

Last week I learned that a friend had been passed over for tenure at an ivy-league school. He had been teaching at the university for several years and was immensely popular – not only with the students but also within the department. With a book and several journal articles to his credit, his qualifications were in good order. So what was the problem?

He was a white male in a department that needed more visible women and minorities. Never mind that the woman hired had less experience and fewer credentials. Never mind that the university had been grooming him – or that my friend now tells his male students to forget pursuing a degree in the humanities, because “credentials and quality do not matter anymore.”

Had my friend been a woman, he would have been able to sue the university for unfair employment practices under Title VII of the Civil Rights Act of 1964. The Act states that it is unlawful for any employer:

“(1) to fail or refuse to hire or discharge any individual, or otherwise to discriminate against any individual with respect to his compensation, terms, or privileges of employment because of such individual’s race, color, religion, sex or national origin.”

But to bring such a suit, he has to belong to a class protected by Title VII: he has to be a woman or a minority. As a male from German-Irish ancestry, he is not simply excluded from protection; he is the person against whom protection is being offered. Why do women have to be shielded from him?

Because, it is argued, women have historically been oppressed by men. Since white males (as a class) have benefited from this injustice, they must now (as a class) bear the brunt of adjusting the balance. In her book *Feminism Unmodified*, Catharine MacKinnon explains, “...the social relation between the sexes is organized so that men may dominate and women must submit and this relation is sexual.”

Affirmative action is based on the concept of socio-economic equality, which became popular during the 1960’s. Access to the “basics of life” (e.g. education, medical care) was presented as the right of every American. The law allocated such goods on a favored basis to certain classes of Americans – e.g. blacks or women – and justified this on two grounds.

First, they were considered to be the victims of another class: namely, white males. Second, only by

legally assuring equal access could those who have been “historically disadvantaged” compete fairly. Thus, affirmative action prefers women through a wide range of measures which include: free remedial training, lower standards for jobs or university admission, and recruitment procedures aimed at women.

WHY DO PEOPLE PUT UP WITH SUCH MEASURES?

Although affirmative action has seldom been mandated by law, administrative regulations and judicial rulings lend it the force of law. The cost of flaunting affirmative action can be very high in terms of court settlements. In 1980, for example, a court ordered the Ford Motor Company to give \$13 million in back pay to women and minorities. Attorney fees alone can bankrupt a company. In a sex discrimination case against the University of Minnesota, the attorney fees came to \$1,475,000.

Thus, the marketplace and academia – in self-defense – have adopted a de-facto quota system that prefers women. How have we arrived at this openly-discriminatory system?

ARGUMENTS FOR AFFIRMATIVE ACTION

Fundamentally, three arguments have been offered for affirmative action:

- 1) social good;
- 2) compensatory justice; and
- 3) the ideal of equality.

The social good, or utilitarian, argument states that society will be enriched by advancing women. Yet advocates of affirmative action themselves generally concede that they would push equality even if it lowered the overall good of society. But it is easy to point out the disastrous long-term consequences to society of using a quota system rather than merit to allocate jobs.

Indeed, affirmative action might well increase the very evil it seeks to cure: prejudice. In his book *Illiberal Education*, Dinesh D’Souza remarks on a strange phenomena occurring on campuses across America. Attitudes on race have grown more informed, but incidents of racial hostility seem to be increasing. D’Souza concludes that a new kind of racism is appearing. One that had been created by affirmative action – that is, a racism that stems from the understandable resentment felt by white or Oriental students who have been victimized by the machinations of the social planners.

Under affirmative action, women and minor-

ities suffer as well. The black free-market economist Thomas Sowell has commented on a bitter irony: blacks who had advanced through merit are being victimized by preferential policies. They will not be given due credit for their accomplishments. The same is true of women. In short, affirmative action is not what economists call ‘a zero sum game’, by which wealth and power are simply transferred from one group to another. It is possible for everyone to be a loser in the exchange.

The argument from compensatory justice claims that anyone who causes injury to an innocent other should remedy the damage. Affirmative action goes one step farther and claims that descendants of the injured parties deserve compensation as well. There are two basic objections to this argument: the people receiving compensation are not the victims; and, the people being forced to pay the compensation have done nothing wrong.

Indeed, many of those forced to pay are also victims of historical prejudice. Sowell comments on this further irony. “The fact that some groups are poor because of historical injustices done to them has been taken by many as a blank check to consider all lower-income groups victims of injustice. In many parts of the world, however, those initially in dire poverty have, over the generations, raised themselves to an above-average level of prosperity by great effort and painful sacrifice. Now the deep thinkers come along and want to redistribute what they earn to others who were initially more fortunate but less hard-working.”

The third argument for preferential treatment is based on the ideal of equality. Yet government – to whom idealists look to enforce equality – has an abysmal record in this area. Gary Becker, in his book *The Economics of Discrimination* emphasizes the role of the government, and those who would use government, in oppressing minorities. He uses what is perhaps *the* most notorious case of discrimination to illustrate his point: namely, South Africa where the government of South Africa restricted the employment of blacks. Becker goes on to give an impressive list of government-induced racism, including “the confiscation of some property of Japanese Americans in the United States during World War II, the restrictions legislated against Negroes in various Southern states, the limited amount of public education available to Jews in eastern Europe for several centuries, or the government-imposed Apartheid in South Africa.”

To give government the power to police equality is more than ironic. It is dangerous and irresponsible.

A GOOD WORD FOR DISCRIMINATION

Freedom of association – the right to freely choose your friends and your employees on the basis of your own standards and judgment – requires the right to discriminate.

Freedom has risks. One of them is that people may choose to deal with women in a biased and offensive manner. But as long as this ‘discrimination’ is peaceful – that is it involves no physical injury or threat of harm – it is not a violation of rights. Such discrimination is simply ignorant behavior, which may show incredibly poor taste. But both freedom of speech and freedom of association guarantee that people have the right to be wrong. To be offensive.

Everyone reaches their own conclusions about other people. And, in general, you associate with those you favor and avoid those you consider objectionable – for whatever reason. Your decision may be biased. It may be wrong by society’s standards. But a free society allows individuals to make their own judgments and allocate their own resources.

Discriminating on the basis of gender may well be unjust. But even in this case, women will benefit more from a free-market system than from government regulation. If one employer refuses to hire a talented woman on the basis of sex, he will impoverish his labor pool to the benefit of his competitors. Moreover, in a shifting free market, any discrimination that is suffered will be random and escapable. In his book *Forbidden Ground: The Case Against Employment Discrimination Laws*, Richard Epstein observes: “In a world in which 90% of the people are opposed to doing business with me, I shall concentrate my attention on doing business with the other 10%...”

He explains that – as long as individual rights are respected – racism or sexism will have only a limited impact: “...as long as the tort law is in place, my enemies are powerless to block out mutually-beneficial transaction by their use of force...The critical question for my welfare is not which opportunities are lost but which are retained.”

CONCLUSION

The government’s attempt to regulate the peaceful behavior and attitudes of society is doomed. It is ridiculous to suppose that the complex, ever shifting interactions of society can be controlled. Even the most totalitarian of societies, the Soviet Union, was unable to prevent market forces and personal preference from erupting in the form of the black market.

Unfortunately, theorizing can bring little solace to my friend. Someone has to get blunt and tell feminists who back affirmative action to put up or shut up about equality and justice. Equality does not mean privilege. Justice requires that all individuals receive what they deserve, whether they are men or women.

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AFFIRMATIVE ACTION: WHAT DOES IT AFFIRM?



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