THE WHITE HOUSE

WASHINGTON

July 14, 1986

thanks! 10 minutes! PJB

MEMORANDUM FOR PATRICK BUCHANAN

FROM: MAX GREEN

RE: Civil Rights Commission

This is where I think things stand. The House Appropriations Committee by a vote of 27-16 voted to fund the Commission but only for the purpose of closing down effective 12/31/86. OMB rules would require that this be done by the end of October. The Committees legislation might reach the floor of the House by late this week. It is almost certain to pass.

The Appropriations Sub-committee in the Senate has not yet taken up the question. That Committee is chaired by Warren Rudman, whose views on the Commission are unclear. Some say that it would take a call from the President to convince him to put up a fight for the Commission. Other members of the Committee include Senators Weicker, Specter, Hatfield, Hollings, Chiles and Lautenberg. In other words, it will probably take some additional work to get a favorable vote out of the Sub-Committee.

Outside Congress the Commission does have it supporters, for example, Nathan Perlmutter of the Anti-Defamation League of B'nai B'rith. However, they are unlikely to act unless there is White House leadership.

In the meantime, I have attached for your information an attack on the Commission from the left. This will give you a very good idea of its line of attack.

A final note: note that the call now is to defund not to deauthorize the Commission. This would make it easier to put it back into gear if the next President is someone who is responsive to the civil rights establishment.

Though I have many good friends at the Commission, I think I can be objective about the situation. So if you would like to discuss the pros and cons of this issue I would be more than happy to discuss them with you at your convenience.

LEADERSHIP CONFERENCE EDUCATION FUND

CIVIL RIGHTS MONITOR

CRC

SPECIAL REPORT NO. 1: U.S. COMMISSION ON CIVIL RIGHTS

APRIL 1986

"[T]here [is] no doubt that the once proud Civil Rights Commission [is] in shambles..." (Newsweek, April 21, 1986)

"The Rev. Theodore Hesburgh, a member of the original U.S. Commission on Civil Rights, said this week that the agency he served for 15 years lacks leadership and integrity and ought to be dismantled." (Wash. Post, April 30, 1986)

The U.S. Commission on Civil Rights, already deeply mired in controversy, faced new troubles in March and April. Heading the list of problems was a U.S. General Accounting Office audit which found serious mismanagement at the reconstituted agency. GAO's findings, which detail abuses in personnel practices, travel payments, and financial records, confirm allegations the House Subcommittee on Civil and Constitutional Rights and the House Committee on Appropriations have received over the past two and a half years. The Director of GAO's General Government Division indicated that "the blame for mismanagement belongs primarily on Linda Chavez, the commission's staff director during most of the period under study" (The San Diego Union, Mar.26, 1986, A-16).

The Commission also faced internal dissension as Commissioner John H. Bunzel called publicly for Commission Chair Clarence M. Pendleton, Jr. to resign, concluding that Pendleton's "opportunity to make a significant contribution to the work of the commission has passed." During their tenure, Bunzel and Pendleton have voted in tandem on virtually all issues. Adding to the Commission's strife, was a fracas over the latest Commission report. The report which recommended a one year funding moratorium for minority business set-asides was characterized by some commissioners as superficial and shoddy. By a 5-3 vote, the commissioners sent the report back to the staff for a rewrite.

BACKGROUND

The Commission was created in 1957 by the first federal civil rights statute in this century. Authorized as a temporary, independent, factfinding agency, the Commission was charged to

investigate complaints that blacks were being denied the right to vote. By law, the President nominated and the Senate confirmed the six members of the Commission and the Staff Director; and the membership of the Commission was to be bipartisan. Over the next 25 years as the Commission was reauthorized by the Congress, its statutory responsibilities were expanded. Often referred to as the conscience of the nation, the Commission consistently monitored and evaluated the federal government's policies and activities in civil rights enforcement and more often than not found the government lax in its efforts. Few Presidents welcomed the Commission's criticisms, but most of its recommendations for legislative and administrative action ultimately were accepted. And no President sought to tamper with the membership of the Commission.

Reagan Administration Transforms the Agency

In 1981, breaking with tradition and piercing the independence the Commission had enjoyed for 25 years, President Reagan replaced two members of the six-member Commission. In 1982, the President nominated three other persons. Though the nominees were favorably reported by the Senate Judiciary Committee, the full Senate, in a rare development, did not act upon the names before the end of the 97th Congress. Again, in May 1983, the President nominated three persons.

On October 25, 1983, while consideration of the Commission's reauthorization was before Congress, and in response to the Senate's lack of action on his nominees, the President fired three more Commissioners. Fearing for the Commission's autonomy, concerned Senators and a majority of the civil rights community were prepared to take the agency out of the hands of the Administration, and replace it with a new Commission whose members would be appointed by the Congress. The proposal for a Commission under the legislative branch had 55 cosponsors. With the Commission's authority scheduled to expire and with the Senate scheduled to adjourn in a few days, the proposal was ripe for a filibuster. A further complicating factor was a House vote not to continue funding for the Commission unless the agency's independence was maintained.

As William Taylor wrote in "Farewell Civil Rights Commission," in The Nation (February 4, 1984):

> ... Senator Dole intervened, despite his earlier statements that the commission's composition was "a Beltway issue" of limited national political and substantive importance. On November 10, with time running out, Dole told civil rights lobbyists he had an offer that they "couldn't refuse" and that he could persuade the Administration to accept. The Dole proposal called for an eight-member commission -- four appointed by the President and four by Congressional leaders. The deal hinged on the selection of specific people as commissioners. Democratic Congressional leaders would reappoint Mary Frances Berry and Blandina Cardenas

> Ramirez, two of the three outspoken commissioners whom Reagan had fired, and the House minority leader, Robert Michel, would reappoint Jill Ruckelshaus, a moderate Republican originally named by President Carter. Moreover, it committed Reagan to reappoint Mary Louise Smith, an Iowa Republican. Although she had been appointed by Reagan in 1981, Smith had taken positions contrary to the Administration's on issues before the commission.

The proposal met general acceptance and was enacted into law. Then, the Administration, led by White House Counsellor Edwin Meese, repudiated the compromise. The Administration refused to reappoint Smith and induced Michel not to appoint Ruckelshaus. Instead, the Administration appointed persons who shared the Administration's views on civil rights, creating a Commission in its own likeness. The President appointed Clarence M. Pendleton, Jr., President of the San Diego Urban League, Morris Abram, partner in the law firm of Weiss, Rifkind, Wharton and Garrison, John Bunzel, senior research fellow at the Hoover Institution, Stanford University, and Esther Gonzalez-Arroyo Buckley, a science and math teacher in Laredo, Texas. The Senate appointed Ramirez and Francis Guess, Commissioner of Labor for the State of Tennessee. Berry and Robert Destro, assistant professor of law at Catholic University, were appointed by the House. Destro had been nominated by the President in 1982 and 1983.

With the additional appointment of Linda Chavez as Staff Director, the Administration had a Commission whose criticism of its civil rights policies would be almost nonexistent.

THE GAO AUDIT

The GAO audit was requested by four House Committee and Subcommittee Chairs: Representative Don Edwards (D-CA), Subcommittee on Civil and Constitutional Rights; Representative Augustus Hawkins (D-CA), Committee on Education and Labor; Representative Pat Schroeder (D-CO), Subcommittee on Civil Service; and Representative Matthew Martinez (D-CA), Subcommittee on Employment Opportunities. The audit was requested to respond to allegations of mismanagement at the Commission since its reconstitution.

GAO was able to document a series of abuses despite the unusually bad condition of the Commission's records. In subsequent testimony before the House Subcommittee on Civil and Constitutional Rights, William J. Anderson, Director of GAO's General Government Division, stated:

> [W]e had great difficulty in performing this audit. Some records were missing; some were incomplete; and still others were conflicting. This situation seriously hampered our ability to come to firm conclusions on some of the allegations, using the standards of evidence that we require. We were particularly concerned that documents

critical to our ability to determine whether the Commission had followed merit principles in personnel actions were not in the files.

The GAO found...

-The Commission hired consultants and temporary and political employees in place of career staff: "From the beginning of fiscal year 1983 through December 31, 1985, the period covered by our review, the Commission made 212 noncareer appointments vs. 60 career appointments. The total of 212, was composed of 151 temporaries, 41 consultants and 20 Schedule Cs. The largest number of these (102) were made in fiscal year 1984." Schedule C employees are commonly referred to as political appointees. At the end of fiscal year 1985, 55 of its 236 permanent career positions were unfilled.

-Procedural violations of Office of Personnel Management (OPM) requirements were found in all 31 consultant personnel files reviewed. "The poor records maintained on consultant appointments precluded us from making firm determinations on their propriety. However, all 31 appointments contained indications of irregularities. None of the personnel files for the 31 appointments contained the statement of duties and responsibilities that OPM requires be in the files. Thus, we could not determine whether the consultants' services were needed or whether each consultant possessed the necessary background to render advisory services to the Commission." GAO found that "at least five of the consultants appeared to be performing operating duties [managing a Commission project or supervising career employees]. Performance of operating duties is considered by OPM to constitute illegal employment." Hiring of consultants allowed the Commission to avoid competitive employment procedures. Indeed the Federal Employment Manual states that: "The improper employment of experts and consultants is not only illegal, it is wasteful and destroys the morale of the career specialists."

And, the GAO raised serious questions about still other practices...

-about improper use of a car and driver by Staff Director Linda Chavez to go from home to work-related meetings and activities. The staff director's driver left the Commission for a job at the White House at approximately the same time Chavez left the Commission to become White House deputy assistant for public liaison. While the driver maintained a trip log during his tenure at the Commission, he did not turn the log in when he left the Commission. "He acknowledged," the GAO reported, "that he took the logs he prepared during the 3-month period he drove the automobile with him when he left the Commission in April 1985. He said he disposed of them approximately 6 months later."

Coincidentally, the GAO auditors requested the log the same month the driver disposed of it. Both Linda Chavez and the driver in written statements maintained that she was not transported from home to work.

-about the propriety of a trip to Israel by Chavez at U.S. taxpayers' expense during her tenure as Staff Director. The trip was made at the request of the Government of Israel and the travel authorization states that the purpose was to discuss affirmative action and civil rights issues with Israeli officials.

-about travel by Commissioners and staff which in some instances was inappropriately paid for by organizations other than non-profit tax-exempt organizations. Among the groups picking up the tab were "an oil company, television networks and political organizatons."

The GAO revealed dubious financial practices by the Commission's leadership...

-Commissioners are appointed as part-time employees of the Federal Government, although "the Commission does not limit the number of days the Commissioners or their Special Assistants can work each year." Chairman Pendleton has billed the Federal Government at an almost full-time rate during his tenure at the Commission. In fiscal year 1985, the Chair billed the government for 240 days (assuming a 5 day work week, there are 260 work days in a year) for a total of $67,334. The Commissioner receiving the next highest salary, John Bunzel, received $28,781 for 103 days, less than half of Pendleton's salary. Pendleton's assistant, Sydney Novell, in fiscal year 1985 billed the Federal Government for 239 days and received $41,328. Commissioner Berry's assistant, Linda Edwards, received the next highest salary, $15,478 for 99 days.

-Further, in 1985, Pendleton received an additional $29,300 from the government for expenses, and his assistant billed the Commission for almost $15,000 in expenses. Corresponding figures for the Commissioner and assistant receiving the next highest amounts in expenses were $17,200 (Bunzel) and $1,000 (Commissioner Guess's assistant). Moreover, in 1985 Sydney Novell billed the government for 21 trips, while other assistants billed for one trip each. At oversight hearings, Pendleton did not respond to Representative Schroeder's questioning as to whether the number of days for which Commissioners can bill the agency should be limited.

-Commission officials are unable to account for $175,000 of FY 1985 funds. These funds represent part of $421,000 the Commission was allowed to shift from three budget activities to a hearing budget in fiscal year 1985; the hearing in fact was not held until fiscal year 1986. Commission officials informed GAO that $175,000 of the shifted funds "was spent

on various other, unidentifiable, program activities" (emphasis added). Moreover, before responding to GAO's repeated requests for documentation on how the monies were spent, "the Commission's General Counsel changed his own time charges, as well as the time charges of the staff he said worked on planning the November hearing... Most of the increases, however, were to the time charges of the General Counsel and his Deputy. [GAO] questioned four other staff members who are still at the Commission; only one agreed that the changes to his time charges were correct."

The GAO report documents the changes in the State Advisory Committees...

-The Commission's State Advisory Committees (SACs) have changed drastically since the Commission was reconstituted. The Commission has Advisory Committees in each State and the District of Columbia that help in investigations and act as clearinghouses for Commission information. (According to the Commission's Employee Handbook, the Committees are composed of citizens who serve without compensation and who are familiar with local and state civil rights problems.) Although referred to as the "eyes and ears" of the Commission, the Committees have decreased in size and in their activities. Prior to 1985, SAC memberships ranged from 11 to 33. When the SACs were rechartered, each committee was limited to 11 members. The representation of women and minorities as SAC chairpersons declined drastically. Committee chairs are now 72 percent white vs. 29 percent previously, and 92 percent of the chairs are male compared to 61 percent before.

According to Representative Don Edwards, the "shocking problems" at the Commission, detailed in the audit, help explain why the Commission is no longer performing effectively its statutory responsibilities of fact-finding and monitoring of the Federal Government's enforcement efforts in civil rights. "It's been nearly two and a half years since Congress reconstituted the Commission... [T]he Commission has spent close to $30 million and the American taxpayer has seen almost nothing for it."

The Commission's Response

Commissioners Pendleton, Abram and Destro, and Staff Director J. Al Latham, Jr., at an April 22, 1986 hearing before the House Subcommittee on Civil and Constitutional Rights, assailed the GAO report as a political hatchet job, and asserted that the report "presumes guilt in the absence of evidence, is riddled with mistakes and half-truths, and fails to highlight a single deliberate violation of law, statute, or regulation, or a single ethically improper act" (emphasis added).

In contrast, Commissioners Ramirez and Berry asserted that "the Commission on Civil Rights, as described in the GAO audit, is an agency out of control... [A]ccording to the GAO report, we are an

agency whose Staff Directors, Linda Chavez and Max Green, engorged the staff with political appointees and created a mess of paperwork and administrative confusion." These Commissioners observed with regret, "We had hoped the Staff Director would come here prepared to promise to strengthen administration and management and to avoid the defects cited in the GAO report. That has not happened. Instead we have testimony by the Staff Director, who was not even at the Commission when the activities analyzed by GAO occurred, which defends the actions of previous Staff Director Linda Chavez and Acting Staff Director Max Green."

Vice Chair Morris Abram, after insisting upon the impeccable credentials of Commission staff, confirmed that two Commission employees cited in the GAO report because of their unusually rapid advancement at the Commission were college friends of Mr. Abram's son. In response to questioning from Representatives Schroeder and John Conyers, Jr. (D-MI), Abram said that he had recommended the individuals in question (one a former roommate of his son), but "had nothing to do with anyone's grade level." Both were hired as GS-7 temporary employess (starting salary $17,824), one was promoted to a GS-11 job in nine months (starting salary $26,381), and the other to a GS-12 position in 13 months (starting salary $31,619). Because the young men were hired as temporaries, their promotions were not governed by OPM's requirement that "career employees above GS-5 must serve at least 1 year in grade before becoming eligible for promotion."

MORRIS ABRAM ON MERIT AND FAIRNESS

1981 Abram states that the Commission's proposed Statement on Affirmative Action supporting numerically based remedies "is the very antithesis of our struggle... It is directed against the principles of merit in the Federal civil service and throughout life; it will be a brake on productivity which we sorely need so that we can have a larger pie that fairly distributes."

1986 Abram tells Robert Pear of the New York Times: He favors "equality of opportunity -- a fair shake" for all individuals, while the old commissioners supported "equality of results -- a fair share" for particular groups.

1986 At oversight hearing, Abram admits that he recommended two of his son's college friends for jobs at the Commission. The two were cited in the GAO report for their rapid advancement at the agency. "I recommended them but had nothing to do with anyone's grade level." One of the young men, in an article in a magazine of his alma mater, blandly observed "Through pluck and grit and nepotism I landed a job at the U.S. Commission on Civil Rights" (Diary of a Mad Bureaucrat," Columbia Magazine).

INTERNAL DISSENSION AT THE COMMISSION

Adding to the Commission's problems was Commissioner Bunzel's public call for Chair Pendleton to resign. Bunzel, who has uniformly supported Pendleton's civil rights policies, said that the Chair's "inflammatory rhetoric" and "fulminations" had diverted attention from the work of the Commission and tended to "undermine the credibility" of the agency. Bunzel's letter continued:

> During the two and a half years I have been a member of the commission, I have been increasingly disturbed by your inflammatory rhetoric. It has too often stifled, rather than contributed to, the kind of rational and respectful debate of complex issues that is much needed today.

During Pendleton's tenure as Chair he has frequently taunted black civil rights leaders, referring to them as "new racists" and "seducers" who are guilty of leading black Americans into a "political Jonestown."

> I say to America's black leadership: Open the plantation gates and let us out. We refuse to be led into another political Jonestown as we were led during the presidential campaign. No more Kool-Aid...(Rolling Stone Magazine, March 13, 1986).

Pendleton's financial problems...

Bunzel's letter also made reference to Pendleton's financial difficulties. "Although I know nothing of your personal finances, I do know that the cloud that continues to hang over you has not reflected well on the agency." The reference was presumably to pending investigations by the Small Business Administration inspector general and the California attorney general of a contract Pendleton arranged for his assistant, Sydney Novell, while he was chairman of a federally funded nonprofit organization in San Diego. The contract ultimately provided for Novell to receive $60,000/year plus commissions for packaging loan applications to the Small Business Administration, though the organization had previously paid only commissions for the same work. In 1985, Novell received $77,000 under the contract. Both Novell and Pendleton ended their association with the organization in January 1986 (Wash. Post, April 22, 1986).

Berry says Pendleton is a Scapegoat...

Commissioner Berry who has consistently been at odds with Pendleton has said she does not think the Chair should resign and that he is being used as a convenient scapegoat by Commission officials wishing to divert attention from the GAO audit and the serious problems at the Commission.

> Bunzel is looking for someone to blame for all the difficulties and Penny is a convenient scapegoat because

everyone knows what a bumbler he is (USA TODAY, April 9, 1986).

Berry noted that "the problems at the Commission are more than Penny deep" (Wash. Post, April 8, 1986). Pendleton was quoted as saying he had "absolutely no intention of resigning" (Wash. Post, April 8, 1986).

FRACAS OVER MINORITY SET-ASIDES

With the GAO audit report less than a month old, the Commission found itself once again embroiled in controversy over a draft staff report on minority set-asides. Commissioners charged that the report had not been authorized by the commissioners, and that the product was "shoddy". Another commissioner characterized the report as superficial.

The report is a statement on Federal Government programs which "set aside" specified percentages of government procurement money for firms owned by minorities. The report, which if adopted by the Commissioners would constitute the Commission's policy on set-asides, is highly critical of the programs and recommends a one-year moratorium on set-asides, including the Small Business Administration's 8(a) program, the Department of Transportation's Surface Transportation Assistance Act 105(f) set-aside, and direct set-asides between Federal agencies and Disadvantaged Business Enterprises and Women's Business Enterprises.

Criticism of the Report...

Commissioners Ramirez and Berry issued a statement criticizing the report and asserting that the Commissioners never voted to direct the staff to prepare such a report.

> This report provides fresh evidence of the credibility and management problems of the reconstituted U.S. Commission on Civil Rights... The report is an example of Commission work at its shoddiest, exhibiting a disdain for Commission procedure in its inception and an obtuseness about exploring the issues which extends to ignoring factual matter in the hearing transcript, and an overall product which concludes with the flimsiest findings and recommendations possible. In sum, anyone who is interested in ascertaining the value or legality of minority business set-asides must look elsewhere than in the Commission's report.

During Commission review of the study, Berry revealed that the SBA's Associate Administrator for Minority Small Business and Capital Ownership Development, who reviewed a section of the study, had expressed concern over the report's "lack of accuracy and objectivity." In a letter to the Staff Director, the Administrator stated:

> [W]e are concerned with the lack of accuracy and objectivity

of those parts of the report dealing with the 8(a) program, since they appear to be based on dated 1970s General Accounting Office reports and existing rules and regulations and not on a meaningful analysis on the present state of the 8(a) program or its performance over the last 4 years. One particular issue I want to clarify is that contrary to the report's conclusion... that one of the continuing problems of the 8(a) program is its inability to graduate firms, the opposite is true. 'Since the passage of Public Law 96-481, 8(a) firms have indeed been graduating from the program. For example, in the 5 years prior to Public Law 96-481 (1977-1982) only 82 firms graduated from the program while, since the law's implementation in late 1982 through FY 1985, 463 firms have graduated. Through 5 months of the current FY, 117 firms have exited from the program.

The uproar over the Commission's opposition to set-asides took a strange twist when reports surfaced alleging that Pendleton had at one time tried to set up a minority business enterprise to take advantage of the Federal set-aside programs. Reportedly, Pendleton was to serve as a "front" for two white businessmen (New Republic, April 14, 1986). The chair has stated that any such suggestion is "a blatant outright lie."

On April 11, the Commissioners voted 5-3 to send the report back to the Staff for rewriting on the basis of Commissioners' comments and questions. It has been stated in the news media that the report was tabled following pressure from the White House as President Reagan has on several occasions expressed support for business set-asides (Wash. Post, April 12, 1986). On July 14, 1983, President Reagan signed Executive Order 12,432 which requires federal agencies to establish objectives and methods for increasing minority business subcontracting by federal contractors.

LACK OF INDEPENDENCE AND PERFORMANCE

The problems the Commission faced in March and April exemplify broader concerns over the Commission's independence and fulfillment of its statutory mandates, concerns which have been voiced since the Commission's reconstitution in 1983.

The Importance of Independence...

Since its inception the Commission's independence has been the cornerstone of its integrity. At the Commission's first hearing in Montgomery, Alabama (December 8, 1958), Chair John A. Hannah stated:

> I would like to emphasize that the Commission on Civil Rights is an independent agency of the Government, in no manner connected, even administratively, with the Department of Justice... The emphasis of the commission and its staff is on objectivity, and, as the commission views it,

objectivity presupposes getting all of the facts.

During the 7 month Congressional battle in 1983 to maintain that independence, members of Congress highlighted its importance:

> We need a Civil Rights Commission with an abiding commitment to equality, an independent, apolitical commission that can give the American people the unvarnished truth. Sen. Lloyd Bentsen (D-TX), 129 Cong. Rec. S15912, November 9, 1983.

> The legislative history which surrounds the initial establishment of the Commission reflects a strong desire on the part of Congress that the Commission be an independent, fact-finding agency. Rep. William Clinger (R-PA), 129 Cong. Rec. H6488, August 4, 1983.

Despite the legislative intent, the Commission since 1983 has been nothing more than a public relations agent for the Administration and its civil rights policies:

The day after President Reagan's re-election, Staff Director Linda Chavez informed the Commission's executive staff (many of them veteran commission employees) that "Anyone who thought the election results would be different and would change things, should know that the Commission will go forward in the direction it has been taking. I expect better cooperation and those who are unhappy should make a hard choice." In a debate with an Hispanic leader, Chavez declared that she did not speak for Hispanics, but "only for myself and the Reagan Administration." Similarly, Clarence Pendleton, the President's hand picked Chair, stated in a speech to the National Press Club on March 5, 1985:

> Since 1980, and the election of Ronald Reagan, we have a team of people attempting to enforce the 14th Amendment. This team, led by Ronald Reagan, is trying to create a society that is truly colorblind... Many of you wrote that we are political... Yes, we are political. Everything in this city is political.

Thus, the agency that had once been known as the conscience of the nation in matters of civil rights, became a propaganda voice for the Administration. And, its spokesperson, Linda Chavez was rewarded with a White House job as deputy assistant to the President for public liaison.

Productivity suffers...

While the Commission has been busy performing its public relations function for the Administration, it has neglected its statutory responsibilities of fact-finding and monitoring. Setting aside political orientation, the reconstituted commission has been a much less productive agency:

The GAO Report indicates that--

In FY 1983, the Commission's State Advisory Committees published 36 reports, in FY 1984 the SACs published only 3 reports and in FY 1985 the number was down to 2.

In FY 1983, the SACs had 40 projects-in-process, in FY 1984, 29 and in FY 1985, 14 were in process.

The number of SAC fact-finding meetings decreased from 12 in FY 1983 to 9 in '84 and to 5 in '85.

Further, a review of the Commission's Request for Appropriations and Budget Estimates documents that--

In FY 1982, the Commission completed 9 clearinghouse and statutory reports. In 1983, again 9 such reports were completed. In FY 1984, and in FY 1985, however, the Commission completed only 3 reports.

Moreover, the Commission appears to have redefined one of its principal duties -- monitoring the civil rights performance of federal agencies -- out of existence. The Commission's statute requires it to appraise the laws and policies of the Federal Government. In the 1970s, the agency issued detailed reports pointing out strengths and deficiencies in the programs of many federal agencies. Now, things have changed.

Rep. Schroeder pointed out at the April 22, 1986 oversight hearing that the Commission's Office for Federal Civil Rights Evaluation has not issued one analysis of federal civil rights enforcement since the reconstituting of the Commission. Characterizing the monitoring function as the "heart and soul" of the Commission, she questioned why two years after the Grove City decision, the Commission has been silent on the impact. (Grove City limited the prohibition against discrimination by recipients of federal financial assistance to the specific program receiving federal funds. Prior to the decision, receipt of federal funds was believed to require non-discrimination institution-wide. The result has been to limit severely the ability of the Federal Government to prohibit discrimination in institutions receiving federal funds.) In contrast, "During fiscal year 1983, the Commission undertook a sustained effort to monitor and evaluate executive branch policy concerning enforcement of civil rights protections in Federal financial assistance... This involved tracking and commenting on litigation, as well as regulatory and legislative actions and reviewing closely policy developments at the Departments of Justice and Education. Work products included public statements, congressional testimony, and extensive correspondence."

Few and Feeble...

Derision has surrounded most of the Commission's work since it was reconstituted. The Commission's report on Comparable Worth (1985) was highly criticized by the GAO, which questioned the Commission's basic definition of the concept. The report has

THREE YEARS IN THE LIFE OF THE COMMISSION

1965

Commission holds public hearing in Jackson, Mississippi on denials of voting rights and racial violence in the administration of justice, taking testimony from black citizens, voting registrars, sheriffs and others. Issues a report on VOTING IN MISSISSIPPI. After enactment of the Voting Rights Act (which adopts Commission recommendations), Commission issues a VOTING RIGHTS ACT HANDBOOK, and publishes a study of the first months of implementation, THE VOTING RIGHTS ACT...The first months. Agency also issues REGISTRATION AND VOTING STATISTICS by State and County for 11 States. The Commission publishes studies assessing the Federal Government's enforcement activities in several areas: EQUAL OPPORTUNITY IN FARM PROGRAMS: An Appraisal of Services Rendered by Agencies of the U.S. Department of Agriculture; ENFORCEMENT: A Report on Equal Protection in the South; CIVIL RIGHTS UNDER FEDERAL PROGRAMS: An Analysis of Title VI; and EQUAL OPPORTUNITY IN HOSPITALS AND HEALTH FACILITIES, Civil Rights Policies Under the Hill Burton Program.

1975

The Commission issues THE VOTING RIGHTS ACT: TEN YEARS AFTER which recommends extension of the Act. Congress extends the Act for seven years. Commission holds hearing in Boston, Mass. on SCHOOL DESEGREGATION, and issues DESEGREGATING THE BOSTON PUBLIC SCHOOLS: A CRISIS IN CIVIC RESPONSIBILITY which recommends that the Federal District Court consider placing the school system in receivership. The court subsequently places South Boston High in receivership. Commission issues six volumes of a major study evaluating THE FEDERAL CIVIL RIGHTS ENFORCEMENT EFFORT. Consultations are held on AFFIRMATIVE ACTION IN EMPLOYMENT IN HIGHER EDUCATION, and SCHOOL DESEGREGATION: THE COURTS AND SUBURBAN MIGRATION. The agency publishes: THE NAVAJO NATION: An American Colony; MINORITIES AND WOMEN AS GOVERNMENT CONTRACTORS; MAKING CIVIL RIGHTS SENSE OUT OF REVENUE SHARING DOLLARS; CONSTITUTIONAL ASPECTS OF THE RIGHT TO LIMIT CHILDBEARING; TWENTY YEARS AFTER BROWN: Equality of Educational Opportunity, Equality of Economic Opportunity, and Equal Opportunity in Housing; and a CIVIL RIGHTS DIRECTORY.

1985

Commission holds consultation on AFFIRMATIVE ACTION TOPICS IN EMPLOYMENT AND BUSINESS SET-ASIDES. Civil rights groups decline to testify after Commission refers to their position on affirmative action as "divisive, unpopular, and immoral". Commission holds hearing on THE PROTECTION OF HANDICAPPED NEWBORNS receiving testimony from physicians, parents, federal officials etc. Commission issues reports on: COMPARABLE WORTH: ANALYSIS AND RECOMMENDATIONS; DIRECTORY OF STATE AND LOCAL FAIR HOUSING AGENCIES; and TOWARD AN UNDERSTANDING OF STOTTS.

been useless in the continuing debate on this important topic. A second report released by the Commission, Toward An Understanding of Stotts (1985), is little more than a recitation of the opinion, most of the 64 page report consisting of the printed text of the Supreme Court's ruling. The "legal analysis" in the report failed to mention any of the post-Stotts federal court of appeals and district court cases, all of which were at odds with the interpretation of the decision given by the Justice Department and the Commission.

A much ballyhooed study of Affirmative Action in Higher Education was scheduled for completion in February 1986, but in response to questions raised by the House Subcommittee on Appropriations, the Commission indicated that an "intensive review of the project" was underway. "Upon completion of this review, a recommendation on the project will be made to the Commissioners." The project director, who began working on the study on February 24, 1984, left the Commission on April 18, 1986 before completing the study. Elliot C. Lichtman, a civil rights attorney, who represents plaintiffs in the Adams case (suit to require the Federal Government to enforce the Civil Rights Act and compel States to eliminate segregated higher education systems), wrote, with respect to the project director's draft of a chapter on the Adams litigation:

> Instead of objective scholarship, it is a diatribe against the good faith efforts of the NAACP Legal Defense Fund, representing the victims of racial discrimination, to secure effective executive enforcement of a vital civil rights statute. Moreover, your chapter also attempts to indict the Federal Government for carrying out its constitutional duty of ensuring an end to segregation and discrimination by the recipients of Federal funds... In addition... the tone of your document... is frequently hostile and snide... there are numerous errors of fact.

Similarly, the Commission's study on Voluntary and Involuntary Methods of School Desegregation is behind schedule and has been mired in controversy. The Commission initially contracted with a major research organization whose project staff had substantial experience in school desegregation research. In fact, this was one of the criteria used to evaluate the firm's ability to do the study. After problems arose with the contractor, the Commission transferred the project to a research organization with no experience in school desegregation which hired a technical consultant who has played an "active partisan role in desegregation litigation in creating evidence used against desegregation or to permit resegregation and return to neighborhood schools" (Statement of Gary Orfield, Professor of Political Science, Before the U.S. Commission on Civil Rights, December 10, 1985). The scope of the study was narrowed substantially. Professor Orfield resigned from the study's advisory panel citing numerous problems with the new contractor, commission staff handling of the study, and substantive problems with the scope of the study:

> My basic objections to the study concern the lack of the necessary professional skills in the contractor's staff, the strong ideological tilt in the key leadership positions of the study, the lack of fair treatment of those who were not anti-busing activists on the advisory committee, and the exceedingly narrow focus of the research as it is now defined.

By the Commission's own assessment, 8 studies are behind schedule. While the Commission correctly asserts that it is not unusual in social science research for schedules to be adjusted to account for new research etc., the accumulation of deadlines not met, a decline in productivity, and charges of bias and inaccuracy has cast a cloud over the operations of the agency, and led many to question how the Commission has spent its annual budget of $12 million.

WHAT CAN BE DONE?

In testimony before the House Subcommittee on Civil and Constitutional Rights, Commissioner Berry stated that Congress should not permit the situation at the Commission to continue. Responding to the agency's request for an appropriation allowing its activities to be combined under one line item --thus permitting total flexibility in how the agency spends its funds-- she said: "This GAO report, if it does anything, underscores the need for less rather than more flexibility." She also recommended that appropriated funds not be used to hire non-career civil service staff except for one assistant assigned to each Commissioner; that the Staff Director be a top-level career civil servant with management experience; that the Staff Director be instructed by Congress to abide by laws and regulations governing the management, appointment, and promotion of employees; and that frequent, detailed reporting requirements on the status and use of funds be imposed on the Commission by the relevant House Committees.

Representative Schroeder, expressing concern that the Commission as reconstituted is "throwing away the taxpayers' money," has called for a defunding of the agency. This would mean a refusal by Congress to appropriate further funds for the Commission. Others have expressed an interest in establishing a Congressional Commission, an idea which first surfaced during the 1983 fight over reconstitution of the agency (see Background Section).

Father Theodore Hesburgh, a member of the Commission for 15 years, four of them as Chair, recently reflected on the role the Commission played in gaining passage of key civil rights legislation: "We changed the face of America with those bills." Now, he says, the agency has "no leadership or the kind of integrity it should have." His solution is dismantlement of the agency.

As William Raspberry, a syndicated columnist, wrote in response to Hesburgh's assessment:

> [The Commission] has now become just another federal agency... It is no longer a cutting edge for change, but a drag-anchor; no longer a part of the solution for what ails minorities but a part of the problem.
>
> Hesburgh is right. It's time to end the charade (Wash. Post, April 30, 1986) .

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CHRONOLOGY: DEATH OF AN INDEPENDENT AGENCY

November 1981: White House notifies Chair Arthur Flemming, former Secretary of HEW and President of Ohio Wesleyan University, and Commissioner Stephen Horn, President of the University of California, Long Beach that President Reagan plans to replace them.

February 1982: White House announces its plans to nominate the Rev. B. Sam Hart. A controversy over Hart's alleged lack of credentials results in the withdrawal of his name from consideration. He is never formally nominated.

March 1982: Senate confirms the President's nomination of Clarence Pendleton, President of the San Diego Urban League, to be Chair, and Mary Louise Smith, former chairwoman of the Republican National Committee, to be Vice Chair. Later in 1982, the President nominates three other persons: Robert Destro, general counsel for the Catholic League for Religious and Civil Rights, Nicholas Domalis, and Guadalupe Quintinilla to replace Mary Frances Berry, professor of history and law at Howard University, Blandina Cardenas Ramirez, director of development at the Intercultural Development Association, and Murray Saltzman, Senior Rabbi, Baltimore Hebrew Congregation. Though the nominees are favorably reported by the Senate Judiciary Committee, the full Senate, in a rare development, does not act upon the names before the end of the 97th Congress.

May 1983: The President again nominates Robert Destro, now assistant professor of law at Catholic University, Morris Abram, partner in the law firm of Weiss, Rifkind, Wharton and Garrison, and John Bunzel, senior research fellow at the Hoover Institution, Stanford University to replace Berry, Ramirez and Saltzman.

October 1983: Responding to the Senate's lack of action on his nominations, and the Senate Judiciary Committee's scheduled vote to expand the Commission to eight members and maintain the independence of the agency, the President fires Berry, Ramirez

and Saltzman on the morning of the Grenada invasion.

Berry and Ramirez file suit in U.S. District Court asserting that the President does not have the statutory authority to fire sitting Commissioners without cause, and seeking an injunction against their removal.

November 1983: House refuses to appropriate funds for the Commission. Compromise proposal offered by Senator Robert Dole is accepted by the civil rights community and key members of Congress. The proposal provides for expansion of the Commission to eight members, four to be appointed by the President, two by the House and two by the Senate. The civil rights community accepts proposal with assurances from Dole and Baker that Meese has agreed that the President will reappoint Mary Louise Smith, the House Republican Minority Leader will appoint Jill Ruckelshaus, and the Senate Majority Leader will appoint a Republican with strong civil rights credentials.

Judge issues preliminary injunction against the firing action. Berry and Ramirez are reinstated.

President indicates he might not sign the legislation citing constitutional issues.

The President signs the legislation on November 30, the day the Commission is scheduled to go out of business.

December 1983: White House states it had made no commitment to reappoint Mary Louise Smith. Vice President Bush indicates that Mary Louise Smith presents a problem for the President because she will not guarantee a positive vote for the President's designated Chair.

Commission is reconstituted: President Reagan appoints Pendleton (Chair), Morris Abram (Vice), John Bunzel, and Esther Buckley; the Senate appoints Ramirez and Francis Guess; and the House appoints Berry and Destro. It is notable that Destro was twice nominated by the President, but not confirmed by the Senate.

January 1984: Commission holds its first meeting and while declaring its independence from the Administration, adopts a position on affirmative acation in tune with the Administration's Without holding one hearing or conducting one study, the Commission begins its reversal of positions taken by the old Commission after careful study and research.

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NEW PERSPECTIVES

U.S. COMMISSION ON CIVIL RIGHTS WINTER 1985

Editorial

Toward A Better Understanding of Minority Progress

It is difficult to imagine that the tremendous progress made by minorities and women in the past three decades—professionally, educationally and economically—would have been possible without the passage of the major civil rights reforms of the mid-sixties and the demise of legal discrimination in this country. Civil rights leaders, then and now, recognized that removing the artificial barriers of discrimination was the first, and perhaps most essential, step toward the promotion of minority progress. Yet the progress that followed the civil rights revolution was not shared equally by all black Americans. Indeed, the conditions of some have not improved at all. And, tragically, others seemed to have fallen further behind. Does this uneven progress reflect the failure of our society to eliminate all vestiges of discrimination? To what extent can other factors, besides discrimination, account for these inequalities?

This issue of *New Perspectives* highlights several articles relating to these questions. Herbert J. Walberg takes a careful look at educational strategies for minorities that have—and have not—increased academic achievement. Integration as a tool for learning enhancement, he concludes, often has little or no measurable effect, while other strategies have consistently proven effective in raising achievement. Sue Berryman explores the various reasons why certain minorities and women have failed to enter quantitative and scientific disciplines in college and graduate school. Such "underrepresentation," she concludes, may be limited more by perceived sex roles, career ambitions and class status than by discrimination on the part of educational institutions and employers.

Tod Lindberg reviews Charles Murray's provocative book, *Losing Ground,* which argues that the expansion of welfare benefits in the 1960s and the simultaneous growth of the black underclass may be causally related. And, in a lengthy interview with the editors of *New Perspectives*, Bayard Rustin discusses why the civil rights movement failed to meet all the expectations of its participants and supporters.

These articles are part of *New Perspectives'* continuing inquiry into the complex factors explaining ethnic and racial progress in this country. Discrimination, of course, still persists and continues to present obstacles for women and minorities. But the persistence of economic disparities, two decades after the legal demise of discrimination, suggests that other issues also need to be explored and confronted. ¤

L.C.

NEW PERSPECTIVES

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A "CIVIL RIGHTS" Snare

by Jeremy Rabkin

Civil rights" has become an irresistible slogan in American politics. The very phrase seems to have acquired talismanic properties, paralyzing political debate far more reliably than the flag and apple pie. Thus while everyone is for "peace," it is not sufficient to dub a new weapons system "the peacemaker" to assure it of political support. Everyone is for "full employment," but putting that phrase at the head of a tax or spending bill will not intimidate its critics into silence. Yet the so-called Civil Rights Act of 1984, a bill with very radical and disturbing implications, whipped through the House of Representatives last Spring with almost no debate and quickly secured co-sponsorship by almost two-thirds of the Senate. Only last minute parliamentary maneuvers prevented the measure from being enacted in the last session of Congress; it has been reintroduced in the 99th Congress as the Civil Rights Act of 1985.

In fairness to those in Congress who supported the Civil Rights Act of 1984, it must be acknowledged that its principal proponents presented it as no more than a technical corrective measure, simply restoring civil rights law to the status quo prior to the Supreme Court's recent decision in *Grove City College* v. *Bell.* Yet officials from both the Justice Department and the U.S. Commission on Civil Rights (along with many legal scholars) testified that the measure would go far beyond this in its reach.* The eagerness in Congress to discount or ignore this testimony surely does say something about the intimidating force of the phrase "civil rights." No one in public life wants to be accused of "opposing civil rights" and the result is a tyranny of slogans.

Part of the reason for this, no doubt, is that "civil rights" are regarded as an extension of fundamental constitutional principles, as simply too important to be left to partisan politics. Surely another reason is that we are still barely two decades removed from a period in which civil rights laws were loudly opposed by defiant advocates of racial segregation. No one wants to be identified with the racist sentiment animating so much of the opposition to civil rights measures in the not-so-distant past. But beyond all these reasons, it seems to me, we have lost the capacity to deliberate soberly on civil rights measures because we have lost our sense of what civil rights are for. In consequence of this confusion, we can have large majorities in Congress embracing, in the name of civil rights, a measure which undermines the very purpose of civil rights.

This may seem an unduly harsh judgment on the Civil Rights Act of 1984. But that measure did, to my mind, embody several of the most disturbing trends in recent civil rights regulation: First, the sort of extreme moralism that begets intolerance; second, the extension of financial strings to the point where they become manipulative, coercive and oppressive; finally, the wholesale transfer of power to administrators to an extent that threatens public accountability and representative government. It may be that a redrafted and refined version of last year's bill can, to the satisfaction of most legislators, escape the burden of these charges. But the extraordinary haste and complacency of congressional action in the last session suggests that a careful rethinking of ends and means in civil rights regulation is now very much in order.

The *Grove City* case concerned Title IX of the education amendments of 1972. Title IX prohibits discrimination on the basis of sex in any "education program or activity receiving federal financial assistance." The Supreme Court held that, although Grove City College itself received no federal grants, its scholarship aid program must be covered by Title IX because it was effectively assisted by federal education loans to students at the college. At the same time, however, the court expressly rejected the claim that all aspects of the college's activities should be covered by Title IX for this reason. It was this latter part of the decision that proponents of the Civil Rights Act of 1984 sought to correct.

A wide coalition of civil rights groups backed the measure because the *Grove City* decision, by implication, affected the scope of three other civil rights laws with parallel provisions. Title VI of the Civil Rights Act of 1964, the prototype of all the others, prohibits discrimination on the basis of "race, color or national origin" in any "program or activity receiving federal

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**Editor's note: The U.S. Commission on Civil Rights supports legislation overturning the Supreme Court's decision. It believes the legislation to achieve that goal should be limited to that sole purpose.*

Illustration by Dean Williams

financial assistance." Section 504 of the Rehabilitation Act of 1973 borrowed the same formula to prohibit discrimination on the basis of personal handicap, while the Age Discrimination Act of 1975 similarly prohibits discrimination on the basis of age in any federally assisted "program or activity."

The central idea behind "civil rights" was that the government must be restrained in its power to manage society.

To prevent the courts from imposing narrow readings of the key phrase "program or activity," the Civil Rights Act of 1984 would have eliminated this language in all four statutes and submitted prohibitions on discrimination by any "recipient" of federal assistance. The term "recipient" was then defined in sweeping terms to include "any state or political subdivision thereof . . . or any public or private agency, institution or organization or other entity . . . to which federal financial assistance is extended (directly or through another entity or person) or which receives support from the extension of . . . assistance to any of its subunits." In addition, the term "recipient" was defined to include "any successor, assignee or transferee" of an entity receiving federal assistance.

Plainly, these provisions would extend the reach of federal civil rights laws very broadly indeed. In place of controls on the immediate, localized beneficiaries of federal funding, federal regulatory standards would extend as far as the imagination could pursue a trail of federal dollars. A small federal grant to a county library, for example, might be traced upward to bring all the operations of the state government under federal civil rights regulations (on the theory that the state "received support from the extension of assistance" to its county "subunit"). Or the grant might be traced downward, to encompass all the other operations of the county and all the town and village governments within it (on the theory that they, too, received at least indirect "support" from the "extension of assistance" to the library "subunit" of the parent county).

Alternatively, federal civil rights regulation might be extended to pharmacies filling prescriptions for medicaid patients ("federal financial assistance . . . extended . . . through another entity or person") or to a private developer purchasing land or buildings from a university or a hospital receiving federal grants (of which the developer could be considered a "successor, assignee or transferee"). All of these examples may seem far-fetched, but the Supreme Court considered it implausible to imagine that Congress intended federal "regulatory authority to follow federally aided students from classroom to classroom, building to building, and activity to activity" at Grove City College. And it was precisely this "restrictive" reading that the Civil Rights Act of 1984 was designed to correct.

But why, after all, should this great expansion of federal civil rights standards be cause for concern? If it is proper and praiseworthy to impose these standards on particular "programs and activities" receiving federal aid, what harm can there really be in extending these requirements more broadly? Who can really object to that without objecting to "civil rights"? No doubt it was reasoning of this sort that allowed Congress to view the Civil Rights Act of 1984 with so much complacent approbation. And it is precisely this sort of careless reasoning that shows how far we have drifted from any solid understanding of what "civil rights" are all about.

The term "civil rights" does not appear in the Bill of Rights, nor in the original Constitution, nor in the Declaration of Independence. The term, in fact, was rarely used before the Civil War. But when Congress enacted the first measure called by the name "civil rights" in 1866, everyone understood the term in light of the political principles of the American Founding. Thus one of the principal sponsors of the 1866 Civil Rights Act described civil rights as "the absolute rights of individuals, such as the right to personal security, the right of personal liberty and the right to acquire and enjoy property"—a bit more pedantic than the appeal to "life, liberty and the pursuit of happiness" in the Declaration of Independence, but plainly in the same spirit.

Originally, then, civil rights were seen as guarantees of personal independence. They assured to each individual the legal authority to conduct his life according to his own lights, subject only to such legal restrictions as might be imposed on all other citizens for the good of the community. A guarantee of free choice for the individual, "civil rights" necessarily implied a broad toleration of diversity in society. The central idea behind "civil rights" was that the government must be restrained in its power to manage society, to coerce private preferences; a government that respected civil rights would, for the most part, have to allow the character of society to emerge from a multitude of individual choices and private initiatives. Thus, most of the "civil rights" measures enacted by Congress after the Civil War sought to constrain state *governments,* rather than private action. So too did the 14th Amendment, which was adopted to assure constitutional legitimacy to these federal "civil rights" laws.

We now conceive "civil rights" primarily as a guarantee of equality. But to the framers of the 19th century federal "civil rights" laws, as to the framers of the federal Constitution before them, equality was, in a sense, a secondary and derivative principle. They were principally concerned to ensure that basic rights would be equally protected for all citizens, which is why the 14th Amendment guarantees "the equal protection of the laws"—rather than "laws protecting equality." Without attempting to catalogue or define basic civil rights in detail, federal measures mandated equal protection of rights—however ultimately defined by state and local governments—in the expectation that this would make it difficult to constrain or restrict basic rights: Unnecessary or improper restrictions on individual liberty were thought to be far less likely to occur if they had to be imposed equally on everyone. Essentially, then, federal demands for equal treatment were animated by the ultimate goal of protecting personal liberty.

In our time, "civil rights" measures are usually aimed at constraining private conduct or (like the funding statutes involved in the Civil Rights Act of 1984) aimed indifferently at private or local governmental entities. This does not in itself show that they have departed from the guiding purpose of the original federal civil rights laws or from the political tradition that inspired them. There is no necessary or inherent paradox in

constraining individual conduct for the sake of individual liberty. We are quite comfortable with the notion that certain regulatory constraints on business—those directed at fraud or hidden threats to safety, for example—may actually strengthen the free market. Similarly, most states regulate gambling and the use of addictive drugs, in part because such self-destructive practices undermine people's capacity to act as free individuals. But it is obvious that this sort of reasoning cannot be pressed too far before personal freedom comes to seem rather hollow—the right to pursue the narrow track of state-approved conduct. A government that sought to monitor and restrain every form of potentially compulsive personal behavior would be regarded as a tyranny rather than a guarantor of liberty.

At some level, almost everyone recognizes and accepts the need for... limits on "civil rights" regulation if we are to remain a nation of free citizens.

Modern civil rights laws should be viewed with this sort of balance in mind. Private prejudice in some areas may be so rigid and engrained that it severely constrains opportunity for its victims—and even for those within the spell of the prejudice. Laws prohibiting various forms of discrimination in employment, housing or public accommodations, for example, may thus serve the cause of personal liberty, even though they restrict certain kinds of private choices. But a government that is truly committed to personal liberty—the ultimate moral grounding of civil rights—will be wary of intervening too broadly and minutely. It will be wary of rashly presuming to know better than private citizens or local authorities what are reasonable choices amidst all the complexities of diverse, individual circumstances.

At some level, almost everyone recognizes and accepts the need for such limits in "civil rights" regulation if we are to remain a nation of free citizens. Thus, no one seriously proposes that, to further the fight against racial discrimination, government should monitor racial and ethnic patterns in marriage decisions, in restaurant attendance or attendance at private social events. It is not that such private activities are altogether irrelevant to the economic opportunities which current civil rights laws try to promote: Everyone knows that social connections may be very crucial aids in career advancement. But a government that sought to interfere with such very private decisions would be decried on all sides as a tyranny.

On the other hand, neither has anyone seriously proposed government controls to prevent family or social ties from influencing employment decisions. It is not that people condone blatant nepotism or cronyism or reject the view that personal merit should be the primary consideration in employment decisions. But almost everyone recognizes that government cannot presume to judge what constitutes "merit" for every job, nor can it evaluate the extent to which trust and confidence (growing out of family or personal ties) may be legitimately related to "qualification" for particular jobs. A government seeking to regulate such matters would again be viewed as intolerably oppressive.

In the abstract or in the extreme case, then, we have little trouble in acknowledging that measures to promote individual opportunity may actually be destructive of liberty—of the very thing we are ultimately trying to promote. In practice, however, federal civil rights regulation has all too often proved insensitive to this need for balance. And the Civil Rights Act of 1984 is a disturbing example, perhaps the culminating example of this tendency to extend controls without serious thought of their purpose or effect. It perfectly reflects the spirit of blind moralism that begets intolerance and oppression.

Opponents of the Civil Rights Act of 1984 expressed great concern about extending civil rights regulations so sweepingly, with such unpredictable consequences. But the proponents of the bill insisted that no compromise could be admitted, no amendments to the bill accepted, because the principle at stake was too fundamental: Federal taxpayers dollars, they insisted, must never be used to "support discrimination." That sort of reasoning is blind moralism. Neither "discrimination" nor "support" in this context is so clear or unequivocal that we can afford to dismiss all objections and debate with preemptive sloganeering.

Racism rightly inspires great moral loathing—even, perhaps especially, among people who take their moral bearings by the principles of individual liberty. For much of American history, after all, racist doctrines were invoked to justify slavery and brutal oppression. So, understandably, people invest great moral passion in the principle that the government—even if it cannot try to fight racial discrimination in every corner of private life—should never aid and legitimize racial discrimination with public funds.

To prohibit discrimination, however, government must first define it. And reasonable, honorable people disagree quite intensely over the proper definition. Thus the Office for Civil Rights in the Department of Education has repeatedly held that admissions or employment tests that exclude black applicants more often than white applicants may violate the prohibition of race discrimination in Title VI—even though the tests were adopted in complete good faith, with no invidious intent. Arguably it is appropriate in some circumstances for government to apply this sort of "effects" standard. But we surely should not regard the desire to evade an "effects" standard of discrimination with moral loathing.

Moral passion seems even more out of place with regard to other forms of prohibited discrimination. Thus even the most ardent feminists disagree on the extent to which distinctions between men and women should be regarded as invidious or restrictive of opportunities for women. The Education Department's implementing regulations for Title IX allow separate teams for men and women in college sports but insist that physical education classes in elementary and secondary schools must be coeducational. Until recently, the regulations also forbade differential hair length or dress code requirements for men and women. One need hardly be an advocate of female subordination to desire to escape the particular definitions of "nondiscrimination" imposed by the federal government under Title IX.

Similarly, the Age Discrimination Act itself allows recipient

"programs and activities" to impose mandatory retirement at age 70; institutions which regard 67 or 65 as more appropriate age limits for particular jobs can hardly be considered malicious bigots. The implementating regulations for Section 504 define "discrimination" against the handicapped as any failure to make "reasonable accommodation" to particular disabilities—including the provision of ramps and elevators for those in wheelchairs, braille and taped texts for the blind and so on. Efforts to avoid the great costs associated with such "accommodations" can hardly be equated with malicious disdain for the handicapped.

The Supreme Court's decision in the Grove City case has already decreed a rather draconian punishment for this bid for independence.

The same sort of blind moralism is reflected, it seems to me, in the claim that *any* aid to *any part* of a private or local institution implies public or taxpayer "support" for the whole institution and all its various activities. Within limits, of course, it is perfectly reasonable to view public funding as a form of public endorsement for the recipient. And on this view, it is quite reasonable to insist that such endorsement be restricted to programs or institutions which are deemed worthy of it. But when this notion is pressed so far as it is in a measure like the Civil Rights Act of 1984, it poses grave dangers to tolerance and diversity. One need only vary the context and most of the proponents of this argument in the civil rights field would be the first to denounce it.

Many universities now provide facilities for students involved in "gay rights" activities. Are federal taxpayers really endorsing these activities when the federal government provides funding to such universities for totally unrelated activities? If so, a very large proportion of taxpayers would probably want to deny any funding of any kind to these schools. And why should these taxpayers not try to press their own moral judgments in funding restrictions as far-reaching as those in the Civil Rights Act of 1984? Similarly, federal grants are not awarded to a wide range of secular programs at colleges, hospitals and social service agencies which are operated by or affiliated with particular churches. Many people feel very strongly about the principle that the taxpayers money should not be used to subsidize religion, in any form or to any extent. Following the reasoning behind the Civil Rights Act of 1984, should not these "strict separationists" insist that *all* funding to secular programs at religious institutions be terminated at once?

This may sound extreme; but what was the Civil Rights Act of 1984? Would its proponents really maintain that it left any school or hospital or local government with a free choice to avoid even the most intrusive or burdensome requirements in current civil rights regulations? Perhaps they would maintain this. They demand "no support for discrimination" with the kind of moralism that readily blinds them to coercion and manipulation.

Some practices are so harmful or abhorrent that we have banned them completely by direct legislative command. Race and sex discrimination in employment are directly prohibited in this way by Title VII of the Civil Rights Act of 1964. I think it surprising and regrettable that Congress has never enacted a comparably sweeping and direct prohibition on race discrimination in private education. But when it comes to sex discrimination or discrimination against the handicapped, I find it hard to imagine that we would ever want to impose on all schools or all institutions the requirements—particularly as interpreted by the implementing regulations—imposed on recipients of federal funding by Title IX and Section 504.

The Title IX regulations, for example, insist that schools may not remove pregnant teachers or students—whether married or not. They prohibit, as previously noted, any separation of the sexes in physical education classes or for that matter in almost any other classes. And they insist that guidance or vocational counselors must give precisely the same advice to women as to men. (The statute itself does exempt schools "controlled by a religious organization" from any requirement that "would not be consistent with the religious tenents of such organization." But this is no comfort for *independent* religious schools or secular schools that adhere to a more traditional moral outlook.)

I would strongly question whether these and many other requirements in the other regulations really ought to be imposed on anyone by the federal government. But I cannot conceive that we would want to make them universally binding. The saving grace in such intrusive requirements is that they are—or presumably were intended to be—voluntary: Those who strongly object may escape them by simply refusing to accept federal grants. This leaves some scope for conscience, for liberty, and diversity.

But what price must institutions pay to retain their independence? For most, in fact, the price is already more than they can afford to pay. The federal government began large-scale funding of higher education programs in the mid-1960s and within a few years all but a small fraction of American colleges and universities had become recipients of federal grants in one form or another. Hospitals, libraries and a wide array of other institutions also came to participate in federal funding programs on a larger and larger scale after the mid-1960s, as federal social spending burgeoned in the following decade. New statutes were enacted and new regulations elaborated in the mid-1970s, imposing more and more instrusive requirements on funding recipients in the name of "civil rights." But by then buildings had been erected, equipment purchased, employment commitments made—all in the expectation of continued federal fundings. By the mid-1970s, most institutions of higher education, like a great many institutions in other fields, could no longer maintain themselves without federal financial assistance. As a practical matter, they no longer had any real choice about submitting to federal civil rights requirements.

Before the Supreme Court's decision, one of the few exceptions was Grove City College, which for 20 years had steadfastly refused to accept federal assistance lest it fall under the scrutiny of federal regulators. It had never been accused of sex discrimination but has always been fiercely determined to maintain its independence.

The Supreme Court's decision in the *Grove City* case has now decreed a rather draconian punishment for this bid for independence: If the college does not promise to submit to federal

controls in its scholarship programs, the students at Grove City must be denied eligibility for federal student grants and loans. In other words, women who choose to attend an independent institution of this kind must forego all hope of federal assistance in their pursuit of education.

This already seems to me to go a long way toward transforming federal education aid from an engine of opportunity to an instrument of regimentation. For it is surely very difficult for independent schools to compete when the federal government offers direct financial inducements to students not to attend them. But a measure like the Civil Rights Act of 1984 would surely complete this transformation. With "recipient" defined in such an all encompassing manner, literally every school in America might be brought under federal control: Tuition dollars from a student who received Social Security survivors benefits might suffice to make the school a "recipient" of federal assistance ("extended . . . through another entity or person," as the act has it).

The same mentality that demands a hook to catch Grove City demands a bludgeon to beat those schools already heavily dependent on federal grants.

The Grove City colleges are, admittedly, exceptional. But, the same mentality that demands a hook to catch Grove City, demands a bludgeon to beat those schools already heavily dependent on federal grants. Thus, the Civil Rights Act of 1984, while dramatically extending the reach of existing statutes, also proposed a dramatic increase in their sanctions for non-compliance.

The current statutes specify that non-compliance can be penalized by the withdrawal of federal funding from the "*particular program or part thereof* in which . . . non-compliance has been . . . found." But the Civil Rights Act of 1984 would have eliminated this so-called "pinpoint provision" to allow the enforcing agency to withdraw all federal "assistance which supports . . . non-compliance"—which, on the theory underlying the measure, ought logically to include all federal funding of any kind reaching the institution.

The desirability of wielding federal financial power as a coercive bludgeon already seems to be taken for granted by many "civil rights" advocates. Thus, many feminist leaders have demanded that the federal government withhold financial grants from those states that have not ratified the Equal Rights Amendment. Several contenders for the Democratic presidential nomination in the last election promised to do just this if elected. Surely this betrays a scandalous disregard for constitutional process and free legislative deliberation. But these are, I fear, inevitable casualties when a moralistic fever takes hold of "civil rights" advocates.

At the core of our constitutional tradition is the principle that coercion must always be justified by law and law must always be sanctioned by representative legislature. The battle cry of the American Revolution—"No taxation without representation"—was simply a pithy application of this underlying principle. The principle has two broad rationales: It ensures that the coercive impulses of officials will be confined within well-established bounds and it ensures that the coercive constraints which are imposed will reflect the deliberate sense of the community. A measure like the Civil Rights Act of 1984 betrays contempt for both concerns.

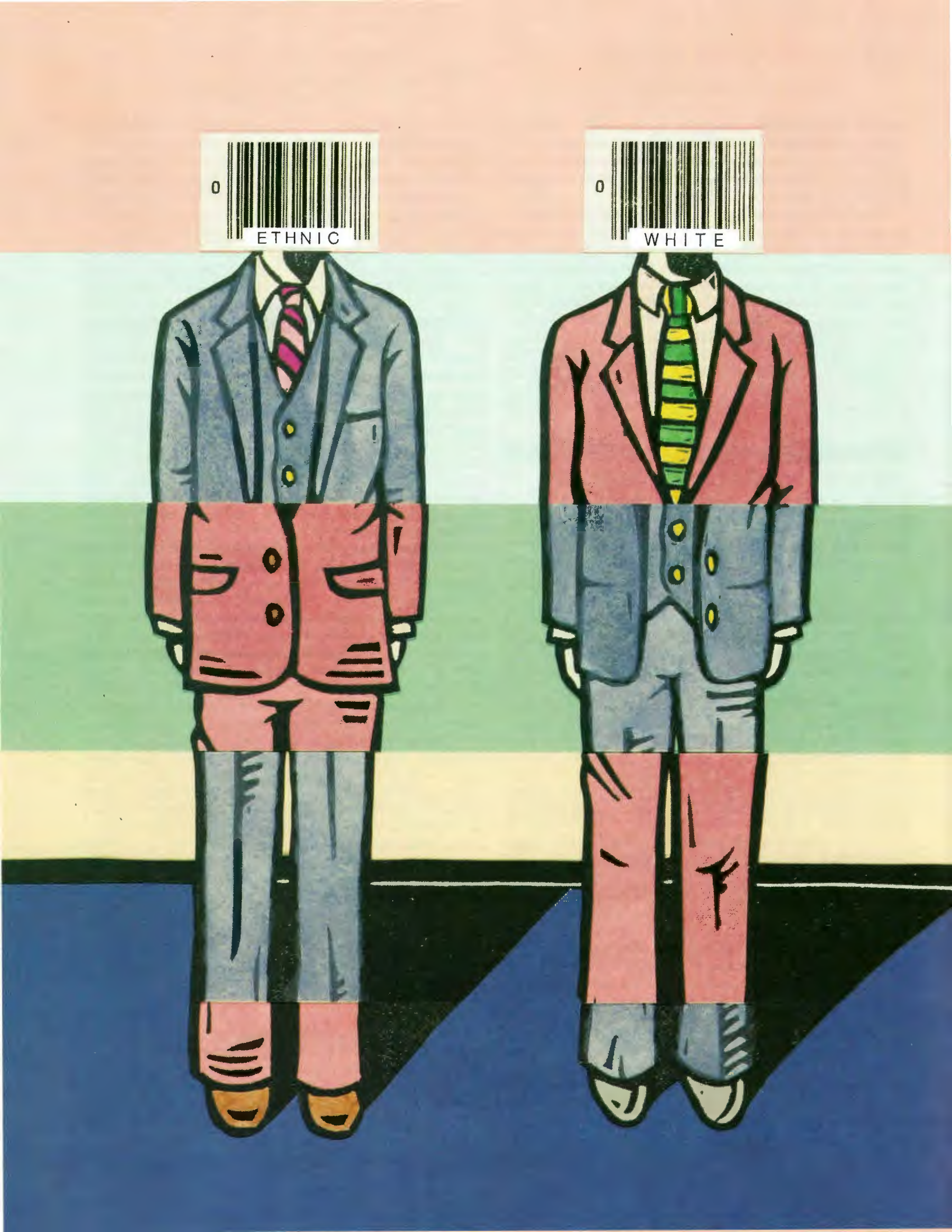
Congress originally enacted its prohibition on "discrimination" in federally funded programs in extremely general, open-ended terms. It has left it to imaginative regulation writers to fill the void. What is "discrimination on the basis of race?" Is it the application of any academic standard that has the unintended *effect* of excluding minorities more often than others? It is, when the bureaucrats in the Education Department choose to define it as such. What is "discrimination on the basis of sex?" Is it a class for high school girls on pre-natal health measures or advice to college women on the problems encountered by working mothers? It is, because the Department of Education says it is. When the Title IX regulations were first issued, the accompanying *Federal Register* notice explained that the regulations would not cover "sex stereotyping in school textbooks" as had earlier been proposed: It would not be illegal, then, to use first grade readers showing only male firemen on the big red fire engine—but only because the Department of Health, Education and Welfare had finally decided to relent in this instance.

Congress, in short, has already delegated dismayingly broad powers to the enforcers of civil rights laws. These powers, it seems to me, have all too often been wielded with arrogance and presumption. Yet a measure like the Civil Rights Act of 1984 would have greatly expanded official power in this area—to an extent that no one could really gauge. Can such reckless abandon really contribute to the protection of individual liberty? Can it really be reconciled with our traditional regard for the rule of law?

Yet the measure displays equal contempt for the second great concern animating our rule of law tradition. Is it at all conceivable that such an enactment reflects the deliberate sense of the community on what ought to be controlled and to what extent? Anyone who is inclined to believe this ought to consider how much support the Civil Rights Act of 1984 would have received if its implications had been spelled out directly in its text. Is it conceivable that such a law could be whipped through Congress without serious opposition or debate?

The issues at stake in this legislation are not so technical and arcane that congressmen must trust their resolutions to experts. Nor are the issues so marginal or inconsequential that they may be properly trusted to clerks and drones. No scientific formula can tell us when federal controls will still enhance individual opportunity and when they have reached so far that they begin to subvert it. No established accounting rule can tell us how taxpayer "support" should be measured or where such "support" provides sufficient grounds for government supervision and control.

Reasonable people may differ greatly on the proper answers to these questions and complete consensus may always elude us. But that is all the more reason why Congress must debate such issues candidly and soberly. It cannot assume that every measure with a "civil rights" label will actually serve the cause of civil rights. ¤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Rationalizations for REVERSE Discrimination

by Sidney Hook

The progress of civilization is marked, among other things, by the abolition of the blood feud. This is the practice of continued hostility over generations often marked by murder based on the views of collective, inherited guilt for a crime committed in the past. Although the blood feud often involves murder, those who engage in it deny that their killing is murder if murder is defined as the killing of the innocent. But since it is not difficult to establish the innocence of most victims of blood feuds, when that is established, other rationalizations are sought for the practice. Sometimes religious justifications are introduced. There is the biblical pronouncement "I shall visit the sins of the fathers upon the heads of the children unto the third and fourth generation." Yet no one can morally justify such a view of collective guilt over time. The law in all enlightened jurisdictions recognizes that guilt is individual.

There is, to be sure, a distinction between collective guilt and collective responsibility; one can accept the validity of the latter concept in some situations without accepting the former. In the West, however, the responsibility for the commission of immoral or illegal acts is generally recognized as individual, not collective. Since invidious discrimination against persons on the basis of race, color, sex or national origin is rightfully regarded as immoral today, no one can reasonably object to the punishment of individual persons guilty of such discrimination. The punishment may take many forms in order to redress the sufferings of those victimized. But it is clear that current applications of affirmative action, by going beyond the outlawing of present day discrimination and requiring preferential hiring practices on the basis of race and sex, constitute a form of punishment based on the concept of collective rather than individual guilt and responsibility. This is evidenced by the manifest injustices committed against white males who by no stretch of the imagination can be regarded as responsible for present or past practices of invidious discrimination. I myself am acquainted with half a dozen young white males who, after long years of intense preparation, have been prevented from achieving an academic career in the humanities, and are compelled to look elsewhere for work by the refusal of administrative officers in the institutions where they applied even to grant them interviews. This was an injustice not only to these highly qualified candidates but to all students—black and white—in the institutions which accepted less academically qualified applicants in place of those summarily rejected for reasons of race or sex.

There are some situations in which the claims of justice may be overridden on behalf of other values—e.g., safety and social stability. And there are some advocates of affirmative action based on reverse discrimination who do in fact acknowledge its injustice with respect to young white males and to student bodies

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Illustration by David Street

but insist that these are the necessary and unavoidable costs of beneficent social policy. Such judgments are based on empirical estimates of consequences. I doubt, however, whether anyone can establish that the results of quota systems, lax or discriminatory open admissions policies or reverse discrimination in hiring practices have contributed to the quality and discipline of the educational experience or that strict application of the merit principle would pose a threat to basic peace and social order. On the contrary, were the Supreme Court to reverse itself and mandate that the claims of the seniority system were subordinate to those of the affirmative action quota programs, the result would be chaos and conflict in many institutions and industries. Indeed, on the basis of *their* empirical experience, a majority of whites and blacks in some opinion surveys have time and again declared themselves opposed to reverse discrimination and quotas.

Militant advocates of discriminatory affirmative action programs insist that despite the objections raised, these programs are based on justice. They assert that even if minorities and women are given equal opportunities in the present, even if they are not subjected to any invidious discrimination, they still suffer collectively under the weight of past discrimination. They claim that despite enlightened treatment of minorities and women in the recent past, despite all encouragement and remedial programs, these victimized groups suffer from the cumulative effects of the previous discrimination against their forbearers, and that among these effects from the distant past are loss of confidence, self-contempt and lower expectations resulting from the absence of role models in many areas of life.

It is further argued that even if some women and members of minority groups have not themselves suffered directly from the environment in which they grew up, they have suffered debilitating consequences *indirectly* from the discrimination against their brothers and sisters of earlier times and that present day society should therefore make amends to them even if by so doing it does less than justice to some white males. The latter, it is asserted, even if not guilty themselves of having wronged minorities and women, have profited from the wrongs imposed and the opportunities denied to minorities and women by the past policies of the community.

This line of argument seems to me to be very far fetched and invalid. For one thing, the present descendants of *any* group that suffered severe discrimination in the past, could, by the same mode of argument, make similar claims for preferential treatment and hiring. Faced by such claims in any particular situation, we would have to determine the relative degree, intensity and duration of the injustices of the past with respect to each candidate. Anyone who knows the history of the United States knows of the persecutions to which the Jews, the Irish, the Mormons, the Chinese and Japanese were subjected, to mention only major groups. Yet none of these groups has asked for preferential treatment. All they have ever demanded is that one equitable standard be applied to all. Of course, our knowledge of American history also tells us that none of the aforementioned groups, even when periodically subjected to mayhem, suffered the evils and consequences of slavery. But surely there are *some* individuals from discriminated groups not recognized today as protected minorities for purposes of preferential treatment who have suffered as much as or more than *some* present day individual blacks who may be competing for the same position. It would be absurd to attempt to undertake an inquiry in each individual case to make comparative evaluations.

Secondly, if it is the community which is responsible for the injustice of the past to minorities and women, why should the burden of compensating such injustices now fall upon young white males alone? To allege that the white male who may himself be from a poor and underprivileged family has necessarily profited from the deprivations and psychic damage of present day descendents of the enslaved is a claim that borders on fantasy. Wisdom suggests that instead of correcting the injustices of yesterday by creating the new injustices of today, it is better to recognize a statute of limitations on present day accountability for man's inhumanity to man in the distant past.

Wisdom suggests that instead of correcting the injustices of yesterday by creating the new injustices of today, it is better to recognize a statute of limitations on accountability for man's inhumanity to man in the distant past.

In many areas, society has already long acknowledged the need for a statute of limitations on the obligations incurred by injustices of the past when the effect of attempting to counteract or undo long past wrongs is to create new and possibly greater wrongs. There is no doubt that property was unjustifiably seized or fraudulently acquired by early American settlers from the native population. But even if it were possible to establish the truth about these spoliations centuries ago, to contest or deny legitimate title to the current possessions of those who purchased them in good faith would generate social chaos. Similar considerations apply to the current recognition of squatters rights. Even in the area of criminal law, except for treason and capital crimes, statutes of limitation of varying durations are the rule. In various state jurisdictions, contractual obligations lapse after a certain period of time.

There is one particular response that is often made to the proposal that we recognize a statute of limitations on accountability for injustices of the distant past and conscientiously and honestly abide in the present and future by the merit principle. This response invokes a deceptive analogy: "If you handicap a runner at the outset of the race," say the advocates of preferential hiring, "by burdening him with heavy chains, you cannot make it a fair race by removing the chains from his limbs when the race has been half run. He will still suffer unfairly from the effects of that handicap."

Of course, this is perfectly true for the individual runner in this particular race and possibly in subsequent races in which he engages. He is certainly entitled to special consideration and treatment to overcome his handicap. This is nothing but a simple

application of the principle of justice on which there is universal agreement, viz., that any person who has been unfairly discriminated against in the past is entitled to compensatory treatment. But surely this does not entitle the descendants of the originally handicapped person who are running against others in subsequent races to a privilege of handicap over them. Who knows but that the ancestors of the others in the race were also handicapped unjustly in past races.

There is also something very nebulous about postulating the harm done to individuals by social practices that undermine their self-confidence. The same conditions that depress and discourage one person may inspire another to revolt against these conditions, or to rise to a challenge. Further, when we have to make a choice between specific candidates, how do we balance the possible lack of confidence of a minority because of past discrimination against members of his group and the danger of a crisis of self-confidence that often arises when one profits from discrimination and subsequently encounters the judgment of one's professional peers that the post or award was not earned by merit but by special favor?

To give weight to possible injustices from the past, and their alleged continuing debilitating effect on individuals in the present, without tracing the specific proximate causes of discriminatory actions, encourages fantastic speculations of a conflicting kind. Because some blacks have said that they prefer their present status in the United States to that of the present African descendants of blacks whose ancestors were not sold by their chiefs or kidnapped by Arab raiders into slavery, should the relatively superior status of American blacks, as compared to what would have been their lot if their ancestors had remained in Africa, be entered into the equation when calculating what society owes them? This would be absurd. Here we are dealing with hypothetical possibilities that defy not only quantification but significant comparison.

Another questionable assumption by those who speculate about the might-have-beens of the past is that we can retroactively determine what would have been the vocational interests of members of discriminated-against minorities if they had not experienced any prejudice against them. We therefore can reasonably assess—so it is argued—the advantages thereby gained by contemporary white males in particular fields from the cumulative frustrations of the lives of the minorities in the past and make it clear what the former owe the latter. This presupposes, among other things, that in the absence of persecution and discrimination, all groups will manifest interest in various vocational fields roughly in the same proportions. It overlooks the variety of cultural, religious and historical factors that may operate in determining the vocational orientations of different groups. (It is, moreover, an elementary fallacy to infer merely from the statistical inequalities of representation, without evidence of individual discrimination, an overall practice of past or present discrimination. No informed person or one with a sense of humor would infer from the fact that 92 percent of the captains of tug boats in New York harbor and adjoining waters are Swedish, and from the fact that not a single Jew is among them, that the industry is anti-Semitic or, for that matter, anti-black.)

One must acknowledge that the experiences of the blacks who endured slavery and the Jim Crow laws of the post-Reconstruction era were worse than the humiliations and handicaps of any other minority group in this country except the American Indians. But one cannot convert this acknowledgement into a sufficient criterion for public policy in making positions available to the descendants of blacks regardless of their qualifications. After all, there are black immigrants to the United States who were never slaves or were slaves for a short time before being liberated. And how shall we assess the effects of oppression on persons of mixed blood? Implicit in the very essence of a social policy of preferential treatment based on race is the assumption that members of victimized minorities in the past were a compact, passive mass, incapable of differentiated responses and lacking all initiative and responsibility for making choices, however limited, that would in some way have altered their lot. Stripped of its moralistic rhetoric, the reverse discrimination approach represents a condescending and disparaging attitude towards an entire race, an attitude which many blacks quite properly resent.

We should also question the assumption that minorities were seriously handicapped because they were deprived of role models, especially in the educational system at the level of college and university life. The fact that there were once no role models for aspiring black athletes in some professional sports, particularly major league baseball, a field from which American blacks were unfairly and shamelessly excluded, did not prevent blacks from acquiring the skills of star players and—once Jackie Robinson broke the color bar—from achieving outstanding careers in all major sports. The best players were recruited for baseball, football and basketball teams, regardless of the percentage of black and white players represented on the team in relation to the distribution of blacks and whites in the general population. In this field we do not hear of setting up numerical goals and definite time periods within which these goals are to be achieved.

There is no reason to doubt the potential ability of blacks, other minorities and women when given the opportunities in an atmosphere free of invidious discrimination to reach achievement comparable to those of the general population. It requires, of course, the sacrifice or postponement of immediate gratifications in order to achieve success. Preferential treatment, quota systems, reverse discrimination of any variety, are likely in actual effect to harm the prospects of achievement for blacks by wrongly suggesting to them that there is a shortcut to success.

The black experience in professional sports may in fact be taken as a paradigm case of how to combat invidious discrimination without a demand for reverse discrimination. If the bars of racial discrimination are removed in *all* fields and remedial programs are introduced to supplement the educational activities of those interested in learning, who is to predict what the outcome will be? One thing, however, is certain. Just as skill and success in athletics are not simply gifts bestowed at birth but are the result of harnessing native talents to a hard and sustained discipline, so too will meaningful achievement in any field of endeavor depend upon that same sort of effort and commitment.⌑

The Supreme Court and Affirmative Action:

An Exercise in Judicial Restraint

by Eric Schnapper

Over a decade has passed since the Supreme Court first agreed to hear a case challenging the constitutionality of affirmative action. In the years since that first case, *DeFunis* v. *Odegaard,* a number of other Supreme Court cases have raised the same issue. In each instance the parties and a swarm of supporters, although divided on the merits, have shared a conviction that the legality of affirmative action was finally to be resolved. For both sides the issue has seemed a practically and constitutionally simple one; a definitive and precise decision was urged to be required by both legal precedent and the national interest. Supporters of affirmative action argued that it was always constitutional, while their adversaries insisted with equal certainty that any consideration of race, however benign, was impermissible. The press has dutifully accorded each case landmark status, repeatedly suggesting that the Burger Court was about to bring to a close the political and legal debates about race-conscious practices, and that for affirmative action the day of constitutional reckoning was finally at hand.

Yet ten years after *DeFunis,* and despite decisions in *Bakke* and several other similarly, albeit briefly, acclaimed cases, that day of reckoning seems further away than ever. Neither *Bakke* nor its progeny have provided the final definitive victory sought by proponents and opponents of affirmative action. Decisions which seemed at first to lend support to one side or the other are now largely forgotten; who can still recall, for example, the standards articulated in Justice Powell's once apparently critical opinion in *Bakke?* In fact, over the last four years the Court has repeatedly refused to review cases involving voluntary affirmative action. It reconfirmed that practice in October 1984 when it refused to consider an appeal challenging a set-aside program for minority contractors in Miami, and again in January 1985, in refusing to consider an appeal attacking a New York affirmative action hiring program. Since 1980 the Supreme Court has limited its actions in this area to defining when a federal court can compel an unwilling employer or other entity to engage in race-conscious action.

The Court's present policy of refusing to review cases involving voluntary affirmative action plans reflects an appreciation, one far greater than is ordinarily found in public debates on the subject, of the complexities of, and thus the multiplex differences among, the contents and contexts of the countless race-conscious practices utilized across the nation. An awareness of those difficulties was first aired in *DeFunis* by Justice Douglas. Although a majority of the court voted to dismiss that case as moot, Douglas wrote a dissenting opinion arguing that the record before the Supreme Court was insufficient to decide the case. While Douglas' proposed standard was less than clear, his suggestion that the case be remanded for a new trial was inconsistent, not only with the relief sought by the plaintiff and defendant, but also with their respective theories that race-conscious affirmative action was either always or never unconstitutional.

United Jewish Organizations of Williamsburgh v. *Carey* marked the high watermark of this *per se* approach. In sustaining deliberately created legislative districts with a 65 percent minority population, a majority of the Court articulated constitutional standards which made unnecessary any detailed inquiry into the nature of such affirmative action. Justices White, Stevens and Rehnquist expressed the view that race-conscious action was invalid only if intended as a slur or stigma, while Justices Stewart and Powell concluded that affirmative action was not unconstitutional unless intended to harm whites. Only Justice Brennan and the Chief Justice, concurring and dissenting respectively, sug-

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gested that the particular details of a benign race-conscious districting plan might be critical to its constitutionality.

In *Bakke,* four members of the Court were prepared to adopt a *per se* rule, holding that any benign consideration of race was forbidden by Title VI of the 1964 Civil Rights Act. Ironically, three of the four had previously voted in *Williamsburgh* for a *per se* constitutional rule tolerating such considerations. Four other members of the Court, applying a constitutional standard to the University of California at Davis affirmative action plan challenged in *Bakke,* concluded that such plans need only be based on an important articulated purpose and avoid stigmatizing any particular group. This criterion required some analysis of the goals and content of an affirmative action plan, but not a very penetrating one. Justice Powell cast the decisive vote against the Davis plan, holding that affirmative action in admissions was permissible in some but not all cases, and expressing a preference for the particular race-conscious admissions plan utilized by Harvard College. Many of Justice Powell's objections to the purported reasons for the Davis plan—e.g., that there was no prior finding of discrimination—suggested that other institutions needed not different plans but just better lawyers. Since the peculiar alignment of votes in *Bakke* has not recurred, the particular differences between the Davis and Harvard plans is no longer of importance, but the concern with the specific details of and reasons for a defendant's practice expressed by Justice Powell was to dominate subsequent opinions.

The next year *Steelworkers* v. *Weber* presented a challenge under Title VII to a job training program which required that half of the participants be black. The majority opinion in *Weber* was signed by the four justices who in *Bakke* had upheld race-conscious practices under Title VI, and by Justice Stewart, who had in *Bakke* taken the opposite position. The *Weber* majority expressly disclaimed any *per se* rule, concluding merely that Title VII did not "condemn all private, voluntary, race-conscious affirmative plans." The majority opinion contained only a brief discussion of why the particular plan at issue was lawful, referring to half a dozen different aspects of that plan without explaining which mattered how much or why. The Court expressly acknowledged that its opinion did not "define in detail the line of demarcation between permissible and impermissible affirmative action plans." But the majority's assumption that the line was a detailed one signaled the fact that *Weber* marked the emergence of a working majority that spurned the *per se* rules advanced in previous opinions.

Fullilove v. *Klutznick* presented a growing although somewhat different majority favoring a detailed analysis of the substance and purposes of a challenged affirmative action plan. Chief Justice Burger, who had favored *per se* rules in *Bakke* and *Weber,* voted in *Fullilove* to uphold a ten percent federal set-aside program based on the particular origins and nature of that plan; Justices White and Powell joined in his opinion. Justices Marshall, Brennan and Blackmun, while adhering to their views in *Bakke,* concurred in an opinion that attached some importance to the details of the disputed program. Justice Stevens' dissent expressly disavowed any rigid rule, arguing instead only that the particular plan in question was unconstitutional. Only Justices Stewart and Rehnquist, in a dissenting opinion, urged the adoption of a *per se* constitutional rule. While *Fullilove* marked the ascendency of a case-by-case approach to affirmative action cases, it also signaled the difficulties inherent in that type of analysis. No majority could be marshalled in *Fullilove* for any particular set of constitutional standards; there were three different opinions upholding the set-aside plan. Worse yet, the Chief Justice's opinion, which presumably represented the critical middle of the Court, contained an analysis of the details of the set-aside program which was ten times the length of the similar analysis in *Weber,* and yet still did not succeed in articulating any simple or clear set of standards for the resolution of future cases.

These difficulties came to a head in *Minnick* v. *California Department of Corrections,* the last case of voluntary affirmative action in which the Supreme Court has granted review. In *Minnick,* the trial judge, writing prior to *Bakke,* had assumed that all affirmative action plans presented the same simple constitutional issue; holding that race-conscious action was unconstitutional *per se,* the trial court made few findings as to the specifics or purposes of the employment practices under challenge, and the record was ambiguous as to both. The Supreme Court, unable to ascertain what had occurred or why, voted to dismiss the case without deciding it. Only Justices Rehnquist and Stewart, who continued to advocate application of a *per se* rule, thought it possible to resolve *Minnick* without knowing what the affirmative action plan was or for what purpose it had been adopted.

Issues raised and questions asked by the Supreme Court in affirmative action cases are not the stuff of a rousing public debate.

The present unwillingness of the Court to entertain challenges to voluntary affirmative action was tacitly but deliberately demonstrated by its recent decision in *Firefighters* v. *Stotts.* The narrow issue presented and decided in *Stotts* was whether a particular consent decree signed by the city of Memphis in 1980 required that layoffs in the city fire department be made on a racial basis. The Justice Department in *Stotts* had urged the Court to decide the case on a far broader basis, by holding that Title VII and the Constitution forbid the city from agreeing in a consent decree to any such layoff policy. But the majority and concurring opinions in *Stotts,* while indicating that there were limits on the authority of a federal court to order an unwilling employer to engage in race-conscious practices, expressed no reservations about the authority of the city to undertake or agree to affirmative action in layoffs, hiring, or other areas.

The issues that have divided the seven members of the Court favoring a case-by-case appraisal of affirmative action plans have been less substantive than procedural and evidentiary. In *Bakke,* Justice Powell acknowledged that the Davis admission plan could have been justified as a measure to correct past discrimination, but insisted that the record did not provide a suffcient basis for that defense. The four justices who would have sustained the Davis plan argued that such a basis was provided by state and federal court findings of racial discrimination in the California public schools. Similarly, in *Williamsburgh* the Chief Justice agreed that race-conscious redistricting might be proper where there was racial bloc voting, but insisted that "the record in this case is devoid of any evidence that such bloc voting has taken . . . place . . . ." In *Fullilove,* Justice Stevens offered a variant of this argument, conceding both that there had been discrimination against minority contractors and that such discrimination rendered constitutional certain affirmative actions, but objecting that some of the beneficiaries of the minority set-aside provision were not necessarily the victims of that discrimination. The six justices who voted to uphold the set-aside program, noting that there were some 382,000 minority-owned businesses in the nation, supported Congress's implicit conclusion that it would not be feasible to determine which of these firms had in the past been subject to some form of discrimination.

But while the Court has clearly rejected the more extreme views articulated in *Bakke* and *Fullilove* by Justices Powell and Stevens respectively, the issues which they raised are relevant to every case challenging an affirmative action plan, and the majority and plurality opinions handed down so far leave the evidentiary and procedural questions involved largely unresolved. How much past discrimination, of what kind, and by whom, must be shown in order to justify affirmative action to correct that discrimination? Is it necessary or sufficient or both that the agency which adopted the affirmative action plan have made findings regarding past discrimination? If race-conscious action is justified, as in the Detroit police case, on the ground of operational necessity, what types of evidence and/or prior findings are required? How precisely must the beneficiaries of a program meet the purpose adduced to justify that program, and what weight is to be attached to the judgment of the responsible agency about the feasibility of greater precision?

These problems may well seem to be rather esoteric legal questions, far removed from the grand and apparently simple controversy regarding whether or not affirmative action is wise or moral, and these issues certainly are not the stuff of a rousing public debate. Yet on the resolution of those questions, were they to be resolved, would certainly turn the constitutionality of every affirmative action program in the land. One can readily imagine evidentiary standards so stringent that no conceivable program could be upheld; conversely, standards sufficiently lax as to sanction all existing practices are equally conceivable. The case law from *DeFunis* to *Fullilove* did not finally resolve the constitutionality of benign race-conscious action, but instead raised a series of procedural and evidentiary issues on which would turn the practices of countless federal, state and legal agencies.

Yet today, some five years after *Fullilove,* those issues remain unresolved, and with each denial of certiorari in a relevant case it becomes increasingly apparent that the Supreme Court has no present intention of pursuing those questions. The refusal of the Court to address issues of such practical and constitutional importance would be surprising under any circumstances, and is all the more so on the part of a Court increasingly renowned for its inclination to create and resolve legal disputes never raised by

the parties or considered by the lower courts. The unwillingness of the Supreme Court to delve further into the legality of voluntary affirmative action reflects an understanding of the intractability of the issues that have become central to that subject, and embodies the sort of judicial restraint about which liberals often express considerable reservations.

The unwillingness of the Supreme Court to delve further into the legality of voluntary affirmative action... embodies the sort of judicial restraint about which liberals often express considerable reservations.

It is apparent that in most cases in which an affirmative action plan might be challenged, the quality and quantity of evidence offered to defend that plan will often depend largely on the skills and motives of the defense counsel. In a nation with a pervasive history of discrimination against minorities and women, most institutions have been guilty of such practices within the last generation, most women and minorities will have suffered from such abuses, and many selection or appointment criteria will have an adverse effect on previously excluded groups. Where a trial record contains no such defense, that is more likely to indicate the existence of bad lawyering than of a bad program. In *DeFunis* and *Bakke* Justices Douglas and Powell went out of their way to comment on the failure of counsel to make obvious arguments or present relevant evidence of this kind. In *Minnick,* the defendant's original counsel presented little evidence of prior discrimination or operational necessity; after trial, newly retained counsel offered overwhelming proof of both. The Supreme Court was well aware of the decisive importance of the change in attorneys in *Minnick,* since on appeal the plaintiff was still trying to exclude the post-trial evidence.

The federal courts might naturally be reluctant to entertain any category of cases in which the validity of government programs would turn so much on the conduct of government counsel, and so little on the actual merits of the programs. But the problem presented by these cases is considerably worse. Undeniably the best defense for any such program would be an allegation and proof that the defendant had in the past engaged in invidious discrimination against the beneficiaries of the program. But such a claim and evidence would amount to a confession of judgment in any future lawsuits by the victims of that earlier discrimination, and would present an irresistible invitation for such litigation. But few sensible defendants would attempt to justify a challenged program in that manner. The evolution of the case-by-case approach of affirmative action plans, as the Supreme Court is doubtless well aware, has thus led to a situation in which the defendants simply cannot be relied on to present the relevant defenses, the real parties in interest are not before the courts, and the case or controversy requirements of Article III may well not be met.

Even though the process of resolving these issues seems far removed from the traditional work and expertise of the judiciary, the Supreme Court might be inclined to undertake that task if there were some reasonable possibility that deciding one, two or some limited number of appeals would finally conclude the constitutionality of affirmative action or stem the tide of new litigation or appeals. But since the constitutionality of an affirmative action plan depends primarily on the quality of the defense offered at trial, not on the nature of the plan, no Supreme Court decision or series of decisions could provide public officials with any reliable method of framing a plan that would not be subject to challenge. More seriously from the Court's point of view, the unresolved evidentiary and procedural issues are the types of questions for which the courts simply have no final answers. The uniqueness of the defense for each affirmative action plan, compounded by the complex divisions within the Court regarding the probative value of various types of evidence, will make each case as novel, challenging and divisive as those which came before. By grappling indecisively with these issues, the Court will often merely compound the justifiable confusion of the lower courts and stir up yet another wave of litigation. The Supreme Court's reluctance to do so is entirely understandable.

If this is an accurate account of why the Supreme Court has declined since 1980 to grant review of any cases challenging voluntary affirmative action plans, then there is no realistic possibility that the Court is going to decide once and for all the constitutionality of affirmative action, quotas, goals and timetables or any other specific practice. The debate about these practices seems destined to be limited to public and political forums, with little or no further guidance from the judiciary.

If the present administration does not approve of affirmative action, it will have to persuade Congress to repeal the substantial number of federal statutes which mandate such action. If conservative political leaders oppose the promotion plan established for the Detroit police by Mayor Coleman Young, they will have to seek any desired change by supporting in the next mayoral election in that city a candidate who shares their opposition.

Over the last three years the Department of Justice has repeatedly pressed the Supreme Court to pursue an agenda of "New Right" activism, seeking to overturn established precedent and attempting to obtain decisions on issues not adequately framed, raised or considered by the lower courts. This campaign for radical change has been conducted, somewhat ironically, in the name of judicial restraint; it would be entirely fitting if, at least in the case of affirmative action, the Justice Department were to get precisely what it has been asking for. ⌗

INTEGRATING the Sciences

by Sue Berryman

American women and certain minorities are more likely than men, whites and Asian Americans to leave school without the mathematical or scientific training required to obtain the increasing number of technical, higher wage jobs in the economy. Since differential representation in higher paying jobs accounts for a substantial share of the income differences among subgroups, the underrepresentation of women and minorities in the scientific and engineering labor force has appropriately become a public issue.

Parties to the public debate generally appreciate the connection between educational investments in quantitatively-based fields[1] and job opportunities in these fields. On the basis of this understanding they often presume that it is the university itself that can achieve fuller subgroup representation in the quantitative disciplines, either through enhanced recruitment efforts, affirmative action programs, or other academic policy initiatives aimed at attracting larger numbers of women and minorities. However, increasing evidence suggests that this strategy will affect subgroup imbalances only minimally. This evidence pertains to the processes by which subgroup differences in mathematical educational investments occur, the reasons that they occur, and the subgroup variations in these reasons. It highlights the complexity of the subgroup imbalance problem, and we cannot effectively address the underrepresentation of women and minorities in the scientific and engineering labor force without taking it into account.

Toward that objective, this article focuses on three questions. What is the representation of different subgroups among quantitatively-based degrees? By what process do the subgroup differences that we observe emerge? What factors produce these differences, and how do they differ by subgroup?

As of 1978–79, relative to their shares of the age-relevant population, blacks, Hispanics, and American Indians were underrepresented at the associate, B.A., M.A., and Ph.D. degree levels in three ways:

- among the total degrees awarded at each level—both quantitative and non-quantitative;
- among the quantitative degrees, awarded at each level, controlling for the subgroup's share of total degrees; and
- among the quantitative degrees awarded at each level, without controlling for the subgroup's share of total degrees.

For example, relative to a randomly selected white from the appropriate age group, a randomly selected black in 1978–79 was only 50 percent as likely to receive a B.A. degree in any field; only 60 percent as likely to receive the B.A. degree in a quantitative field; and only 30 percent as likely to receive a quantitatively-based B.A. degree. On the other hand, whites and Asian Americans were overrepresented on all three grounds at all degree levels.

When we look at professional degrees, blacks, Hispanics, and American Indians were underrepresented among the total professional degrees awarded. However, their shares of the biologically- or physically-based professional degrees[2] were about equal to their shares of these degrees in total.

Blacks, Hispanics and American Indians are more underrepresented relative to Asian Americans than to whites. For example,

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1. The quantitative disciplines are defined to include the biological sciences, physical sciences, computer sciences, mathematics and engineering.

2. The biologically- and physically-based professional degrees are defined to include medicine, dentistry, optometry, osteopathy, podiatry, veterinary medicine and pharmacy.

Illustrations by Salvador Bru

in 1978–79, relative to a randomly selected black from the appropriate age group:

- a randomly selected white was 3.5 times as likely to have received a quantitatively-based B.A., over five times as likely to have received a quantitatively-based M.A., and seven times as likely to have received a quantitatively-based Ph.D.;
- a randomly selected Asian American was six times as likely to have received a quantitatively-based B.A., 13 times as likely to have received a quantitatively-based M.A., and 17 times as likely to have received a quantitatively-based Ph.D.

In 1979–80, women got about half of the total degrees—quantitative and non-quantitative—awarded at each degree level except at the Ph.D. and professional degree levels. A randomly selected male was over twice as likely to have received a Ph.D. or a professional degree as a randomly selected female of the age-relevant group.

Given that a woman received a B.A., M.A., or Ph.D. in any field, she was no more than half as likely to obtain that degree in a quantitative field as a man who received a degree at the same level. Thus, women's underrepresentation among quantitative B.A. and M.A. degrees reflects their field choice only; their underrepresentation among quantitative Ph.D. degrees, the joint effects of their underrepresentation at the Ph.D. level itself and their field choice at the Ph.D. level. The end result for 1979–80 was that a male randomly selected from the age-relevant population was twice as likely as a randomly selected female to have received a quantitatively-based B.A. or biologically- or physically-based professional degree, and three times as likely to have received a quantitatively-based M.A. or Ph.D.

The policy implications of current representational imbalances depend partly on representational trends. Minorities and women may be changing their representation among quantitative degrees at rates which, projected forward, would gain them proportionate representation in this decade.

Current enrollment data for the underrepresented minority subgroups do not suggest an increase in their future shares of B.A. or graduate degrees greater than increases in their shares of the age-relevant population. The trends for women, however, are strong and positive. In the last decade, women earned an increasing percent of the degrees conferred at every level—associate, B.A., M.A., Ph.D. and professional. They are still underrepresented among Ph.D. and professional degrees, but if their rates of increase continue, by 1990 the percentage of Ph.D. degrees and professional degrees earned by women should approximately equal their representation in the age-relevant population. Women also show increases in their shares of quantitative degrees at each degree level, but growth in these shares is much smaller than that for total degrees.

At any given degree level, a group's share of quantitative degrees reflects persistence in the educational pipeline and field choice. The term "pipeline" refers to the sequence of educational levels and degrees, beginning with grade 1 and concluding with a professional or doctoral degree. Individuals can leave the pipeline at any point, although losses concentrate at degree completion points. "Field choice" refers to the substantive focus of the individual's education, such as an English or a physics major in college.

Understanding how imbalances emerge requires determining the relative contribution of pipeline losses and field choices to each subgroup's representational outcome. All subgroups lose members as they progress through the educational pipeline; the issue is whether, at particular points in the process, a subgroup loses more or fewer members than all other groups.

Underrepresentation of blacks, Hispanics, American Indians and women at the end of the pipeline—among quantitative Ph.D. degrees—is partly attributable to their underrepresentation at the Ph.D. level itself. Interventions that aid retention in the educational process should therefore increase the representation of these groups among quantitative Ph.D.'s. However, the groups have different dropout patterns, indicating dissimilar needs.

For blacks, the losses are dispersed across the pipeline. For Hispanics, they are concentrated at high school graduation and college entry. For American Indians, disproportionately high losses occur at high school graduation, college entry, and the B.A. degree level. However, this subgroup does not show disproportionately high losses after the B.A. degree. For women, the losses are concentrated at the end of the pipeline: at the Ph.D. level.

Field choices also contribute to blacks' underrepresentation among quantitative B.A., M.A. and Ph.D. degrees. Blacks lose "field" ground, just as they lose degree attainment ground, at several points in the process. At the B.A. level, the percent choosing quantitative fields is 60 percent of the national average; at the M.A. level, 40 percent; and at the Ph.D. level, 33 percent.

For American Indians, higher pipeline losses, not field choices, cause their underrepresentation among quantitative B.A. and M.A. degrees. At the Ph.D. level, both factors account for their underrepresentation.

Although higher persistence during the educational process partly explains the overrepresentation of Asian Americans among quantitative B.A., M.A. and Ph.D. degrees, their field choices are the driving force. Relative to whites, they choose

quantitative fields at the rate of 2-to-1 at the B.A. level, 3-to-1 at the M.A. level, and 2-to-1 at the Ph.D. level. For example, in 1980, 60 percent of the Asian American Ph.D. graduates earned their degrees in quantitative fields, relative to 30 percent of white Ph.D. graduates.

The field choice factor for women is startling. The increased percentage of women in quantitative fields at each degree level is *entirely attributable to their greater representation at the degree level itself, not to changes in their field choices.* Unless women begin to change their field preferences, further increases in their shares of quantitative degrees will depend entirely on an increased percent of women at each degree level. It is not clear that we can expect major percentage increases at the lower degree levels.

Quantitative graduates are ultimately derived from a scientific/mathematical talent pool that first appears in elementary school. In the early grades, membership in this talent pool is defined by mathematical or scientific career interests. As cohorts move through school, it is defined increasingly by higher mathematical achievements.

To increase a subgroup's representation among quantitative degrees, policymakers can either try to increase the group's share of the initial mathematical/scientific talent pool or try to reduce attrition along the educational pipeline. In either case, knowing *when* to take action is critical.

The scientific/mathematical talent pool emerges strongly before grade 9, appears to reach its maximum size prior to grade 9, and subsequently declines in size through graduate school. Although the talent pool seems to reach its maximum size before high school, migration *into* the pool continues to occur during grades 9 through 12. However, *after high school migration is almost entirely out of, not into, the pool.* In other words, the probability that an individual not in the pool at the end of high school will enter it during college or graduation is close to zero. This irreversibility coincides with the conclusion of the high school mathematical sequence required for heavily quantitative college majors. Those who obtain quantitative doctorates or have quantitatively-oriented careers a decade after high school come overwhelmingly from the group that had scientific and mathematical career interests and high mathematical achievement scores in grade 12.

These results have two major policy implications. First, strategies to increase the size of the initial scientific/mathematical pool of minorities and women should be targeted *before* and *during high school.* Second, strategies to decrease attrition from the pool can be targeted at any point in the process, since attrition from the pipeline and from quantitative fields occurs at all points.

The probability that an individual not in the mathematical/scientific talent pool at the end of high school will enter it during college is close to zero.

As we have just seen, completion of the high school advanced mathematics sequence is a necessary—although not sufficient—condition for post-secondary study in quantitative fields and employment in quantitative occupations. Thus, understanding the underrepresentation of different subgroups requires an understanding of the factors which predict completion of this sequence.

Available research tells us more about women and blacks than about the other subgroups and more about choices made in grade 12 and college than before grade 10 or after college. However, even our sometimes fragmentary knowledge clearly indicates that different factors underlie the underrepresentation of different subgroups.

For women the pattern is relatively clear. Gender differences in grade 12 mathematics achievement are primarily attributable to differences in boys' and girls' participation in elective mathematics. Since grade 9 boys and girls do not differ significantly in average mathematical achievement, previous achievement does not explain subsequent gender differences in the decision to pursue elective mathematics courses and in resulting mathematical achievements.

The individual's confidence in his or her mathematics ability predicts participation in the high school mathematics sequence. A recent study finds gender differences in mathematics confidence for children with the same objective mathematics ability, boys being more confident than girls. Parents believe that daughters have to work harder than sons to perform well at mathematics, despite the similarity of sons' and daughters' past achievements in mathematics.

Career and educational goals also strongly affect participation in high school elective mathematics courses. The more useful the individual expects mathematics to be, especially in achieving educational and career goals, the more high school mathematics he or she takes.

Since career goals seem to determine educational investments, gender differences in occupational expectations become key to understanding gender differences in high school mathematics participation. An accumulating literature indicates that girls' occupational expectations depend on how they expect to allocate their time between the labor force and the home during

adulthood. Girls who expect more labor force participation have occupational goals that approximate those of their male counterparts. They are more apt to chose traditionally male occupations and ones that require systematic educational investments, such as the elective high school mathematics sequence.

As long as girls expect to assume the major child-rearing responsibilities of their children, they will be less likely than boys to choose quantitative occupations.

The gender differences in career preferences and mathematical achievements at the conclusion of high school unfold in predictable ways to produce post-high school gender differences in educational and occupational attainments. Mathematics ability and career interests strongly predict men's and women's choices of a science major in college and persistence in a science major. High mathematical achievement at grade 12 predicts realization of grade 12 quantitative career plans by age 29, and even those who do not plan a quantitative career at grade 12 but subsequently switch into a quantitative career have high mathematical achievement at grade 12.

In sum, the key for women seems to be their career choices, their investment in the junior and senior high school mathematics and science sequence being dependent on these choices. The career choices themselves seem to reflect how women resolve the conflict between achievement in the labor force and family responsibilities. Studies show that male single parents make occupational and labor force adaptations to parenting that look like the occupational and labor force plans of girls who expect dual family and work responsibilities. As long as girls expect to assume the major child-rearing responsibilities of their children, they will be less likely than boys to choose quantitative occupations that require major educational and labor force commitments.

While boys and girls enter high school with approximately equal average mathematical achievements, racial and ethnic groups differ in their average mathematical achievement at grade 9. These differences strongly influence subsequent participation in the elective high school mathematics sequence required for post-secondary training in the quantitative disciplines. The racial and ethnic differences in mathematical achievements that we observe at grade 9, in fact, appear at grade 1. Blacks, Mexican Americans and Puerto Ricans start school with mean scores on verbal and nonverbal tests of achievement below the national white average. At grade 1, Native Americans score below the national white average on verbal tests and at the national average on nonverbal measures; Asian American children score at the national average on verbal measures and above the national average on nonverbal measures.

Two momentous factors contribute to the relationship between ethnicity and mathematical performance at each educational stage: *culture* and *social class*. Both affect family behavior patterns which in turn powerfully affect children's school performances. Culture and social class interact to produce unique patterns that cannot be predicted by knowing either cultural or social class effects alone.

A study of verbal, reasoning, numeric and spatial achievements among Puerto Rican, Jewish, Chinese and black children at grade 1 shows clear racial and ethnic differences in the patterns of these abilities, and subsequent studies suggest that ethnic differences in ability patterns at grade 1 persist through elementary and secondary school. More important, although social class has important effects on the *level* of abilities of each group, it does not alter the *basic pattern* of abilities associated with each group.

At the same time, the study also shows that social class matters. The scores of middle-class children from the various ethnic groups resemble each other to a greater extent than the scores of the lower-class children from the different groups. In other words, middle-class Chinese, Jewish, black and Puerto Rican children are more like each other in ability scores than lower-class children in each of these groups. Social class has a particularly profound effect on the performance level of black children, lower-class status depressing performance more for these children than for children from the lower classes of other ethnic groups.

Recent research indicates that very young babies develop cognitively far more than had been realized and that the socioeconomic status of the babies' families has profound effects on this early development. As Lewis Lipsitt, director of Brown University's Child Study Center notes, "[T]he socioeconomic index is as powerful a predictor of later intellectual prowess as any variable we've got, but it doesn't operate in a vacuum. It is not simply a matter of economic hardship or nutritional deficiency. It is a representation of the way people live and relate toward each other,and the way they behave toward babies."

Studies of families support this view. Social class seems to be a proxy for *family characteristics* that affect school achievement. For example, an American study showed that characteristics such as parents' achievement pressures on the child, language models in the home, indoor and outdoor activity levels of the family, intellectuality in the home—as represented by the nature and quality of toys, games and hobbies available to the child—and work habits in the family together correlated at 0.80 with chil-

dren's achievement scores. The importance of these or similar variables has been confirmed for samples of English, Australian and Canadian children. These same studies also show that, like social class, culture also seems to be a proxy for family characteristics that affect school achievement. They find that *different* ethnic groups at *similar* socio-ethnic levels differ in their patterns of those family characteristics that predict children's school performance, especially children's verbal and number performances.

Minority underrepresentation would be a simpler problem if it arose primarily out of discriminatory practices in universities and the work place. It does not.

Overall, the literature seems to indicate that, independent of cultural differences among groups, social class predisposes a family to certain patterns that affect the child's school performance. At the same time, some variation in these patterns occurs among families of similar social class but different ethnicities. This variation is greater among lower-class families of different ethnic origins than among their middle-class counterparts. Social class tends to be negatively related to recency of immigration; and recency of immigration, to mainstream acculturation. Thus, middle social class probably marks not only a socio-economic position, but also reduced cultural variations in family behaviors.

In fact, analyses of 1980 American data show that being second-generation college not only increases, but also *equalizes,* choice of quantitative majors across white, black, American Indian, Chicano and Puerto Rican college freshman. An analysis of 1972 data shows that higher family socio-economic status increases blacks' choices of and persistence in a science major, the effect operating by increasing high school mathematical achievement and the mother's educational aspirations for the student. *When this analysis equated whites and blacks on the intervening variables, blacks had a higher probability of choosing a science major than whites.*

In sum, this set of findings implies that changes in family behaviors, frequently associated with changes in socio-economic status, will change the representation of non-Asian American minority groups in quantitative fields. However, the Asian American case argues that different ethnic groups produce different achievement predispositions among their children, *independent of social class.*

While our knowledge is far from complete, it is increasingly clear that minority and female underrepresentation among quantitative degrees is tightly fused to some of the most deep-seated questions that a society can pose. For example, what starts as a fairly simple question about women's representation among quantitative degrees ends as a series of profound questions about family responsibilities, child care and the economic independence of women.

Society and biology dictate the conflicts that women face, requiring that major educational, career and child-rearing investments occur in approximately the same two decades of the life cycle. However, as women's average life expectancy increases to 78 years and the average retirement age for male and female workers edges toward the seventh decade of life, even women who devote several years primarily to child rearing have several productive decades after their children leave home. Social arrangements, if not biological clocks, are not inflexible. It is not clear that we have to cram the most important commitments that individuals make—post-secondary education, career investments and child rearing—into the same two decades of life.

Minority underrepresentation would be a simpler problem if it arose primarily out of discriminatory practices in universities and the work place. It does not, and it is difficult to devise strategies appropriate to the different stages of the process by which minority representational outcomes occur, especially when that process starts in earliest childhood and is tangled with much larger questions of class and culture.

Each of us confronts a social reality. It derives from our place in the life cycle, our native talents, and the resources and horizons that institutions—such as family, school, church, ethnic community, or political parties—allocate to us. We tend to experience this reality as a definition of our choices. Political and religious groups, for example, are currently fighting for the hearts and minds of American women. If traditional values gain influence, women will perceive a more traditional set of choices. Their educational attainments and representation in quantitative fields and jobs should subsequently decline relative to what they would have been in the absence of this value change.

At the same time, in a free society realities are in fact broadly defined, and permit a wide range of choices. The individual and groups such as families are the ultimate source of action. As such, people have a choice—they can accept externally defined realities or harness their talents and opportunities to create alternatives. ¤

Educational STRATEGIES That Work

by Herbert J. Walberg

Research on effective education shows that the rate of learning among minority children can be greatly increased. Recent evaluation of experimental programs and field trials of both old and new educational methods show that some methods yield dramatic effects and give cause for optimism about the prospects of raising the scholastic achievement of minority youth. Other approaches appear to have little positive impact on the generally slow rate of learning in minority schools, but even such negative results can be put to good use if our enlarged understanding of what does *not* work finally enables us to recognize and discard the unproven views and failed solutions of the past. For only then will it be possible to focus our resources on putting the most workable and effective programs into the schools.

We can begin that process by abandoning three assumptions which, though clearly contradicted by empirical observation, have greatly influenced the goals and direction of minority group education in this country. These assumptions are that blacks and other minority children cannot learn because they are untalented or genetically inferior; that they can only learn by being in classes with white children; and that foreign-born students will benefit from continuous instruction in their non-English native language.

The defeatist hereditarian and racist view that minority children cannot learn to the level of middle-class standards is refuted by our growing knowledge of what determines differences in children's abilities and achievements. These differences largely derive from wide ranges in the quantity and quality of educationally stimulating experiences given to children in school and in the home environment where they spend most of their time. As discussed below, there is much evidence to show that minority children can and do learn at the same rate as other children when given appropriate opportunities and stimulation by educators and parents. This is not to say that intelligence counts for little in learning or that talent and giftedness make no difference. Of course they count, as parents can attest from observing obvious differences among their own children. Nonetheless, it is true that scholastic accomplishments are strongly determined by practice and by the character of the academic and extramural environments.

A second unproven assumption about minority group educa-

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tion is that blacks, Hispanics and others cannot learn by themselves and must therefore sit in classes with white children in order to improve their learning environment and bolster their self-esteem. In support of this racially demeaning theory, the courts continue to mandate an end to de facto segregation through involuntary busing and district consolidations. Recently, however, precedent-setting court decisions in Benton Harbor, Michigan, St. Louis, Missouri, and Norfolk, Virginia have rejected involuntary transportation and district consolidation as at best ineffective and, at worse, damaging to the goals of education.

According to a number of rigorous studies, desegregation does not appear to be a significant factor promoting learning among black children and, indeed, seems to hinder black achievement nearly as often as it helps. In one of the most recent and ambitious efforts to synthesize the research on the educational impact of desegregation, the National Institute of Education (the research arm of the U.S. Department of Education) commissioned seven scholars to examine this question. Six of the seven concluded that the effects of desegregation are small, inconsistent or inconclusive. (See "Thinking Realistically About Integration," by Max Green, *New Perspectives,* Fall, 1984.) In contrast to specific educational factors which almost invariably yield positive results—discussed in some detail below—only about 62 percent of the comparisons of desegregated and non-desegregated black children favored the desegregated groups. Furthermore, the average effect of desegregation on learning was not different from zero in the sense of statistical or educational significance.

Another major non-solution to the problems of minority schools is bilingual education. The usual assumptions of bilingual programs are that children must be taught their native non-English languages to preserve their self-esteem and ethnic culture and that children benefit educationally when they are taught subjects in their native language before or while they learn English. This approach represents a sharp break with the experience of earlier generations of immigrant groups who placed great value on public education as the means for their children to learn English. These parents correctly perceived that the inability to speak the language of the United States was a severe handicap not only to economic advancement but also to participation in the civic and cultural life of mainstream American society. Immigrants who wished to preserve an ethnic language and cultural heritage traditionally did so not through the public schools but by providing their children with extramural activities in private and religious organizations.

The laws of learning, and particularly language learning, show that practice makes perfect. Those who practice English intensively and extensively in and out of school learn better. (Lack of opportunity, need or practice can often create problems for American students trying to learn foreign languages. Those who do master other languages are likely to have lived and gone to school in foreign countries.) Time is the essential ingredient; but unfortunately, it is in short supply. Assuming 180 six hour school days for 12 years, children spend only about 13 percent of their waking hours in school during the first 18 years of life. If a significant fraction of that time is taken up by lessons conducted in the non-English native language, children are clearly being denied a full opportunity to master English. This makes them fall further and further behind their English speaking peers the longer they remain in school—a rather dubious way of promoting ethnic self-esteem.

While we now know that certain approaches to the problem of minority education do not work, we also know a good deal about other methods and techniques which yield positive effects. What, then, are the factors which shape the learning experience, and how do we employ our human and material resources to maximize the educational opportunities for minority youth?

A vast amount of educational and psychological research over the past few decades shows that nine factors are strongly and consistently associated with learning. These productivity factors, indicated by essay examinations and standardized achievement tests in major school subjects, include the student's age, ability and motivation; the amount and quality of education (including homework); minimal exposure to leisure-time television; and the psychological environments of the student's classroom, home, and peer group outside school.

Desegregation does not appear to be a significant factor promoting learning.

Nearly 3,000 investigations of the nine factors have been compiled and synthesized by researchers supported by the National Science Foundation, and other funding agencies. In addition, the nine factors were probed for their significance in promoting learning by three large sets of statistical data on elementary and high school students: "The National Assessment of Educational Progess," "High School and Beyond," and "The International Study of Educational Achievement."

Syntheses of the various studies suggest that these nine basic factors are the chief determinants of cognitive, affective and behavioral learning and that many aspects of these factors can be altered or influenced by educators and families to increase the student's mastery of school subjects and to encourage an ongoing motivation to learn.

The average impact on learning of each of the nine factors can be quantified through the use of "grade equivalents." Many standardized achievement tests are callibrated so that a student making normal progress gains a one year grade equivalent in achievement during one calendar year; a typical sixth grader tested in June, for example, would gain one grade equivalent by June of the following year.

What would happen if various factors were systematically targeted for remediation? Based on the aforementioned 3,000 studies of learning in schools, current estimates indicate that raising ability would be associated with an approximate seven month gain in addition to the normal 12 months and that raising motivation would lead to an additional three month gain. The other factors—including the amount and quality of instruction and the psychological aspects of the educative environment—would each raise learning (the grade equivalent) about five additional months. These figures are only rough estimates: some children could make considerably greater progress, while others might do less well.

The studies also showed that the factors appear to substitute, compensate or trade off for one another at diminishing rates of return. Immense quantities of instructional time, for example, may be required if motivation, instructional quality or positive family influences are minimal. A comprehensive strategy to upgrade the academic achievements of minority youth must therefore focus not only on the essential classroom factors but also on the extramural components and, most importantly, on the home environment.

For minority children—as for all children—intellectual ability is strongly influenced first by the formative experiences of early childhood and later by the small amount of time spent in school during the school-age years. (Accounting for absences, lateness, inattentiveness, disruptions, non-instructional activities, and lessons that are too easy, too hard, or otherwise unsuitable, children may actually spend only *3* to *6 percent* of their waking hours effectively learning in school.) While it is no easy task for educators to alter intellectual ability, there is much evidence to show that excellent instruction tailored to the student's individual needs can overcome prior environmental handicaps from which some minority students suffer and greatly expand the opportunities for learning by making more efficient use of school time. Syntheses of the extensive research in minority education suggest a number of specific initiatives schools can take to achieve significant improvements in the rate of learning among minority students.

Effective teaching techniques "individualize" instruction, that is, fitting education to the child rather than the other way around. While most children can benefit from more personalized instructional methods, this is apt to be particularly true for students on either end of the ability spectrum. There are minority and majority children on both ends and it is essential that these students be treated as individuals rather than merely as members of a racial, ethnic or socio-economic group. Lower achievers should be identified through testing and given appropriate lessons and learning materials to help remedy their deficiencies. For the higher achievers—white and minority students with outstanding test scores—acceleration programs and homogeneous grouping can provide advanced, challenging activities suited to their level of ability. Programs developed at Johns Hopkins University, for example, have enabled groups of elementary school students in Maryland to excel at college level mathematics.

Studies of minority group education have consistently shown that more individual attention to students results in greater learning. One example of personalized instruction is the Keller Plan, named after its inventor Fred Keller, a student of the famous behavioral psychologist, B. F. Skinner. The Keller Plan increases learning efficiency by allowing high school and college students to procede at their own pace. Students are given diagnostic tests to determine what they know and what they need to know to master a given subject. Lectures, discussions and recitations are omitted. With personalized individual help from teachers and course assistants, students complete work books, exercises, laboratory tasks and other appropriate assignments. They are allowed to work at their own pace and according to their own needs, and can double their ordinary rates of learning.

Individual instruction almost invariably increases positive reinforcement, which, in a wide variety of circumstances has been successful in raising levels of minority group learning. For example, students in the Keller Plan receive more positive reinforcement in the form of correctly answering questions because they never move on to new material until they have mastered the old.

Another type of program which has had positive effects on the educational productivity of minority children employs a technique known as "cooperative team learning." In these programs, teachers typically form several six-member student teams within the class. These teams are assigned clearly specified learning goals and given the procedures and materials to accomplish them. The teacher delegates considerable autonomy to the team members, who cooperate with one another in competition with other teams in class. The teacher can choose to base the grade of team members on the average performance of their team so that it becomes in each member's interest to enhance the performance of his or her teammates. Cooperative team learning programs provide an interesting change from the usual lectures and recitations, and help develop valuable social skills. They can increase learning rates by 50 to 75 percent.

In contrast to the progress attributable to superior instructional methods, comparable gains do not emerge from other, sometimes widely-touted and often rather costly, approaches to the problems of minority education. A major synthesis of twenty-eight studies on the dependence of learning on administrative, financial and sociological "inputs" to schooling concluded that of the thirty-three inputs surveyed, only one—socio-economic status—has a statistically significant association with learning. Reduced class size for example, is a large determinant of educational costs but appears to have little positive impact on learning except at class sizes below five, which are tantamount to tutoring groups. (The largest synthesis of learning effects ever conducted showed smaller classes benefited learning more than larger classes did in only 60 percent of 691 comparisons. This percentage comes close to what would be expected by chance alone and is far less consistent than the effects of such things as amount of time allocated for learning, quality teaching techniques, and graded homework.)

Rather than cutting class size in half, which would roughly double their expenditures, schools would do better to adopt more educationally productive and cost-effective strategies centering on the greater use of modern proven instructional methods by master teachers assisted by aides and tutors. In a similar vein, the results reported for computer-assisted instruction have been relatively unimpressive and do not yet justify the current trend among school boards of assigning an increasingly high priority in budgetary outlays to the purchase of costly computer systems. (It should be added, however, that the prognosis for more effective computer-based instruction in the future is very positive. Over the next two decades we can expect to see drill and practice or "page-turning" programs being replaced by psychologically sophisticated systems better able to adapt to student interests and abilities.)

There is, in sum, much that can be done in the schools to increase the rate of learning of minority students provided that

educators choose methods of proven worth rather than those which promise much and produce little. But what about the 87 percent of the student's waking hours spent outside school—time controlled not by teachers but by parents?

Although extramural factors are consistent correlates of academic learning, they can directly supplement as well as indirectly influence the essential classroom factors. In either case, the effect of out-of-school factors—and especially the home environment—is extensive and powerful.

The psychological environment of the home, moreover, is not necessarily constrained by race. In *The Declining Significance of Race,* sociologist William Julius Wilson maintains that the controlling social factor influencing learning (and other life outcomes) is not race but social class. In other words, it is far more critical to have a middle-class doctor or lawyer as a parent than one of a particular race.

Neither race nor even the social status of the parents is as critical to learning as educational support and stimulation in the home.

Educational psychologists, for the most part, would agree but would go a step further: Neither race nor even the social status of the parents is as critical to learning as educational support and stimulation in the home and the amount of out-of-school study including homework. Parents, for example, who ask their children what they are learning in school each day have supportive effects. Parents who ask their children's teachers to assign and grade homework have a positive influence on their own children and possibly on other children as well.

What might be called "the curriculum of the home" is, in fact, about twice as predictive of academic achievement as is family socio-economic status. This curriculum refers to informed parent-child conversations about everyday events, encouragement and discussion of leisure reading, monitoring and joint analysis of television viewing and peer activities, and expressions of affection and interest regarding the child's academic progress and development as a person.

A key component of the home curriculum and an obvious but neglected factor in achievement is homework—the amount, quality and usefulness of which is determined by educators, parents and students. The 15 empirical studies of homework conducted since 1900 indicate that the assignment and grading of work done at home produces an effect on achievement that is three times as large as family socio-economic status (as measured by parent income, education and occupation).

Unfortunately, current data reveal that during the school year, average American high school students spend only four to five hours per week on homework and *28 hours per week watching television.* (Compare this, for example, to Japanese high school students who engage in up to *40* hours of extramural tutoring and study per week in addition to regular school on Saturdays and only brief summer vacations. Although further research is necessary, the Japanese may compress high school and college into four years. By this measure, the Japanese high school diploma may be equivalent to the American baccalaureate degree, considering the rigor and comprehensiveness of the Japanese high school curriculum.) This negative influence on student achievement can be reduced, however, by parental intervention and, when necessary, by systematic school-initiated programs to improve the academic conditions in the home.

Cooperative efforts between teachers and minority group parents have an outstanding record of success in boosting student achievement by increasing the academic effectiveness of time spent at home. A recent seven month study in a suburb of Chicago showed large effects on the learning of black children resulting from extensive teacher-parent contacts by telephone, and from home and school visits. During the study, for example, first graders whose parents had no contacts with their teachers gained only the equivalent of an estimated 3.3 months in achievement, about half the normal rate; but those with ten contacts gained 8.5 months, which is greater than the normal seven grade-equivalent months gain in achievement in seven calendar months.

Over the past decade, twenty-nine studies involving cooperative efforts between parents and educators show that 91 percent of the comparisons favored children in such programs over non-participants. Although the average effect was twice that of socio-economic status, some programs had effects ten times as large. Few of the programs lasted more than a semester, but the potential for programs sustained over the years of schooling are great since they appear to benefit older as well as younger students.

Operation Higher Achievement, led by then District 9 Superintendent Albert Briggs at the Grant School in Chicago, illustrates what can be done in inner-city public schools with well organized and sustained partnership efforts. A joint school staff-parent steering committee at Grant initially formulated seven program goals such as "increasing parents' awareness of the reading process" and "improving parent-school-community relations." Seven ten-member staff-parent committees were appointed and met periodically during the summer and school year to plan and guide the accomplishment of each goal. The goals were based in part on a survey of parents which indicated that they desired closer school-parent cooperation, stricter school discipline, and more educational activities conducted in the community for their children.

The committees wrote staff-parent-child contracts to be followed during the school year. The superintendent, principal, and teachers signed contracts on educational services to be provided to each child. The parents pledged such things as providing a quiet, well-lit place for study each day; informing themselves about and encouraging the child's progress; and cooperating with teachers on matters of school work, discipline and attendance. The children also signed improvement pledges. Small business merchants in the community raised funds to provide book exchange fairs and other school activities. Evaluation of this program, along with other research, shows that minority-group children can progress at middle-class rates of achievement when educators and parents work cooperatively on joint goals. ¤

An Interview with Bayard Rustin

To chronicle the career of Bayard Rustin—civil rights leader, trade unionist, author, essayist and human rights activist—is, in essence, to trace the path of the movement for civil rights in this country. From the founding of the Congress of Racial Equality (CORE) in 1941 and the first, perilous "freedom rides" in 1947, through the orchestration of the Montgomery, Alabama bus boycott and the 1963 March on Washington, Rustin has championed the cause of equality with unparalleled idealism and pragmatic consistency.

Born near Philadelphia in 1910, Rustin attended Cheyney State College and the City College of New York, earning his tuition by singing with blues greats Josh White and Leadbelly. His first involvement in the civil rights movement came in 1941, when he served as race relations secretary for the Fellowship of Reconciliation and as youth organizer for A. Philip Randolph's planned march on Washington, considered by many the first major organized effort of the civil rights movement.

In 1955, Rustin went to Alabama at the request of Dr. Martin Luther King, Jr., first to help in the Montgomery bus boycott and later to draw up the first organizational plans for the Southern Christian Leadership Conference. Rustin spent the next seven years as Dr. King's special assistant. In 1963, he organized the March on Washington—perhaps the single most important event preceding the passage of the Civil Rights Act of 1964. Since then he has served as chairman of the A. Philip Randolph Institute in New York City and is currently chairman of the executive committee of the Leadership Conference on Civil Rights.

Rustin was interviewed by New Perspectives *executive editor Max Green and assistant managing editor David A. Schwarz in New York City on September 23 and by Max Green on October 18, 1984.*

NEW PERSPECTIVES: *In your opinion, has there been a civil rights revolution in the United States? If so, when did that revolution take place and what did it accomplish?*
BAYARD RUSTIN: The civil rights revolution took place between 1954 and 1968 and accomplished three things. It gave blacks the *right* to go to schools of their choice, the *right* to use public accomodations and removed barriers to their *right* to vote. It was, perhaps, the most revolutionary period of any country in the world with regard to the achievement of justice for any minority group. In fact, in most of the world during that period, conditions worsened for many minorities. Racism was increasing in England. In the newly independent African countries, tribal hostilities were increasing. Ours was a most unique situation.

NP: *Is there anything left on the civil rights agenda that needs to be accomplished? I'm not talking about economic and social progress. All of us recognize we still need more of that. Are there still civil rights goals that the nation has yet to achieve?*
RUSTIN: Let me put it this way. If you go into Harlem tomorrow and turn everyone there white, all their needs will not be met. What we have to do now is engage in a struggle to eliminate poverty. That is basically a class, not a racial, struggle.

NP: *How do you account for someone like Ben Hooks saying that "affirmative action," which is a civil rights measure, "is to blacks*

as Israel is to Jews." Is he mistaken in believing that affirmative action is as important as that statement seems to imply?
RUSTIN: Affirmative action cannot improve the lot of those who are most in need. It does not help the white unemployed nor the black unemployables. That's where the problem is most acute. You cannot have affirmative action where you don't have work or the skills needed for work.

NP: *But don't advocates of affirmative action maintain that its purpose is to correct the racial and ethnic variances in unemployment rates that exist whether or not you have full employment?*
RUSTIN: In a multi-cultural society you cannot create jobs or train only blacks. And you are not going to get jobs for blacks who have no skills unless we find some way to maintain labor intensive industry in this country, work which requires only muscle power.

NP: *Are you saying that without appropriate economic policies you will have a growing, permanent group of unemployed—white or black?*
RUSTIN: Exactly.

NP: *You've been critical of some of the employment programs of the 1960s that failed to hold people accountable for their behavior. Don't we encourage irresponsibility by creating well-paying unskilled jobs for, let us say, teenagers who drop out of school? Shouldn't we hold people accountable by saying that unless you stay in high school through graduation your opportunities will be very limited?*
RUSTIN: Yes. But on the other hand, unless you have some jobs that they know are out there if they do finish high school, the tendency is to drop out. The beauty of RTP (a labor union-sponsored recruitment and training program that placed young minorities in construction jobs) was that if people got their high school equivalency certification and passed the apprenticeship test there was a job waiting for them. When we set up RTP in order to recruit and train young blacks for construction jobs, we said "Get your high school equivalency degree, stick with us and maybe there will be a job for you"— they did not come to us. The possibility of work was simply not incentive enough. But when George Meany and A. Philip Randolph worked out an agreement committing the trade unions to help, we were able to say "Come in, get your equivalency, and there will be a job waiting for you if you pass the apprenticeship test." The same chaps who would not come in earlier then came in and passed the test.

NP: *Let me ask you about the underclass. An increasingly high percentage of unwed teenage girls are having children out of wedlock. Why? Is it, as some people argue, that they do it to get their own apartment and welfare payments?*
RUSTIN: That's part of it. Also, welfare case workers tell some of these girls that, if you have to live alone you better have another baby because if you have two, you will get enough to live on—with one, you won't. It also has to do with what I call the "black man's black man" problem. We concentrate on the "black man's white man" problem so much that we sometimes forget the other. In the sixties, when we attempted to go into the black community and talk about contraceptives, talk about family planning, it was the black radicals who jumped on us and denounced us for advocating genocide.

NP: *Here we are in 1984 when educational opportunities are greater than they ever have been before—remedial programs and alternative high schools, inexpensive community colleges offering courses day and night, a multitude of four-year colleges and more special admissions programs than ever before. With such educational and economic opportunities available, why do so many young black males in the ghetto drop out of school and forego opportunities for personal advancement?*
RUSTIN: The fact is that they do not perceive themselves as foregoing opportunity. Ghetto kids see blacks making it in the NBA and so they spend enormous amounts of time on the court dribbling the ball. They see blacks making it in boxing so they hang out all day long in gyms. They see blacks making it in music and therefore everyone of them has a box at his ear—and so they sing and try to sound like the popular singers, hoping they'll be able to sing professionally one day. But those who make it in such activities are but a tiny fraction of one percent of the black population.

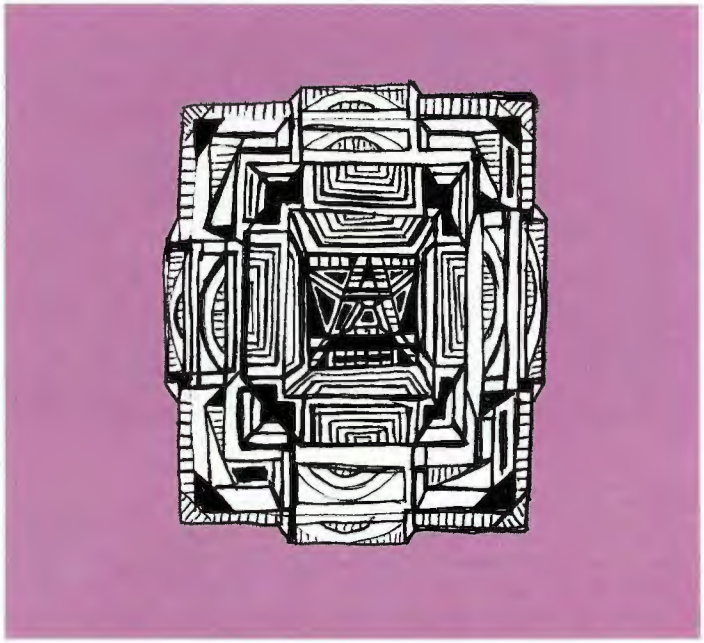
NP: *The fact is that there are opportunities throughout society at the present time due largely to the success of the civil rights revolution.*
RUSTIN: A lot of blacks are taking advantage of those opportunities. If you go to Harvard, Yale, Princeton or Brown, you'll find great numbers of blacks compared to the past.

NP: *Don't blacks in Harlem, for example, see opportunity mirrored in the successes of the Korean immigrants who have opened a whole string of food markets and small shops in New York City?*
RUSTIN: No. The American poor are too acculturated. Whether it's whites in Appalachia or blacks in Harlem, they are simply too acculturated to do stoop work—they will not do it. You and I can argue that they ought to do it, but they won't. And that's a fact. And it is stupid to try and develop social policy on a psychology

Doodles by Bayard Rustin

which is not viable.

NP: *Is running a fruit and vegetable stand stoop labor?*
RUSTIN: It is to them and I'll tell you why. The store owners have to work all the time. They have no social activity whatever. There are two Korean fruit stands on corners near my house. No matter how early I have to get up to catch a plane or a train, they are already there. That's the first thing. Second, they still have an extended family, which blacks do not. All the people who work there are related. Thirdly, they have not yet been destroyed by American television. I tell you, these things are very important. If you are told repeatedly that you are nobody if you don't have the junk advertised on American television, and if you don't have a job which makes that immediately possible, then what you are going to do is put your wits to work at dope, prostitution and other things which are going to give you the opportunity to get those things. I make no excuses for people, but you must not expect people who have lived in the United States to act like people who have just come here. And I assure you that the children of these Korean immigrants will never do what their parents are doing now.



NP: *You mentioned earlier the break-up of the extended black family. As you know, when the Moynihan Report came out it was very controversial because he reported that a disturbingly high percentage of black youth were being raised by women without husbands. Since his report the percentage has doubled. What's been happening?*
RUSTIN: First, the migrations to the North destroyed the extended family. In addition, poverty itself creates certain psychological and cultural characteristics. Loss of hope in the future, for example, can lead to a demand for immediate gratification. Everything is immediate gratification. Sex is immediate gratification. Eating, in many ghetto homes, is not people sitting down to dinner at seven o'clock. Food is put into the refrigerator. Whoever gets there first eats it. By the time the last person comes home at seven o'clock, knowing there is not going to be anything left in the icebox, he stops at the shop and picks up something. Sheets are bought, for example, not at a white sale, the way the middle class, black or white, would buy them—they are bought when the last sheet is torn. And you then send the kid around the corner to buy the sheet locally and you pay more for it. Immediate gratification—you cannot eliminate the psychology of immediate gratification by preaching and urging people to be better. It is an integral part of poverty.

NP: *Isn't it a fact that preaching by previous immigrant groups, such as the Jews, did have an effect on behavior of the ones who arrived later?*
RUSTIN: The Urban League was established by middle-class blacks and whites for the very purpose of teaching blacks coming out of the South, with the extended family destroyed, who had no notion of what living in a city was like. It didn't work as compared to other poor immigrants. The man who had a cart had no tax responsibility then. So, he could save something and help send his kids to college. Second, the Jews and other immigrants were able to sell not only their own muscle power but the muscle power of their children. And despite the fact that they were mistreated throughout history, the Jew was never without the Book. It gave him an historical link to his tradition which blacks were robbed of—and you cannot imagine how important that was. The Jew was never totally divided the way we were, between house slaves and field slaves, spying on each other. We were purposely divided by whites according to our shade of color and finally we adopted that classification ourselves. I think it is impossible to preach people into social patterns. These patterns emerge from the way goods are produced, services are provided, etc., etc.

Now, I lived for some years in a rooming house in Harlem. And I learned to do everything opposite to what my mother had told me. At home I learned that when you finished taking a bath you scrubbed the tub. If you saw a roach, you put down roach powder. When I lived in that Harlem rooming house, I could not possibly follow my mother's advice, for example, of washing the tub after I bathed. Because only a fool is going to wash a tub twice. It was always dirty when I got there, and so I left it dirty. And I washed it before I took a bath. The woman I hated most was the woman that lived above me. Every Saturday she sprayed for roaches, and sent them down to me. I became a totally different kind of human being because of the situation in which I was living.

NP: *Are you an economic determinist?*
RUSTIN: No. The black males' difficulties in finding work does affect family structure. But it is also true that the ability to work is determined to an enormous extent by the family structure. So the problem must be attacked from both directions. But they're not merely products of their environment. I know a family in Harlem with three children—a son who is in prison, a daughter who is a prostitute, and a son about to graduate from Harvard University. Now these children come from the same family and the same economic background. There must be something else involved.

NP: *Would you agree with those who argue that the black community does have some responsibility for helping young blacks prepare themselves for opportunities?*
RUSTIN: Absolutely. That's why I look so positively on the fact that within the past two years the Urban League and the NAACP have called upon blacks to face some of the family problems. If one wants to argue that illegitimacy and desertion is the consequence of discrimination and segregation, I would say yes, perhaps so. But to blame everything on these things just creates a vicious cycle. It is also true that the Japanese on the West Coast, who were greatly discriminated against, have not had the same degree of pathology in their family life as blacks.

NP: *What can these black organizations do to change the psychology of kids from these deprived backgrounds?*
RUSTIN: Well, blacks argue that one of the reasons that kids don't study is because there are too many people and too much noise in their homes. So we ought to open up churches after school and encourage talented people who know math and who are able to speak English properly, to help these kids. We should use the institutions in the community to educate young blacks about birth control. These are educational jobs which governments have not done and that therefore blacks must now do themselves.

NP: *You mentioned earlier that many young blacks practiced basketball, hour after hour, though there is the slimmest chance that they will become basketball stars. Is there something that has to be done to educate young blacks and others in ghettos to have more realistic expectations for their lives?*
RUSTIN: One of the problems we face is that the role models from the middle class have deserted the inner city. The young blacks do not see these doctors, lawyers or teachers in their neighborhood. The black community must present to black youth these hard working black role models as examples and as inspirations.

NP: *The recent* New Perspectives *article argued that too few middle-class blacks are willing to point to themselves as examples of what one can do if one applies oneself. Instead, they have a stake in saying that, despite their progress, the persistence of the black lower-class indicates that this is a racist society, thereby doing a lot of harm to the lower-class blacks who start believing that rhetoric.*

RUSTIN: I think we have a political problem too. And that is that many of the so-called black leaders feel that the only way in which any progress can be made is by emphasizing the ills of the black community and by indicating that things are getting worse. I was recently criticized by a number of black leaders for being critical in my review of a book called *The Myth of Black Progress.* Certainly there has been progress. Now some blacks attack me by saying "even if there has been progress, why do you say it, because if we are to get help our strategy is to point out how bad things are."

Years ago I wrote an article for the *Wall Street Journal* pointing out the progress blacks were making. An important black leader, now dead, called me over to his office and castigated me. He said, "How am I going to get money out of these white people for my agency if you are writing articles in the *Journal* about how good things are and how much progress we are making. I get my money from these people on the basis of telling them how bad things are." Now if you follow that strategy you are really damaging black people.

NP: *Why hasn't the black middle-class given sufficient help to the black underclass. What accounts for this unwillingness to help?*
RUSTIN: You cannot expect the first generation of a people who are making it economically to be charitable toward anybody. It is in the second and third generations of economic security that people begin to be charitable. In another 25 years blacks who are making it will begin to take some responsibility toward the others.

NP: *Do you think that those who have argued that the problems of the underclass must be solved by way of government programs have ultimately discouraged the underclass from trying to make it on their own?*
RUSTIN: Government must take some responsibility. I agree, though, that the so-called "war on poverty" was in some ways damaging to some blacks. I can give you some illustrations.

NP: *Would you?*
RUSTIN: In the late sixties there was one plan whereby young blacks got paid for work that actually did not exist. They ended up having more money than the head of their house—usually their mother—would have left after paying the rent, etc. So they felt they were independent and wouldn't listen to their mothers, who had lost control. The money should have belonged to the household—but it didn't.

Then there were many examples of "make work" where people were taught not to be responsible. The guys were wearing hats at work, cursing supervisors and getting away with worse.

That kind of government program crippled people. Maimonides, the great Jewish philosopher, speaks of four different ways in which charity could be given. And he concludes that the highest form of charity is the charity which removes the further need for charity. Unfortunately, some government programs had precisely the opposite effect.

NP: *How so?*
RUSTIN: If you can get money without producing goods or being of any service you are nobody and you know you are a nobody. Often, one can define a human being with a single phrase—Who was Picasso? A painter. Mozart? A composer. Mr. Randolph? A trade union leader. Who is Mrs. Jones if she is on welfare?

NP: *Mrs. Jones on welfare?*
RUSTIN: Exactly. And she knows it.

NP: *You're saying that people who think they are getting something for nothing lose out in the end?*
RUSTIN: When New York policemen took the sergeant's test, blacks and Hispanics did not do as well as whites. Because blacks and Hispanics had helped devise the test, they had to agree that the test was fair. But they then claimed that the results were discriminatory. This approach says to blacks and Hispanics that you don't necessarily have to qualify to be included. Furthermore, if you have enough political pressure in New York City to get away with that, then what's going to happen 20 years from now in California when it is predominately Hispanic? And then the Hispanics will say "we're very sorry but not enough Hispanics passed the test" so blacks and whites who passed have to go in another line now and wait to get called. Or what's going to happen when women, who far outnumber men in our society, begin to play this game. There is such a desperate and understandable desire to make it somehow. And I want to tell you, I don't think the black community is the culprit.

NP: *Who is?*
RUSTIN: Guilt-ridden white liberals.

NP: *Why the rise in neo-nationalist politics in the black community?*
RUSTIN: Whenever the pie appears to be getting smaller or whenever blacks are led to believe that economically things are in decline, there is a tendency to substitute some form of nationalist rhetoric for what they consider progress. I think this has been historically true.

NP: *But why do so many people believe things are bad? Is it just because black leaders say that the situation is bad? If you look at the evidence, there has been tremendous progress. Why would they—the mass of blacks—turn to a black nationalist candidate during a time of economic progress?*

RUSTIN: Because the economic progress has been essentially for the black- and middle-classes, while lower-class blacks are in a permanent state of depression.

NP: *But didn't the upper- and middle-class blacks come out in tremendous numbers and very high percentages for Jesse Jackson, who was, properly or not, accused of running a nationalist campaign? Wasn't he, in fact, the candidate of black yuppies?*

RUSTIN: But that has to do with the guilt of the black upperand middle-classes. To the degree that they made it, and that the lower-class blacks have not made it, they feel they have to take very radical positions vis-a-vis the black underclass.

NP: *Is this their way of proving to themselves that they still feel solidarity with the underclass?*
RUSTIN: To show that they are still a part of the black struggle. I remember when [the Rev. Martin Luther] King [Jr.] and I went out to Watts following the riot there. They said "you guys go back to where you came from because you made it. Don't come out here criticizing us bcause we rioted." Well that was a great shock to Martin, I can assure you. And, middle-class blacks defend themselves from the wrath of the black underclass by nationalist bull. I really think that is part of it. Here's an example: During the riot in Cleveland, a middle-class friend said the inner-city blacks were tearing up the ghetto and if they had turned toward the black middle-class neighborhood they would not have hesitated to gut those homes. In other words, there is a great fear among some of the black middle class of the black underclass. Blacks living in the suburbs have as many guns, as many dogs in their backyards, and as many locks on their doors as anybody else, and, to a certain extent, a considerable contempt toward poor blacks. All this they feel must be hidden.

NP: *What about the Farrakhan phenomenon? Why wasn't he just denounced from every quarter of the black community?*
RUSTIN: This was another instance of maintaining solidarity. To criticize Jesse was to break the cycle of solidarity. It's interesting that the only black politicians who came out for Mondale were those who needed 25 to 30 percent of white votes to get elected. The nationalist phenomenon which Farrakhan represents comes up periodically. An example: Marcus Garvey organized more blacks than the NAACP ever did. And yet, practically nobody wanted to go back to Africa. Most of the people who, on the basis of solidarity, say "keep quiet about Farrakhan," really reject his philosophy. How many people do you think would go with Farrakhan if the United States were to provide five or six states for blacks, which he advocates? They would run from it. It's the last place they would want to go. So there is a kind of unreality about the whole separatist movement.

NP: *Do you want to add something? A prediction about what is to come?*
RUSTIN: Blacks, unlike the other minority groups who have struggled, survived and finally prospered in this nation, will always remain a visible minority and an obvious barometer of the social problems in America. And because they will always be such an enormous and highly visible minority, there will always be confusion and ambivalence over simply being middle class, period, and remaining related to this "black thing." We still are exaggerated Americans and I think it will be many generations before that exaggeration disappears.

NP: *Thank you very much.* ⌑

NP: *Would you agree with those who argue that the black community does have some responsibility for helping young blacks prepare themselves for opportunities?*
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RUSTIN: Because the economic progress has been essentially for the black- and middle-classes, while lower-class blacks are in a permanent state of depression.

NP: *But didn't the upper- and middle-class blacks come out in tremendous numbers and very high percentages for Jesse Jackson, who was, properly or not, accused of running a nationalist campaign? Wasn't he, in fact, the candidate of black yuppies?*

RUSTIN: But that has to do with the guilt of the black upperand middle-classes. To the degree that they made it, and that the lower-class blacks have not made it, they feel they have to take very radical positions vis-a-vis the black underclass.

NP: *Is this their way of proving to themselves that they still feel solidarity with the underclass?*
RUSTIN: To show that they are still a part of the black struggle. I remember when [the Rev. Martin Luther] King [Jr.] and I went out to Watts following the riot there. They said "you guys go back to where you came from because you made it. Don't come out here criticizing us bcause we rioted." Well that was a great shock to Martin, I can assure you. And, middle-class blacks defend themselves from the wrath of the black underclass by nationalist bull. I really think that is part of it. Here's an example: During the riot in Cleveland, a middle-class friend said the inner-city blacks were tearing up the ghetto and if they had turned toward the black middle-class neighborhood they would not have hesitated to gut those homes. In other words, there is a great fear among some of the black middle class of the black underclass. Blacks living in the suburbs have as many guns, as many dogs in their backyards, and as many locks on their doors as anybody else, and, to a certain extent, a considerable contempt toward poor blacks. All this they feel must be hidden.

NP: *What about the Farrakhan phenomenon? Why wasn't he just denounced from every quarter of the black community?*
RUSTIN: This was another instance of maintaining solidarity. To criticize Jesse was to break the cycle of solidarity. It's interesting that the only black politicians who came out for Mondale were those who needed 25 to 30 percent of white votes to get elected. The nationalist phenomenon which Farrakhan represents comes up periodically. An example: Marcus Garvey organized more blacks than the NAACP ever did. And yet, practically nobody wanted to go back to Africa. Most of the people who, on the basis of solidarity, say "keep quiet about Farrakhan," really reject his philosophy. How many people do you think would go with Farrakhan if the United States were to provide five or six states for blacks, which he advocates? They would run from it. It's the last place they would want to go. So there is a kind of unreality about the whole separatist movement.

NP: *Do you want to add something? A prediction about what is to come?*
RUSTIN: Blacks, unlike the other minority groups who have struggled, survived and finally prospered in this nation, will always remain a visible minority and an obvious barometer of the social problems in America. And because they will always be such an enormous and highly visible minority, there will always be confusion and ambivalence over simply being middle class, period, and remaining related to this "black thing." We still are exaggerated Americans and I think it will be many generations before that exaggeration disappears.

NP: *Thank you very much.* ⌑

Books

The Making of the Underclass

by Tod Lindberg

LOSING GROUND: AMERICAN SOCIAL POLICY 1950–1980
Charles Murray
Basic Books, 1984. 323 pp. $23.95.

The crucial fact of American social policy is that after 20 years of programs and a great deal of money aimed specifically at ending discrimination and alleviating poverty, we still have the poor with us in numbers and situations too alarming to ignore. These poor people, moreover, are disproportionately black. On this, there is now an extraordinary consensus embracing all parts of the political spectrum, although sharp differences obviously remain about what conclusions should be drawn and what actions should be taken. Charles Murray, a senior fellow at the Manhattan Institute for Policy Research, has amassed a great deal of data on the conditions of the least-well-off Americans—especially poor blacks—and *Losing Ground* is his much talked about analysis of the consequences of federal efforts to deal with these problems.

Murray begins with a brief review of earlier conceptions of what a proper federal role in the lives of the poor would entail. The legacy of FDR's New Deal was a genuine consensus that a nation must provide "for those who would otherwise be destitute," and that the appropriate way to do this was by means of regular cash payments (not, for example, by quartering the poor in almshouses). But by the late 1950s, this consensus was giving way. The new Kennedy administration would press for a different kind of federal action: "By shifting the focus of welfare away from the dole and toward escape from the dole, Kennedy brought the federal government into a role it had barely considered in the past: . . . taking a continuing responsibility for helping Americans help themselves." There would now be federal training programs and federal assistance for young people seeking their first jobs.

But this kind of national effort, Murray argues, did not last long. From 1964 to 1967 came "a fundamental shift in the assumptions about social policy." He writes:

> [S]ocial policy went from the dream of ending the dole to the institution of permanent income transfers that embraced not only the recipients of the dole but large new segments of the American population. It went from the ideal of a color-blind society to the reinstallation of legalized discrimination.

By 1967, social policy went from the ideal of a color-blind society to the reinstallation of legalized discrimination.

Murray ascribes this shift to the interaction of four forces. First, the economy was prospering and there was a general sense that resources to do vastly more for the poor were at hand. Second, the notion of "structural" poverty—that there was a class of poor people whose condition would not automatically improve as the economy grew—began to gain currency in the academy and in policy-making circles; this was a "view of poverty as embedded in the American economic and social system." Third, the civil rights movement, having won a great victory with the passage of the Civil Rights Act of 1964, was subject to "a textbook example of the revolution of rising expectations." Equal opportunity had become the law, a color-blind Constitution the rule; but results, as measured by race, were by no means equal. The riots beginning in Watts in 1965 and the increasing calls for "black power" were taken as signals that white America had failed to do enough for blacks as a *group*. The final force behind the new consensus was mounting evidence that the programs conceived under Kennedy to provide "a hand, not a handout" (in the slogan of the day) were failing. The community action programs—which were to create jobs and revitalize ghettos—produced little in the way of results, and job training programs, it was discovered, did little to reduce welfare dependency among the participants.

The legislative action that corresponded to and helped define this new view of social policy was of course Lyndon Johnson's Great Society. But, Murray argues, those programs were by no means the sole source of change. For example, there were new Supreme Court decisions instituting affirmative action and integration programs that reserved specific numbers of places for blacks, and guaranteeing rights for accused criminals at the expense of traditional police prerogatives. The federal bureaucracy introduced changes that relaxed eligibility rules, and their enforcement, for a number of assistance programs. And new educational thinking emphasized keeping adolescents in school, rather than insisting that students behave and work hard as prerequisites for continuing their education. All of this and more came together and radically altered the situation of poor people.

Murray notes that "reducing poverty was the central objective" of these actions. By way of assessment, he presents data from 1950 to 1980 on the number of

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Books

people officially considered to be poor—those whose cash incomes, including direct government payments in such forms as Social Security and Aid to Families with Dependent Children but excluding such benefits as food stamps and housing assistance—who fall below the official poverty line. Unexpectedly, the aggregate number of poor people, which had been falling steadily since 1950, stopped decreasing just as federal spending increased dramatically:

> [T]he declines in poverty prior to 1964 were substantial. . . . Then, after two decades of reasonably steady progress, improvement slowed in the late sixties and stopped altogether in the seventies. . . . A higher proportion of the American population was officially poor in 1980 than at any time since 1967.

But even these statistics, Murray argues, do not give an adequate sense of the problem. He offers a new concept in social policy, "latent poverty"—the number of people who *would be* poor were there no government transfers. He writes: "The proportion of latent poor continued to drop through 1968, when the percentage was calculated at 18.2. This proved to be the limit of progress. At some point during 1968–70, the percentage began to grow, reaching 19 percent in 1972, 21 percent in 1976, and 22 percent by 1980." Murray reviews a number of the conventional explanations for the new increases in poverty—that the economy was sluggish in the 1970s, for example (in fact, it grew at a faster average rate than in the 1950s, when poverty did decline)—and finds them wanting.

As poverty increased, so, too, were there significant changes in patterns of employment. Here and later in the book, Murray relies on comparisons between statistics for black and white Americans. Because blacks are disproportionately poor, and whites are disproportionately well-off, one can obtain from these comparisons a sense (though necessarily an incomplete sense) of how the poor *per se* were behaving. The most striking difference between whites and blacks lies in the area of labor force participation (LFP)—the professed intention to work, given the opportunity. "Black males had been participating in the labor force at rates as high as or higher than white males back to the turn of the century," he writes. But "beginning in 1966, black male LFP started to fall substantially faster than white male LFP [during a period of decreases for both groups]. By 1972, a gap of 5.9 percentage points had opened up between black males and white males. By 1976, the year the slide finally halted, the gap was 7.7 percentage points."

Murray argues that the situation of the poor worsened because of the new federal programs.

This was a new phenomenon: "[W]e had never before witnessed large-scale voluntary withdrawal from (or failure to enlist in) the labor market by able-bodied adults." Again, he reviews the conventional explanations—that young blacks, for whom the figures are especially striking, became "discouraged" about their prospects of finding work, etc.—and again these fail to account for all the new difference.

Murray also reviews statistics on crime, family stability and education. As he writes of increased crime rates—it is a point he makes in other areas as well—"It is fundamentally misleading to see the black crime problem as one that has been getting worse indefinitely. It got worse very suddenly, over a very concentrated period of time." The pattern is consistent: In the late 1960s, in spite of new federal efforts, the situation of blacks, and thus of poor Americans in general, worsened dramatically.

The data Murray presents are by and large indisputable. He then turns to an explanation: The situation of the poor, both in their aggregate number and the quality of their lives, worsened *because* of the new federal programs. "The changes in welfare *and* changes in the risks attached to crime *and* changes in the educational environment reinforced each other. Together, they radically altered the incentive structure" that poor people face [emphasis in original]. Government policy encouraged, or at least no longer discouraged, undesirable behavior among the poor. The changes documented in the statistics were the result of "rational responses to changes in the rules of the game of surviving and getting ahead."

Murray offers two striking instances of how the new encouragements and discouragements operated. The more familiar is the negative income tax experiment, conducted by the federal government among 8,700 people beginning in 1968. Its purpose was to determine the effects on behavior of a guaranteed annual income—a policy whereby the government would make up the difference any year an individual's income fell below a specified floor. After all biases in evaluating the results had been corrected for, there was no escaping the conclusion that the negative income tax substantially discouraged people from working, and encouraged families to break up.

As a second example, Murray asks us to put ourselves in the position of a pair of young, unmarried lovers; they are poor, and the woman is pregnant. Between 1960 and 1970, the situation facing this couple changes dramatically. By 1970, it is a much more attractive proposition for the two of them to live together with their child, unmarried, the woman on welfare, the man drifting into and out of the labor force rather than working steadily. Murray

writes: "There is no 'breakdown of the work ethic' in this account of rational choices among alternatives. . . . The choices may be seen much more simply, much more naturally, as the behavior of people responding to the reality of the world around them and making the decisions—the legal, approved and even encouraged decisions—that maximize their quality of life." But the result is a continuing dependence on welfare, and most people would agree that that is undesirable.

The argument Murray makes here has been made by others before—perhaps most notably, in terms of popular impact, by George Gilder in his 1980 bestseller *Wealth and Poverty.* Gilder, too, asked us to put ourselves in the position of the poor and consider the incentive structure American social policy creates. What should make—in fact, is already making—Murray's argument persuasive to some of those whom Gilder failed to convince is the extraordinary collection of data Murray offers, and his systematic anticipation, and refutation, of the likely counter-interpretations. *Losing Ground* is beginning to have the significant impact on liberal thinking about social policy that *Wealth and Poverty* (and other books) paved the way for.

Murray also offers, unflinchingly, a number of highly controversial policy proposals—the return to a color-blind Constitution, the institution of a system of educational vouchers for all school-age children, and, most radically, the elimination of "the entire federal welfare and income support structure for working aged persons." These actions, he argues, will ensure equal opportunity and appropriate incentives for productive behavior. Murray suggests that private charity can provide for those who remain destitute.

What will come of these proposals, no one can say. But *Losing Ground* does not stand or fall on the eventual success or failure of its legislative agenda. Beyond his codification of the data on incentives, and of far greater importance, is Murray's assessment of the *moral* vision underlying the new consensus on poverty. In a chapter entitled "The Destruction of Status Rewards" (which has been rather neglected in the general conversation *Losing Ground* has provoked), Murray argues that policymakers were adopting a radically different view of the poor. "Historically," he writes:

> [T]he United States has been a nation of people who were either poor or the children of poor parents. . . . Few of the American poor defined their lives in terms of their poverty. Neither did society. . . . Status distinctions among the poor began with the assumption that people are responsible for their actions and specifically, responsible for taking care of themselves and their families as best they could. Missouri farmers and New York immigrants might have had wildly different status distinctions in other respects, but in both communities, and everywhere that poor people lived together, the first distinction was made on this basis.

This would no longer be the case.

"It was much less complicated," he writes, "simply to treat 'the poor' as a homogeneous group of victims." It was also a view that fit well with the policymakers' and professors' recent discovery of structural poverty, and with their focus on outcome instead of opportunity. He writes:

> Once it was assumed that the system is to blame when a person is chronically out of work and that the system is even to blame when a person neglects spouse and family, then the moral distinctions were eroded. The first casualty was the moral approbation associated with self-sufficiency. . . . Self-sufficiency was no longer taken to be an intrinsic *obligation* of healthy adults. Among people who held this view, the next casualty was the distinction between the deserving poor and the undeserving poor. Blame is the flip side of praise. To praise the poor who are self-sufficient is to assign them responsibility for their upstandingness. But if one family is responsible for its success, the next family bears at least a measure of responsibility for its failure [emphasis in original].

Murray has rediscovered the importance of individual responsibility.

The poor, in short, "were not permitted to be superior to one another."

This view, Murray argues, has been disastrous. It undermines the moral authority of those who are trying to support themselves and their families, and gives permanent license to those who are not. For poor but self-sufficient parents who are trying to inculcate in their children the virtues of hard work and respect for authority, this view, espoused *by* the authorities, can only work against their efforts.

In *Losing Ground,* Charles Murray has rediscovered the importance of individual responsibility. It is, after all, an old idea, but one that has truly been lost in what George Gilder has called "the compassionate state" (lost even to Gilder, who cannot quite bring himself to blame those he knows deserve it). Murray has shown how systematically, and ominously, our social policy has repudiated this idea. For that, *Losing Ground* is a landmark contribution. And it is precisely this sense of personal responsibility that any effective reform of social policy—effective, that is, in terms of helping the poor—will require. ⌑

Books

The Good News

by Joshua Muravchik

THE GOOD NEWS IS THE BAD NEWS IS WRONG
Ben J. Wattenberg
New York: Simon and Schuster, 1984.
431 pp. $17.95

Ten years ago, Ben J. Wattenberg provoked an outcry when he wrote an article (together with Richard Scammon) arguing that census data showed significant improvement in the situation of American blacks. To speak of black progress, said the critics, meant inevitably to understate the virulence of white racism and the wide gap that still separated the races. Black progress, so they seemed to be saying, required an uninterrupted flow of bad news about the situation of black America.

That line of reasoning was recently renewed in a book by Alphonso Pinkney entitled *The Myth of Black Progress* (Cambridge University Press). Pinkney in turn draws on a volume published a few years earlier by the National Urban League entitled *The Illusion of Black Progress.* He argues that "[t]here appears to be, on the part of some social scientists, a curious need to convey the impression that American society is a progressive one on matters of human rights for black people. Distorted data are often used to support this myth. Yet there is overwhelming evidence to the contrary."

At the same time, Wattenberg has returned to this subject in his new book, *The Good News is the Bad News is Wrong.* Black progress is one of several subjects treated by Wattenberg in presenting his argument that the news media "are missing the biggest stories of our era. . . and missing them regularly, consistently, structurally, and probably unwittingly." The stories they are getting are about events, usually unhappy ones. The stories they are missing are about trends, usually encouraging ones. Americans are living longer and better than ever before. We are healthier, wealthier and wiser (or at least better educated). Moreover, so are most other people. But such progress is not "news," or at least is not considered to be by the people whose job it is to determine what is news. There is, in short, a "bad news bias."

Is the "bad news bias" bad for us? Wattenberg believes so but confesses that the judgment is tentative. What seems more certain, ironically, is that the bad news bias has harmed the causes cherished by those who reinforce it. For example, Pinkney and others of similar view are incensed by the deep cuts in social welfare programs inaugurated by the Reagan administration. They seem not to have considered the likelihood that it was there own rhetoric that paved the way for those cuts. After all, if black progress was a "myth" or "illusion," then what was the point of perpetuating those expensive programs that had been designed to foster such progress. As Wattenberg puts it aptly in his book, the new liberal rallying cry became: "We have failed, let us continue!"

In addition to being self-defeating, the bad news mongers are just plain wrong, says Wattenberg, and he offers a variety of statistics to make his case. By far the most arresting statistics that Wattenberg presents about racial trends have to do with education. The number of blacks enrolled in college doubled from 1950 to 1960, doubled again from 1960 to 1970, doubled again from 1970 to 1980, and continued to rise during the first two years of the 1980s (the latest for which data are available) at the same breathtaking pace. Obviously this rate of increase cannot be sustained (if it were, within 50 years the entire black population would have to be enrolled in college), but it is already reflected in another powerful set of numbers. In 1982, the median number of years of school completed by whites in the age group 25 to 29 was 12.9. For blacks in the same age group the median was 12.7 years, just marginally lower. (In 1950, by contrast, the median for whites was 12.0 years while for blacks it was 8.6 years!) The increase in education among blacks is also reflected in a shift in occupational categories: The number of blacks in white-collar jobs has surpassed the number in blue-collar jobs.

These changes no doubt also contribute to changes in residential patterns. Wattenberg reports that blacks are moving out of the inner cities into the suburbs. From 1970 to 1980, the proportion of blacks living in the suburbs rose from 16 percent to 23 percent, almost a 50 percent increase. This still left blacks half as likely as whites to live in the suburbs, although the rate at which blacks were moving to the suburbs was much faster than for whites.

Wattenberg also offers figures documenting the rapid rise in the number of blacks holding elective office, owning businesses and holding officer rank in the armed forces. At the same time he documents a change among white people in their attitudes toward blacks, as reflected in opinion surveys asking whites how they feel about integrated schools, about blacks moving into their neighborhoods, or their willingness to vote for blacks for high office. These polls show that racist attitudes persist, but that they have declined sharply and are now eschewed, at least in this form, by the vast majority of whites.

But for American blacks, Wattenberg says that there is also important bad news

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to be balanced against the good. A big piece of bad news has to do with unemployment, where the rate among blacks seems to hold fairly steady at double the rate among whites. When the rate among whites is at a relatively low five percent, the rate for blacks is a recession-level ten percent. And when recession pushes the white rate toward ten percent, the black rate reaches a depression-level 20 percent!

On the other hand, Wattenberg finds that the much reported statistics about black *teenage* unemployment are "misleading" and "not as important as we have been told." The reason is that among the "unemployed" these statistics count youngsters out looking for their first job (you don't have to have been employed to be counted as unemployed) and others who are full-time students looking for part-time jobs. Moreover, the population base against which the teenage unemployment rate is calculated does not include full-time students who aren't looking for work, i.e., the majority of black teenagers. It turns out that the proportion of black teenagers who are not enrolled full-time in school and who are looking for work but unable to find it is ten percent.

In regard to income, Wattenberg says that young blacks entering the work force are not far behind whites. Presumably this reflects the rapid rise in black educational attainment and the decrease in overt discrimination. But the earnings of older generations of blacks still reflect the disadvantages in educational and job opportunities that they suffered along the way. The result is a wide gap in median income: that of black families is less than two-thirds that of whites. Moreover, there are statistics to show that black family income declined from 1970 to 1980 both in absolute terms (after correcting for inflation) and as a proportion of white family income. But, according to Wattenberg, these are another set of misleading statistics. What they really reflect is not a decrease in black income, but a change in black family patterns: the figures reflect median *family* income, not income per person, which has in fact risen.

It is good to know that black income is not really falling, but this is one statistical silver lining that comes with a big cloud. The reason for the contrast between per person income and per family income among blacks is the growing number of single-parent families. This in turn reflects the growing proportion of births to unmarried women among blacks. This piece of bad news has received much publicity and has led to a spate of speculation about a bifurcation of black America, with one part rising to take advantage of new opportunities and approaching equality with whites while the other part congeals into a left-behind underclass untouched by recent progress.

Wattenberg is guardedly skeptical of this talk of a hardening underclass. He finds the statistics on out-of-wedlock births hard to reconcile with other statistical indices of black progress. He offers some figures that show the illegitimacy question in different lights. The most interesting of these shows that the rate of illegitimate births among blacks has actually gone down, not up. But the rate of *legitimate* births has plummeted even faster, thus illegitimate ones make up a rising proportion of the total. Second, he points out that the proportion of illegitimate births among whites has risen faster than among blacks, but this statistic is not very moving. The white illegitimacy rate, whatever its rate of increase, has risen only to 11 percent of all births. That may or may not be a cause for concern. But among blacks, illegitimacies now make up 55 percent of all births. That is a problem of a different order. The statistic that Wattenberg finds to be the most hopeful is one that shows that these unwed mothers do not necessarily remain unwed. Seventy-five percent of them marry by the time they are 24.

These figures for subsequent marriages give us a somewhat different picture from the one we get when we think of the illegitimacy figure alone. But how important is the difference? How long do these marriages last? How many children are born and how old are they before these marriages take place? Wattenberg does not provide a number for the percentage of black children living with only one parent, but he gives a figure that may be close to it. Of all black families with minor children, roughly half, he tells us, are one-parent families. This suggests that a very large proportion of black children are living with only one parent, not far from what the illegitimacy numbers suggest. This is a deeply worrisome datum that does not fade away no matter what light we view it in.

In addition to discussing the status of blacks, Wattenberg also devotes a chapter to assessing the status of women in America. Here too, he finds that much of the bad news is wrong. Take for example, the so-called "feminization of poverty." "The implication," says Wattenberg, "is that somebody out there, probably sexists, rigged the deck and did something to some women to make them poor." The source of the accusation is that people living in "female-headed" families now account for 50 percent of those living below the poverty line. This is larger than the proportion used to be. But this statistic in itself is the product of another trend: a steep increase in the number of people living in female-headed households, the number of whom has more than doubled in 20 years. This increase reflects the rising number of women choosing to conceive and raise babies out of wedlock and the rising number choosing to get and remain divorced. It reflects, in short, the increasing liberation of women.

Wattenberg reminds us that "[a] one-parent family (typically female-headed)

has always been a major correlative of poverty." Nonetheless, the *rate* of poverty among people living in female-headed households has not gone up; it has in fact declined sharply (except for a slight upturn in the recessionary years of the early 1980s). But the *number* of poor people living in female-headed households has grown because the total number of people in such households has increased so quickly.

According to Wattenberg, the real, but underreported, news about the status of women is good news, especially from the point of view of the "women's movement." With one arguable exception, he says, "the most important aspects of the 'women's agenda' are either in place, or in the process of being solidly established with a demographic and political speed that is truly remarkable." He lists five items as constituting the heart of that agenda: labor force participation; high level jobs; equal educational opportunity; "independence;" and "equality," specifically equal pay for equal work.

Fifty-three percent of married women are now counted in the labor force. That is a three-fold increase from 1940 when only 17 percent participated, with the most dramatic change coming among mothers of pre-school-age children. This constitutes the reversal of an important cultural norm within the brief span of two generations.

There was corresponding growth in the number of women holding jobs in the elite category comprising professional, technical, managerial or administrative workers. In 1960 there were 3.8 million women in these positions. By 1982 that number had climbed to 10.9 million. In some occupations the growth was especially dramatic. In 1970, there were 13,000 female lawyers and judges. Just a decade later there were 74,000 of them. Still, women accounted for only 15 percent of all lawyers and judges. But the most powerful fact, says Wattenberg, is that women now account for 44 percent of all law students. In short, unless the trend is reversed, the rapid increase in the number of female lawyers during the last decade will prove to be only the first installment in a wholesale shift in the sexual composition of the legal profession.

Nor is law school a unique example. On the contrary, the most impressive bit of evidence that Wattenberg presents about the long-term trends in the professional status of the sexes are the statistics on college enrollment. As recently as 1960, a single generation ago, there were twice as many men enrolled in college as women. In 1981, the number of women enrolled in college grew equal to the number of men. But don't the best jobs increasingly require more than a college degree; don't they require post-graduate training? Yes, and here the statistics are even more dramatic. Women now also constitute 50 percent of all full-time graduate students, whereas as recently as 1970, they made up only 32 percent.

"Independence" may be thought of as a psychological state, but when Wattenberg speaks of women's independence he means something more tangible and statistically measurable, namely, independence from husbands and children. Wattenberg marshalls an array of numbers to demonstrate the growth of such independence. Divorce rates are up. The number of divorced people in the United States in 1982 was *eight times* as many as in 1940, almost three times as many as in 1970. "Living together" is up. The number of unmarried couples cohabitating was almost four times as many in 1983 as in 1970. Child bearing is down. The number of children born per woman had fallen by the late 1970s to one half of what it was in the late fifties. Whether all this newfound independence has resulted in more happiness for women (or men or children) is, alas, outside the purview of Wattenberg's study.

The one major part of the women's agenda on which Wattenberg finds the evidence of progress to be more ambiguous is the subject of equal pay. He shows that the much publicized statistic (repeated many times during the 1984 election campaign, for example), that the median income of women is only 59 percent of that for men, is both wrong and misleading. It is wrong in the simplest sense. The figure in 1982 reached 63 percent. But it is misleading in a larger way, because it does not take into account differences in such things as education and job experience (differences which are progressively narrowing or disappearing). Holding these factors constant, the earnings of women reach about 80 percent of those of men, or perhaps more. Wattenberg concludes that "an earnings gap clearly exists, and some of it is probably related to sex discrimination," but also that "there is less income discrimination than the popular arguments suggest, less than there used to be, and . . . there will probably be still less in the future."

One needn't be pursuaded by Wattenberg's argument on each one of the dozens of specific issues he discusses (as, for example, I find myself unpersuaded by his reassurances about the significance of the rising rates of illegitimacy) to conclude that his overall case—that the bad news is (often) wrong—is well made.

Wattenberg admits that the bad news bias can at times be helpful: Environmental alarmism, he argues, vastly exaggerated the threats to our habitat but led to salutory restorative efforts. Yet he worries that the bad news will somehow catch up with us. There is, he fears, "something wrong with a society that won't recognize and report its central successes."

But whether it is bad for the country or good is basically beside the point. What is wrong with the bad news is that, as Wattenberg tells us, it is wrong. It is time, as some wit once said, that we learn to live with the truth, no matter how pleasant it may be. ⌑

Books

Force-Fed Democracy

by John Lingner

The New American Dilemma: Liberal Democracy and School Desegregation
Jennifer L. Hochschild
New Haven and London: Yale University Press, 1984. 263 pp.
$8.95, paperback; $27 hardcover.

Jennifer Hochschild's attractively produced book revolves around the theme that desegregative busing is very good, but hard to do well. Busing is good, because its ultimate goal is eradicating racism. Busing is hard to do well, however, because, despite the lip service paid by liberal democracy to the goal of eradicating racism, "a majoritarian society gratifies the majority."

The fundamental argument of *The American Dilemma* is that American society suffers from a weakness of the collective will: although we know the good, we do not or cannot will its realization. Hence, less busing is done, less well, if there are "democratic" elements in its implementation procedure. In other words, popular control of busing acts as a drag upon the goals of any busing program. Ms. Hochschild's conclusion is that if we really believe in the liberal goal of eradicating racism, we will arrange for the goal to be implemented without regard to whatever squeals of democratic displeasure may accompany the implementation. Our "general will" must triumph over our self-interested and particularistic wills, and triumph, as well, over our lazy and conservative inclination for the way things are. This is the sense of the epigram from John Dewey, with which Ms. Hochschild begins her book: "Liberalism that is sincere must will the condition of achieving its ends."

What would be Ms. Hochschild's criteria for a successful busing program? Hers is a book largely of sociological and political theory, and it is difficult to determine, among the spectra of goals she mentions, what practical positions she would herself adopt. As she says, "Goals for school desegregation abound, from the minimalist 'End de jure segregation' to the maximalist 'Equalize race, class, and power relations in the United States.'" The reader is led to believe that she would certainly favor the latter if she thought it had much of a chance. As she mentions in her preface, her book grew out of the "normative concern," "Why is there no socialism in the United States?"

Ms. Hochschild believes that less busing is done less well if there are "democratic" elements in its implementation procedure.

In any case, she adopts the "reasonably ambitious middle ground" whose ten goals include: "End racial isolation (more strongly, achieve racial balance) in school districts, schools, classrooms, and work groups;" "enhance minority self-esteem;" "improve race relations among students and parents;" "enhance low-income or minority students' opportunities to improve their economic and social status;" "give all students equal access to appropriate educational resources;" "improve academic achievement of unsuccessful (predominantly but not solely minority) students without lowering the achievement of successful students;" "promote community and parental support for civil rights, desegregation, and public education;" "avoid white and upper-status minority flight to private schools or segregated public schools;" "minimize disorder in schools;" and "avoid new forms of discrimination." I have quoted at length from her agenda to indicate the tenor of her argument and the difficulty one has in determining her position on matters of practical concern.

"Liberalism," in Ms. Hochschild's somewhat breathless characterization, "asserts the unique value of all persons, political equality of all citizens, liberty of all humans. It insists on natural rights, autonomy, opportunity, dignity." "[R]acism, whether in the virulent form of slavery or the less pernicious form of prejudice and discrimination, is profoundly antiliberal and antidemocratic. It is antiliberal in its assertion of the unequal worth of persons, of civil—not natural—determinations of rights, of the legitimacy of denying liberty and opportunity to some. It distinguishes among people not by what they have done. . . but by what group they were born into. It uses ascriptive characteristics, not achieved character, to determine people's fates, and it proclaims that some groups should not partake of liberalism's promises."

One does not wish to take issue with this shorthand characterization of liberalism here, although it may be that the consequences of such a concept are rather different from those Ms. Hochschild would likely draw. Her description of racism, however, bears careful attention, since the goal of desegregative busing is not, for her, merely the forthright, color-blind enforcement of the law, or the end to de jure discrimination, but the eradication of racism. It is useful to try to understand the disease diagnosed, as well as the medicine prescribed.

"Racism" is, of course, a pejorative term, and one used with enormous rhetorical promiscuity. A scholarly writer faces the task of limiting and defining the term

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so that it may be of some discriminate use in explanation. Given its rhetorical popularity, the word may be unsalvageable. Like the term "capitalism" in Marxist doctrine, it has become a catcall, explaining everything, and nothing.

In the quotation from *The New American Dilemma* above, prejudice and discrimination are referred to as a form of racism; yet the overlap among these concepts is very imperfect. Ms. Hochschild is aware of this dissonance, but her disclamatory footnote only muddies the conceptual waters:

> By racism I do not mean personal dislike or denigration of another race or ethnic group. Individual prejudice is neither necessary nor sufficient for racism to exist. It is not necessary because of the phenomenon of "institutional racism;" a society or part of it may act in ways that severly and systematically discriminate against members of one race without anyone so intending or realizing. Prejudice is not sufficient for racism because it is possible to dislike another race yet treat its members without harm. Thus to assert that American history and contemporary politics are deeply racist is not to accuse individuals of harboring evil thoughts; it is to say that our society is shaped by actions in consequence of racial differences—actions that usually elevate whites and subordinate blacks.

This, if it means anything, is a sociologist's watery determinism. The Marxist concept of capitalism is a bit more straightforward in its adoption of a self-contradictory position; for the Marxist, "capitalism" is both a historical necessity, and something for which the "capitalist" is morally culpable. In Ms. Hochschild's view "racism" is an "institutional phenomenon": It may be that not a single person in American society *intends* to discriminate; and yet American society (or a part of it) *acts* "to severly and systematically discriminate against members of one race."

Racism has become a catcall, explaining everything and nothing.

It is surely a curious sociological, historical and moral theory to say that "American history and contemporary politics are deeply racist" while also holding that this "is not to accuse individuals of harboring evil thoughts."[2] If Ms. Hochschild means that American history or society (or any history or society) is somehow more or less than the thoughts and deeds of individuals, then she owes us a prolegomenon to her present tract. If she means that "racism" is no longer to be thought of as a moral phenomenon worthy of contempt, but rather as a morally neutral, structural element in our society, subject to our remedial attempts (but not originally our responsibility or making), this, too, calls for more discussion. The "effects" test in discrimination litigation, according to which no one need have intended to discriminate, has some affinity to her theory of society. The law can afford such occasional incoherence and lack of intellectual consistency. Common parlance is certainly not to be held to rigorous logic. But scholars are supposed to think these matters through.

This accordian-like concept of "racism" reappears in the goals to which Ms. Hochschild would direct desegregative busing. It is here she is most clearly to be seen spreading confusion about "racism," a confusion which is not accidental, but which allows her to gamble with the moral capital of common understandings of the term, and to play for a much bigger, unearned, payoff. Not content with utilizing busing to remedy illegal racial segregation in schools, she would have it address the problems of (unintended) racial isolation or imbalance, and of what she believes to be the lower status of blacks in American society. This problem of "status" encompasses education, employment, politics, white supremacy and class domination. Thus, desegregative school busing comes to carry a rather heavy burden, and it is small wonder that she should be dissatisfied with its varied outcomes to date.

Upon reflection, the dissatisfaction Ms. Hochschild expresses begins to seem preordained because the laws under which desegregation suits may be brought do not address problems either of prejudice or racism, nor, for that matter, *all* problems of discrimination. Discrimination, whether it be for religion, race, sex, handicap or age is, naturally, a difficult aspect of the human condition for the law to reach. Discrimination begins as a thought, perhaps as an unthought inclination, and even totalitarian states find it difficult adequately to police thoughts and inclinations. As discriminatory thoughts or inclinations issue in deeds, these deeds are open to interpretation as to intention. And most culpably discriminatory deeds may have alternative intentions which are unexceptionable. Laws may satisfactorily address fairly crude deeds—when we have the corpse, the wound, the empty safe—but there is patent straining and stretching, not to say overreaching, to catch our present quarry.

It is not the difficulties with *how* the law tries to do what it does that are at issue here, however. Instead, Ms. Hochschild's real concern would seem to be with getting the laws to do things far beyond their present authority and competence. She writes:

> Desegregating elementary and secondary public schools are perhaps the most important means our generation has used to eradicate racism. Has school desegregation, as it was intended to, eliminated prejudice, provided equal

opportunity, guaranteed rights to all? Is it moving acceptably fast in that direction? Or has the way we have gone about desegregating schools caused more harm than good, for blacks as well as whites? The limits of our success, their causes and implications, and our choices for the future are the substantive focus of this book.

When faced with the failure of "incrementalism" and "popular control" of the desegregation process (which work poorly absent political will) our new dilemma becomes whether to "maintain practices that are normally effective and attractive but fail in this case to reach the roots of the problem" or to "use risky, even undesirable, means that can dig deep enough to achieve our goal." The "roots" here are a racist class structure in which the white elite knows where its bread is buttered, and fears the political muscle of an unsubjected black community. Ms. Hochschild presents Marxist remedies casually, usually as levels of argument which she abstains from evaluating, leaving them to the reader to accept or reject. This faintheartedness is eventually a bit irritating, and one begins to long for the decisiveness of doctrinaire Marxist-Leninism, instead of such insinuating, catpawed "progressivism" which will do away with the republic piecemeal.

The New American Dilemma argues that democratic procedures for the adoption of desegregative busing tend to undercut the very goal intended. In other words, the means American courts have adopted to bring about the end of racially mixed schools act to undercut that end. Court-ordered reassignment of pupils has been too open to direct citizen participation in policy choices and plans. While she does not detail the rearrangements of federal judicial authority which may be necessary to resolve this problem, Ms. Hochschild does offer four guidelines, "all non-incremental and not responsive to popular wishes," for federal courts. These are to desegregate entire metropolitan regions, to not worry about minimizing busing times or distances and to change practices, personnel and presumptions within schools. Finally, authorities must be willing to become leaders, i.e., be willing to enforce the general will, even if it is wildly unpopular.

Hochschild's remedy for our political backsliding is to opt out of the realm of politics and to play the trump card of necessity.

The nub of Ms. Hochschild's argument, then, is that we must have the courage of our convictions, and impose upon ourselves a regime to implement our goals. She recommends that desegregative busing be implemented in a manner least given to popular influence, and so furthest from political controls. Ms. Hochschild recommends that we force ourselves to be free. But is not the tyranny which forces us to be free nonetheless a tyranny?

This bootstrap solution is both politically and morally defective. Its defect is exemplified in the story of a philosophy professor who began his ethics course with the statement: "In ethics, necessity is a trump card." (A student is reported having responded: "What's a trump?") Ms. Hochschild's remedy for our weakness of the will is to supersede the realm of volition altogether; her remedy for our political backsliding is to opt out of the realm of politics and to play the trump card of necessity. ¤

Hochschild Responds

Editor's note: In accordance with U.S. Commission on Civil Rights policy, Ms. Hochschild was given an opportunity to respond to this review of her book. Her response follows:

Mr. Lingner describes me or my "tract" as "breathless," "overreaching," "mudd-[ying] the conceptual waters," incoherent and lacking intellectual consistency, exemplifying an "insinuating, catpawed 'progressivism'," even more replete with "watery determinism" than—his favorite epithet—a totalitarian, "politically and morally defective," and (a bit contradictorily) "fainthearted." Since Commission regulations permit response to a Commission publication that "tends to defame, degrade, or incriminate," I am given the opportunity to refute these comments. I am sorely tempted to respond in the same vein (What is "watery determinism" anyway?) or to engage in the childish pleasures of "Yes, you are—No, I'm not." But I shall refrain. Instead, I will indirectly respond by outlining my argument, and encouraging readers to judge my political, moral and intellectual defects.

The New American Dilemma makes several points:

1) *When properly designed and implemented,* school desegregation benefits both blacks and whites. It improves black achievement without harming white achievement; it increases long-term job and college opportunities for blacks; it eases race relations and reduces racial stereotyping on both sides; it enhances community morale; it increases parental involvement; it permits schools to make stalled pedagogical changes; and it brings new resources, energy, and people into the schools.

2) *When poorly designed and implemented,* school desegregation does little

good and considerable harm to both races. It does nothing for achievement; it increases racial hostility; it exacerbates on-going white flight; it demotes black teachers and administrators; it undercuts neighborhood schools (which both races prefer); it arbitrarily burdens some citizens; and it affronts everyone's sense of justice.

3) Whites initially oppose many, although not all, changes needed to desegregate well. These changes include desegregating the youngest students, desegregating quickly, transporting children across city-suburban school district lines, minimizing tracking and encouraging cooperative learning, reassigning teachers and administrators, restructuring non-academic and extra-curricular activities, and not funneling the most resources and best staffers into a few magnet schools.

4) In order to desegregate well, and thus benefit both races, policymakers must ignore many citizens' preferences. This unfortunate conclusion follows directly from the first three points. To me, the rights of all *do* trump the desires of some in this case, because of the mandate from our Constitution's Bill of Rights and 14th Amendment, because of the extraordinary history of minorities in the U.S., and because even many whites eventually accept, if not embrace, desegregation (i.e., preferences change.) Most important, if we do not protect rights, we cannot preserve democracy.

5) If demographic, legal, or other reasons prohibit desegregation well, we should pursue other means for granting blacks' rights—high-quality black schools, housing integration, jobs, political power, or something else. Above all, we must not pretend that by eliminating a few pernicious laws we can wipe out the effects of 350 years of history.

I do not see this argument as an incoherent catspaw; it seems straightforward, and the best way to interpret the voluminous and contradictory data on school desegregation that my book cites. But I am a biased observer. I suggest that *New Perspectives* readers read the book. Even if you end up disagreeing with me, I will at least have gotten a fair reading.

Lingner Responds to Hochschild

I thank Ms. Hochschild for taking the trouble to respond to my comments on *The New American Dilemma*. I hope it is quite clear that they refer to the book, and not the person, or the author. Leaving much to one side, our disagreement concerns her fourth point. She concludes that rights should trump desires when pupils are involuntarily reassigned to schools on the basis of race. I hold that what she calls "desires" or "preferences" are really other rights, rights which should be balanced with those involuntary busing was originally meant to vindicate. The "unfortunate conclusion" of her argument is that policymakers (federal district court judges?) should ignore this balance in ordering remedies. With this I differ. I can, however, wholeheartedly endorse her statement that, "if we do not protect rights, we cannot preserve democracy."

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1121 Vermont Avenue, N.W.
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June 4, 1986

President's Conference

President Ronald Reagan
The White House
Washington, D.C. 20500

Dear Mr. President:

With this letter I submit to you my resignation as a member and Vice Chairman of the United States Commission on Civil Rights, effective upon your acceptance.

I do so only because of my election earlier this week as chairman of the Conference of Presidents of Major American Jewish Organizations. This post is an extremely demanding one. The Conference is composed of 40 national Jewish religious and secular organizations whose members represent the overwhelming majority of the world's largest Jewish community. Its mission is to help protect the security and dignity of our fellow-Jews abroad. I am honored to have been elected to this position and intend to give it my full attention and energy. Given these new responsibilities I must reluctantly withdraw from all other formal public activities.

It has been a privilege for me to serve as your appointee to the U.S. Commission on Civil Rights and to help guide its programs and policies. In the years since it was reconstituted, this important and independent body has made major contributions toward the goal of full equality for all Americans. I confidently believe it will make even greater contributions in the months and years to come. The Commission will soon publish a series of scholarly studies by some of the most eminent social scientists and economists in our nation. These studies deal with school desegregation, redistricting and voting rights, income differences among racial and ethnic groups and between men and women, and the effects of affirmative action. I believe they will point the way toward a better and clearer understanding of these complex issues and make possible further progress in dealing with them.

As you know, Mr. President, I have been active in the field of civil rights all of my adult life. I saw the civil rights movement grow into a broad coalition united by moral principle and a shared vision of an American society cleansed of racial discrimination but with equal opportunity for all--a vision articulated with eloquence and courage by men such as Martin Luther King, Jr., Roy Wilkins and Hubert

Humphrey. It causes me sadness as I now observe that so many in the civil rights movement today have turned away from its original principled campaign for equal justice under law to engage in an open contest for social and economic benefits conferred on the basis of race or other classifications previously believed to have been invidious.

In my view, this departure violates the basic principles that hold together our heterogeneous society and secures our civil peace. I staunchly believe that the civil rights movement should return to first principles--the zealous regard for equal opportunity and the promotion of color-blind law and social policy. I know that you share this view, Mr. President. For this reason, I have every confidence that the Commission on Civil Rights will--as long as long as it reflects its present majority--move our country in that direction, soberly, effectively and with the support of the leading social scientists of our day. In my judgement, this is not only the soundest and fairest policy, it is also the direction in which the great majority of the American people wish to see our nation go.

I take leave of my service with the Commission with pride in its achievements and the highest expectations of accomplishments still to come, as well with the hope that in my new post I shall have the opportunity to continue my warm association with you.

Respectfully,

Morris B. Abram

pmf

bcc: Mr. Clarence Pendleton
Mr. J. Al Latham, Jr.
Mr. Max Green