prejudices." He uses a fourfold classification: "the unprejudiced non-discriminator," "the unprejudiced discriminator," "the prejudiced non-discriminator," and "the prejudiced discriminator" (see "Discrimination and the American Creed," in *Discrimination and the National Welfare*, ed. R.M. MacIver [New York: Harper & Bros., 1947]).

According to Merton the unprejudiced discriminator may "discriminate" even though he has no prejudice. Included in this category is "the employer, himself not an anti-Semite or Negrophobe, who refuses to hire Jewish or Negro workers because it might hurt business" (p. 106). The prejudiced non-discriminator too may find it unprofitable to express his prejudice, and the prejudiced discriminator may have such intense prejudice that he will always discriminate. Finally, the unprejudiced non-discriminator may have so "little" prejudice that he will hire Jews or Negroes even if it hurts business.

This breakdown does not seem very useful and, indeed, leads to foolish statements when carried to its logical extreme. According to the formulation presented here, the unprejudiced discriminator really does not "discriminate," since he judges Negroes, Jews, and others solely by their economic productivity. The prejudiced non-discriminator simply has a mild taste for discrimination and may frequently be in situations where the costs of discriminating are greater than the psychic gains; likewise, the prejudiced discriminator has a large taste for discrimination and seldom finds the costs greater than the gains. The unprejudiced non-discriminator or "all-weather liberal" is not always a non-discriminator, for, by hiring Jews and Negroes when it is "bad for business," he discriminates *against* Gentiles and whites or *in favor of* Jews and Negroes; that is, he does not consider objectively the economic productivity of Jews and Negroes. Merton probably had in mind a continuous variation in prejudice but confused the problem with his four types of discriminators.

13 Cf. *The Economics of Discrimination*, chapter 4.

14 See his "Equal Pay to Men and Women for Equal Work," *Economic Journal*, XXXII (December 1922): 431-457. He said: "The pressure of male trade unions appears to be largely responsible for that crowding of women into a comparatively few occupations, which is universally recognized as a main factor in the depression of their wages" (p. 439) and "The exclusiveness of male trade unions has been in the past at least fostered by prejudices and conventions" (p. 440). See also M. Faucett, "Equal Pay for Equal Work," *Economic Journal*, XXVIII (March 1918): 1-6.

15 E.F. Rathbone gave an interesting example of this when she implied that male rather than female trade unions in England obtain community support and sympathy because males usually have families to support (see her "The Remuneration of Women's Services," *Economic Journal*, XXVII [March 1917]: 55-68).

16 In the discussions of "equal pay for equal work" of men and women, it was necessary to define "equal work." Edgeworth first defined it in terms of marketable output: "Equality of utility to the employer as tested by the *pecuniary value of the result*" (see his "Equal Pay to Men and Women for Equal Work," p. 433; my italics). He then contradicted himself by stating that "equal pay for equal work" must occur with perfect competition (p. 438), ignoring the possibility that tastes for discrimination exist even in a perfectly competitive society. On the other hand, according to Miss Rathbone's definition, the productivity of a worker is based on his (or her) contribution to non-marketable, as well as marketable, output (see her "The Remuneration of Women's Services," p. 59, and therefore "equal pay for equal work" would occur in a perfectly competitive society.

17 This procedure is necessary not only when discussing discrimination against Negroes or other minorities producing or selling different products but also when discussing discrimination against the labeling or advertising of different products. The latter kind of "product differentiation" has been treated by Chamberlin and others with cross-elasticities, large-group analysis, etc. This problem might be dealt with

in a simpler and more useful fashion by employing the technique of individual and market discrimination coefficients developed in this study.

18 An income-maximizing employer is indifferent between W and N if his money income from hiring W equals that from hiring N, i.e., if

$$P_n - m\pi_n = P_w - m\pi_w$$

or

$$\frac{\pi_w - \pi_n}{\pi_n} = \text{MDC} = \frac{P_w - P_n}{m\pi_n} \tag{i}$$

Consumers are indifferent between the output produced by W and N if

$$P_n(1 + d) = P_w. \tag{ii}$$

Both N and W are employed only when equations (i) and (ii) hold, or

$$\text{MDC} = \frac{P_n d}{m\pi_n} = C'd. \tag{iii}$$

NOTES AND REFERENCES TO CHAPTER 5

NOTES

1 Rees (1978); Laxer and Laxer (1977).
2 Nettler (1968).
3 Gouldner (1979); Kristol (1976).
4 Fairlie (1975); Lachenmeyer (1971).
5 Benokraitis and Feagin (1978).
6 As Glazer (1975), p. 58, documents, such a "strong" interpretation of affirmative action was not the intention of the original executive orders that legitimized these programs in the United States. However, the initial idea that "one should not only not discriminate, but inform people that one did not discriminate" was quickly reinterpreted into its common, present form which imposes remedial solutions. As we shall see later, considerable modification in translating ideas into action is not infrequent and constitutes one of several difficulties in anticipating the consequences of affirmative action policies.
7 We shall have more to say below on the appropriateness and advisability of importing American social policy into Canada.
8 Roberts (1979).
9 Brown (1965).
10 Osgood et al. (1957).
11 Minogue (1963).
12 The fact that the title "affirmative action" is by far the most commonly used designation for the practices signified by this rubric is both a testament to the continuing liberal orientation of most policy makers and observers, as well as support for the utility of attending to labels to gain insight into outlook.
13 Conquest (1979); Andreski (1972).
14 Gross (1977).
15 This label also has drawbacks, the most serious of which is the use of the emotionally loaded term "discrimination." As Hagan (1977) illustrates, the meaning of this term is ambiguous for it denotes little and connotes much. However, as the next section will show, this term can and must be clearly defined if reverse discrimination programs are to be understood and evaluated.
16 Cohen (1979a), p. 45.
17 Following sections will show that similarities among affirmative action programs extend, albeit differentially, to the criticisms directed at such social policies.
18 Goldman (1979).
19 Van den Haag (1970), p. 314, elaborates on the place of guilt in the development of reverse discrimination practices.
20 Robert Conquest (1979), in commenting on the political use of vocabulary, cogently illustrates the power words have to influence attitudes and action. He notes that terms can be selectively used to "arouse such a high level of moral indignation [or affirmation] that no argument on the merits of the case is required." Of course, this does not imply that arguments for values like social justice cannot be marshalled, for they can. What is implied, however, is that such arguments are not as well

known as they might have been if such inspirational concepts did not carry the intellectual closure they do.

21 There are those who would argue that it should be so. This is sometimes justified on *utilitarian* as well as moral grounds. Without elaboration, two relevant propositions deserve mention. First, a sociological axiom: social solidarity, community, and order are greatly enhanced by collective commitment to a set of shared values. Secondly, an uncomfortable correlation: there exists a substantial association between education and alienation from traditional values.

22 Nettler (1979), p. 28.

23 Van den Haag (1975), p. 25; Hayek (1960); Nozick (1974).

24 Perelman (1967), p. 54.

25 Nisbet (1974); Kristol (1972).

26 Nettler (1973).

27 Recent literature concerned with the evaluation of social programs has recognized this point in its documentation of the limits to benevolence (see, for example, Nettler [1970]; Aaron [1978]).

28 Conceptual definitions are concerned with clarifying the *meaning* of a term, while operational definitions focus on procedures for *identification* or recognition (Babbie [1979]).

29 In other words, not all distinctions are invidious; many discriminations are necessary and desired. Teachers, for example, are entirely justified in identifying and distinguishing between good and poor students when assigning grades. For a fuller treatment of warranted and unwarranted discrimination, see van den Haag (1970), pp. 304-305.

30 Nettler (1979b), p. 31, exemplifies this point by noting how the consensus, and therefore the legitimacy, of laws concerning women and youth have shifted over time: "At the time of their passage, such laws were considered just because they treated unequals unequally. Alteration of the definition of equality today challenges the justice of such laws and moves their characterization from 'protective' to 'discriminatory.' "

31 Glazer (1975), pp. 51-53.

32 Glazer (1975), p. 52.

33 This assertion does not imply that continued refinement of testing instruments should not be done. Recent action by Canadian Human Rights Commissions demonstrating the merit of several job selection criteria are being correctly challenged (Boyle [1979]; Canadian Human Rights Commission [1979]).

34 Glazer (1975).

35 Following note 33, it should be acknowledged that the meaning and legitimacy of practices now called "discriminatory" may have been differently labelled and interpreted in other times.

36 Quoted in Glazer (1975), p. 62.

37 The gross inadequacy of using proportional representation to determine historical discrimination is clearly evident by looking at the Jewish case. The existence of historical discrimination against this group is well documented, while evidence reliably shows them to be overrepresented in upper status positions. See Goldstein and Goldschneider (1968).

38 *The Public Interest* (1978), p. 116.

39 The problem of identifying minority group members and the type of fiasco that can result from such problems is illustrated by the following example from the United States, where *surnames* have been used as a means of minority group identification: "A former Naval Academy classmate of President Jimmy Carter recently changed his name from Robert Earl Lee to the Spanish-sounding Roberto Uduardo Leon and is now eligible—as a minority—for preferential treatment under a Montgomery County, MD., affirmative action program." Reported in the *Winnipeg Free Press* (1979), p. 1.

40 See Krauter and Davis (1978).

41 Glazer (1975), p. 77.

42 The degree of such bureaucratic distortion is evident from the history of affirmative action programs in the United States, whose development Glazer (1975), pp. 46-49, has summarized. In brief, although affirmative action was conceived as a set of programs for achieving equal employment *opportunity*, they now focus on achieving similarity of *result*.

43 Adelson (1978), p. 29.

44 Glazer (1975), p. 60.

45 See Cohen (1979a); Benthell (1979).

46 To state that achievement is valued over ascription is, of course, to make a statement about prevalent moral beliefs. It does not follow, and it is certainly not implied, that such statements are accurate *descriptions* of actual operating criteria.

47 Marchak (1975).

48 The following example illustrates this possibility: "An Alberta woman who says she was denied entry to a university course because she is a non-native has taken her case before the Alberta Human Rights Commission. The course was an environment course offered for credit at the University of Calgary and taught at a college on the Hobbema Indian Reserve. The woman lived near the reserve, located about 40 miles southeast of Edmonton, and had applied to the college" (*University Affairs* [1980], p. 14).

49 Surprisingly, some advocates see the extraction of payment from innocent individuals as a *benefit* of affirmative action: "One of the main advantages of affirmative action is that it shifts the cost of securing compliance with generally accepted social goals from the individual to the broader group. . . . Costs of the employer in performing the data analysis and implementing the chosen strategies will, in the first instance, fall on the employer, raising the problem that, by making non-discrimination more costly than discrimination, *coercive measures will be needed to force him or her to accept this 'unfair' burden*. On second glance, however, one can see a further distribution: affirmative action costs will no doubt be passed by the employer to those purchasing his or her goods and services . . ." (Cook and Eberts [1976], pp. 184-185, emphasis added).

50 Merton (1957).

51 The introduction of such programs need not, of course, have undesirable effects. But the awareness that such results could occur may encourage the development of safeguards to mollify the effects.

52 Coopersmith (1967).
53 Van den Haag (1971), p. 495, emphasis added.
54 Stone and Farberman (1970).
55 Evans (1976), p. 1247.
56 Havender (1978), p. 23, emphasis in the original.
57 Van den Haag (1965).
58 Van den Haag (1971), p. 495.
59 Havender (1978), p. 222, emphasis added.
60 *U.S. News and World Report* (1977), p. 22.
61 Bacon (1977).
62 Mackie (1973).
63 Lekachman (1979), p. 22.
64 Cohen (1979a), pp. 40-41.
65 *U.S. News and World Report* (1977), p. 22.
66 *Wall Street Journal* (1978).
67 Moreover, as Sowell (1978), p. 42, suggests, the distribution of costs and benefits of affirmative action programs may be out of kilter:

> . . .it is not the offspring of the privileged who are likely to pay the price. . . . Even aside from personal influence on admission decisions, the rich can give their children the kind of schooling that will virtually assure them test scores far above the cut-off level at which [affirmative action] sacrifices are made.
>
> Just as the students who are sacrificed are likely to come from the bottom of the white distribution, so minority students chosen are likely to come from the top of the minority distribution. In short, it is a forced transfer from those least able to afford it to those least in need of it.

For a description of such a system in action, see the report on affirmative action admissions to Brown University in *Time* magazine (1979), pp. 68-70.

68 Adelson (1978).
69 Parenthetically, cynics are quick to note that many American politicians who support busing as a means of achieving appropriate racial mixtures in public schools send their children to private educational institutions. As Nettler (1976), pp. 264-265, points out, supporting any social reform, including affirmative action, when the consequences of one's commitment are removed from one's personal sphere, is easy—and produces a particular brand of "political stupidity."
70 Bolce and Gray (1979), p. 65.
71 Sowell (1978), p. 40.
72 Nisbet (1975).
73 It is not our intention in this section to provide a detailed description or critique of any particular affirmative action program. Such a task is well beyond the scope of this general review. Instead our intention is to illustrate that affirmative action ideas play a part in Canadian social policy. We also wish to note that this section has benefited from the discussion by Weinfeld (1979).
74 Johnston et al. (1966).

75 Canada (1969).
76 It should be noted that the Commission claimed that their use "of these measurements does not reflect support of a system of proportional representation," Canada (1969), p. 208. However, even the mention of such indicators provides the measures, and the arguments they support, with an undeserved legitimacy.
77 Canada (1969), p. 282.
78 For example, special summer internship programs for Francophone students were initiated in the civil service.
79 Canada (1976), p. xv.
80 Canada (1972), p. 1.
81 Canada (1978), p. 12.
82 Canada (1979), p. 1.
83 Canada (1979), pp. 6-7.
84 Section 15 of the Human Rights Act does not explicitly use the term "affirmative action"—but the intent is evident. Moreover, a summary and interpretation of the Act provided by the Canadian Human Rights Commission (1978), p. 10, claims: "a special program, sometimes called affirmative action [may] be undertaken to equalize opportunity for certain groups which have suffered from discriminatory practices in the past."
85 Treasury Board (1978).
86 Treasury Board (1978).
87 Treasury Board (1978).
88 Treasury Board (1978).
89 Quoted in Weinfeld (1979).
90 Such policies have endured, as the following announcement/advertisement from the President of the National Committee on the Status of Women illustrates: "The new federal government has committed itself to appointing substantial numbers of women to boards, commissions, the Senate, bench, and senior public service. . . . 'Good generalists' are wanted for task force appointments. This entails part-time, but intensive work, for about six months. They will have 'good visibility' and may have an important impact on policy." Quoted from *Society* (1980), p. 6.
91 Public Service of Canada (1977) and (1979).
92 MacLean (1977).
93 Kouri (1979), p. 2.
94 Bulletin (1979), p. 1.
95 Bulletin (1976), p. 4.
96 This is illustrated in a comment from Monica Townsend (1978), p. 1, Vice-President of the Advisory Council on the Status of Women: "It's been three years since International Women's Year—the year the federal government spent $5 million to let women do their thing. . . . Employers held meetings, unions produced affirmative action manuals *(or at least the enlightened ones did)*. . . ." The implication is, of course, that individuals and organizations that do not support affirmative action are "unenlightened."
97 Sowell (1978), p. 40, makes this same point as follows: "Supporters of the [affirmative action] program try to cover up its effectiveness by

comparing the position of minorities today with the position many years ago. This ignores all the progress that took place under straight [non-affirmative action] equal treatment laws. . . ."

98 In this context "ideology" denotes a set of ideas that directly express and legitimate the interests of a particular social group (cf. Mannheim [1936]).

99 The fact that so little data exist on so lively a public issue carries an intimation: "Since any good news is an immediate stimulus for publicity and self-congratulation, one tends to assume, in most cases correctly, that no news is bad news" (Adelson [1978], pp. 23-24).

100 See Davis (1978), p. 4; Adelson (1978), p. 24; and Havender (1978).

101 Nettler (1973).

102 Glazer (1971).

103 Grigon and Rundell (1977), p. viii.

104 Treasury Board Canada (1979), p. 3.

105 Of course, this conclusion has alternate policy implications. One is that such programs ought to be abandoned. The other urges that such programs must be practised even more extensively and enthusiastically.

106 MacLean (1977), p. 136.

107 Adelson (1978).

108 Specifically, Adelson (1978) reports that only about one-fifth of minority students graduate from his university's clinical psychology program, while two-thirds of ordinary admissions do.

109 MacLean (1977), p. 12. Support for the hypothesis that general discrimination was being practised against native law students in these situations is discouraged by MacLean's (1977), p. 31, further finding that: "The success rate was higher (76 percent) for [native] students who entered law school directly, and lower (45 percent) for students who entered through the pre-law program."

110 MacLean (1977), pp. 142-143.

111 Quoted in MacLean (1977), pp. 142-143. Furthermore, some reports on the ineffectiveness of affirmative action illustrate an irony bordering on the absurd: "Two recent studies of employment of women and minorities in higher education showed that little had changed as a result of affirmative action programs. The only position in which women and minorities were equally represented was affirmative action officer, and even in that position the women were paid less than the men" (MacLean [1977], p. 136).

112 This claim assumes, of course, that previously established qualifications were and are legitimate.

113 Sherman (1978), p. 4. Parenthetically, Sherman goes on to address a related, important issue: "Proponents of special admissions, while conceding that most minority students were initially less qualified than whites, argue that many minority students are intrinsically abler than their credentials would suggest, and will ultimately outperform apparently better qualified whites. Grade and test scores, according to this argument, will underpredict subsequent minority performance. . . . But many recent studies have shown that grade and test scores are actually biased in favor of blacks in that blacks with given credentials

will, on the average, receive somewhat *lower* subsequent grades than would whites with the same prior grades and scores."

114 Adelson (1978), p. 28.

115 MacLean (1977).

116 Recent American court cases arising from affirmative action law school admissions make vivid the recipients' revulsion at failure. For example, after being carried through the law programs but failing the standardized bar exams, some have sued for compensation on the grounds that, since they should never have been admitted, it is the schools' fault that several years of time, effort, and money were wasted. Others, noting that minority students fail the bar exams much more frequently than majority candidates, have sued on the grounds that the bar examinations are discriminatory (Lewis [1976]).

117 MacLean (1977), p. 44.

118 Sowell (1978), p. 41.

119 Sowell (1978), p. 43. Affirmative action has gone some way toward providing pejorative minority stereotypes with a basis in reality, as Adelson (1978), p. 29, points out: ". . . thoughtful critics warned that the logic of the situation would ultimately compel an extension of the quota-mindedness into all other areas of public life, and not merely by infection and example. They reasoned that marginal students, once recruited and enrolled, would be passed through educational programs—at least in many cases—and then be unable to compete equally in an open market for talent. Hence new systems of preferment would be established and sustained. That is just what happened. The emerging solution, which we see in faculty hiring and elsewhere, is to set aside, tacitly, certain positions as 'minority' slots. Thus we reach the final and most wretched duality of all—a two-tier system of categories, involving on the one hand 'real jobs' for which the serious candidates compete seriously, and on the other, 'minority jobs' which are set aside as a sop either to conscience or, more often these days, to the demands of government bureaucracies."

120 MacLean (1977), pp. 117-118.

121 *MacLean's* (1979), p. 26.

122 In the United States, where affirmative action programs were conceived, the justification for the idea that something had to be done took the following form: ". . . discrimination in American life is so deeply embedded in the minds and practices of individual Americans and their institutions that the most extended, direct, and determined remedies are necessary to root it out" (Glazer [1975], p. 38). Given that the ideas supporting affirmative action programs have been transplanted into Canada from the United States, it is worth asking whether the legacy of discrimination in Canada is comparable with that in the United States, thereby justifying similar interventions.

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