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Chapter 10

The Tense Office: Discrimination, Victimization, and Affirmative Action

Chapter Overview

Chapter 10 "The Tense Office: Discrimination, Victimization, and Affirmative Action" examines issues and ethics surrounding discrimination in the workplace.

10.1 Racial Discrimination

LEARNING OBJECTIVES

1. Define racial discrimination.
2. Distinguish different ways that racial discrimination occurs in the workplace.
3. Consider legal aspects of racial discrimination in a business environment.
4. Discuss ethical aspects of racial discrimination in a business environment.

The White Running Back

Toby Gerhart is a bruising running back. Coming out of college at six feet and 225 pounds, he was drafted by the Minnesota Vikings football team with their first-round pick in 2010. It was a controversial choice. His playing style is unorthodox: he runs standing almost straight up and doesn't do much faking and cutting. Most NFL runners get low and slip away from tacklers. Gerhart chugs and blows through things.

That's not Gerhart's only distinction. In a league where running backs—almost all of them—are black, he's white. On the days leading to the draft, Gerhart feared his skin color might be expensive. An anonymous quote had been circulating, suggesting that his position in the draft order could fall, bringing his paycheck down along with it: "One longtime NFL scout insisted that Gerhart's skin color will likely prevent him from being drafted in Thursday's first round. 'He'll be a great second-round pickup for somebody, but I guarantee you if he was the exact same guy—but he was black—he'd go in the first round for sure,' the scout said." Michael Silver, "Race Factors into Evaluation of Gerhart," *Yahoo! Sports*, April 20, 2011, accessed May 31, 2011, <http://sports.yahoo.com/nfl/news?slug=ms-gerhartstereotype042010>.

As it turned out, the scout was wrong. But the question of race in sports had flared, and the media came to it. One story appeared on an MSNBC-affiliated website called *theGrio.com*. Writer John Mitchell pointed out that twenty-seven of the NFL's thirty-two general managers (those ultimately responsible for draft-day selections) were white, and so, he asserted, it was "virtually impossible" that racism could work against Gerhart. John Mitchell, "White Running Back's Draft Status Won't Be

Hamstrung by Race,” *TheGrio.com*, April 22, 2010, accessed May 31, 2011, <http://www.thegrio.com/opinion/white-running-backs-draft-status-wont-be-hamstrung-by-race.php>.

John Mitchell is black. In fact, if you go to *theGrio.com*’s contributor page, you’ll find that, as a rough estimate, 90 percent of the website’s writers are black, a number that’s far, far out of proportion with the global percentage of black writers out there. The disproportion, however, would be less surprising for anyone who’d read the description the site presents of itself: “TheGrio.com is devoted to providing African Americans with stories and perspectives that appeal to them but are underrepresented in existing national news outlets. TheGrio features aggregated and original video packages, news articles, and blogs on topics from breaking news, politics, health, business, and entertainment, which concern its niche audience.” “About theGrio,” *TheGrio.com*, accessed May 31, 2011, <http://www.thegrio.com/about>.

On that same page, surfers are directed to a video story about *theGrio.com* produced by NBC New York, which is a station aimed at the general market, not *theGrio.com*’s niche audience. The story tells of *theGrio.com*’s origin, and in an interview with the website’s founder, he remarks that his contributors are very diverse: “We have conservatives, liberals, old folks, young folks, rich folks, poor folks, politicians and plain folks.” “About theGrio,” *TheGrio.com*, accessed May 31, 2011, <http://www.thegrio.com/about>.

The NBC story also informs us that the idea for creating a site that aggregated news stories involving the black community was taken to NBC executives who agreed to sponsor the website. We don’t learn which specific NBC execs received the proposal, but a quick check of the network’s directors and programming directors and so on leads to the strong suspicion that most were white.

Questions about racial discrimination are tangled and difficult. Here are a few of the knotted uncertainties arising from the Gerhart episode and its treatment in the press:

- The story about Toby Gerhart in *theGrio.com* claimed that the white Gerhart couldn’t suffer racial discrimination because the people who’d be drafting him (or not) were white. Is that true, is it impossible for whites to be racists against other whites?
- Overwhelmingly, running backs in the NFL are black. These are painful but very high-paying jobs with long vacations and lots of fringe benefits. Most young guys would be happy with the work, but a certain racial group holds a near monopoly. Is there racism operating here?

- *TheGrio.com*'s workforce is, according to its founder, very diverse in many ways but completely dominated by a single racial group. Racism?
- MSNBC, which sponsors *theGrio.com*, currently has a prime-time TV lineup (Joe Scarborough and Mika Brzezinski in the morning and Chris Matthews, Ed Schultz, Rachel Maddow, and Lawrence O'Donnell at night) that's all white. Racism?

What Exactly Is Racial Discrimination?

Racial discrimination¹ in the economic world can be defined in three steps:

1. An employment decision—hiring, promoting, demoting, firing, and related actions—affects an employee or applicant adversely or positively.
2. The decision is based on the person's membership in a certain racial group rather than individual ability and accomplishment with respect to work-related tasks.
3. The decision rests on unverified or unreasonable stereotypes or generalizations about members of that racial group.

The first step—someone has to suffer or benefit from the discrimination—is important because without that, without something tangible to point at, you're left making an accusation without evidence.

The second step—discrimination is based on race as opposed to job qualifications—is critical because it separates the kind of racism we typically consider vile from the one we normally accept as reasonable. For example, if actors are being hired to play Toby Gerhart in a biography about his life, and all the finalists for the role are white guys, well, the casting company probably *did* discriminate in terms of race, but this particular discrimination overlaps with qualifications helping the actor play the part. This contrasts with the alleged racial discrimination surrounding the Gerhart draft pick: the suspicion that he couldn't be very good at running over other people with an oblong leather ball cradled in his arm because his skin is white. If that's a baseless premise, then it follows that within this definition of racism, *theGrio.com*'s claim that Gerhart has no reason to fear unfair discrimination because so many NFL general managers are white is, in fact, wrong. Whites can exhibit racial discrimination against other whites just as blacks can discriminate against blacks and so on.

1. In a business environment, treating individuals differently from others for reasons of race and at the expense of professional merit.

The difference between discriminating in favor of white males to play Gerhart in a movie and discriminating against white males as running backs is more or less clear. Between the extremes, however, there are a lot of gray areas. What about the

case of hiring at *theGrio.com*? Just looking at the list of contributors, it's hard to avoid wondering whether they're picking people based on skin color as opposed to writing ability. On the other hand, since *theGrio.com* explicitly states that its mission is to tell stories affecting the black community, a case could be made that black writers are more likely to be well qualified since it's more likely that their lives significantly connect with that community. It's not, in other words, that contributors are hired because they're black; it's the fact that they're black that helps them possess the kind of background information that will help them write for *theGrio.com*.

The definition's third step—an employment decision rests on unverified or unreasonable stereotypes or generalizations about members of a racial group—is also important. Staying on *theGrio.com* example, there's a difference between finding that in specific cases contributors well suited to the site also tend to be black, and making the stronger generalization that whites, Asians, Hispanics, and so on are by nature *incapable* of understanding and connecting with the realities covered by the web page. This second and generalizing claim eliminates the *opportunity* for those others to participate.

Finally, questions about racial discrimination center on purely racial divisions but overlap with another distinction that can be similar but remains technically different: ethnicity.

Race concerns descent and heredity. It's usually visible in ways including skin, hair, and eye color. Because it's a biological trait, people can't change their race. Ethnicity is the cluster of racial, linguistic, and cultural traits that define a person as a member of a larger community. The Hispanic ethnic group, for example, contains multiple races, but is unified by common bonds tracing back to Spanish and Portuguese languages and customs. Though it's not common, one's ethnicity may change. A girl born in Dublin to Irish parents but adopted by an Argentine family living in East Los Angeles may ultimately consider herself Hispanic.

The US Census Bureau divides individuals in terms of race and, with a separate question, ethnicity. It's not unusual, however, for the two categories to be mixed in a business environment. Many organizations place Hispanic on the list of racial options when measuring their workforce's diversity. In the real world, the line between race and ethnicity is blurry.

Locating Racism in Business

Questions about racism swirl around the Toby Gerhart episode, but it's equally clear that getting a firm grip on which people and institutions involved actually *are* racist

is difficult. Nearly all running backs in the NFL are black, and at least one scout presumes that racial discrimination in favor of that color is an active part of the reason. But there could also be social and cultural reasons for the imbalance. Maybe young black men are more likely to devote themselves to football because they see so many successful role models. Or it may be that players—regardless of their race—come from a certain economic class or geographic part of the country where, in fact, blacks happen to be the majority. More explanations could be added. No one knows for sure which is right.

On the other side, just as it's prudent to be careful when using words like racist and pointing fingers, there is real evidence indicating wide and deep currents of racism in US business life. Generally, there are three evidence types:

1. Experimental
2. Statistical
3. Episodic

One **experimental indication of racism**² in hiring comes from economist Marc Bendick. He paired applicants for gender and appearance, loaded them with similar qualifications, and sent them to New York City restaurants in search of waiter jobs. The only notable difference between the two applicants was their race; whites, blacks, Asians, and Hispanics participated. After 181 restaurant visits in which the two applicants appeared within an hour of each other, the results were tabulated. Because four racial groups were investigated there are a lot of cross-tabs, but the basic finding was simple: with everything else as equal as possible, whites were significantly more likely to be given information about job duties, receive second interviews, and be hired. According to Bendick, “The important thing is that we repeated the experiment dozens of times so that we can be pretty sure when a pattern emerges it really is differences in employer behavior and not a random effect.” “City Room,” *New York Times*, NY/Region, March 31, 2009, accessed May 31, 2011, <http://cityroom.blogs.nytimes.com/2009/03/31/racial-bias-seen-in-hiring-of-waiters>.

In terms of **statistical evidence of racism**³, racial disparities are significant in many areas. Income is not atypical. According to the US Census Bureau, in 2006 the median personal income for Asians was \$36,000; for whites \$33,000; for blacks \$27,000; and for Hispanics \$24,000. U.S. Census, “Table PINC-03. Educational Attainment—People 25 Years Old and Over, by Total Money Earnings in 2005, Work Experience in 2005, Age, Race, Hispanic Origin and Sex,” in *Current Population Survey* (2006). The disparities contract significantly—but not all the way—when you adjust for education levels. Surveying only those who hold bachelor's degrees yields these numbers: white, \$44,000; Asian \$42,000; black \$42,000; Hispanic \$37,000. Going back

2. Evidence of racism in society gleaned from planned experiments.

3. Evidence of racism in society gleaned from statistics.

a little more than a decade, the federal Glass Ceiling Commission produced a set of striking statistics. According to its study, 97 percent of the senior managers of *Fortune* 500 companies are white (and 95 percent are male). That compares with a broader economic reality in which 57 percent of the working population is female, or minority, or both. George E. Curry, "Race, Gender and Corporate America," *District Chronicles*, April 24, 2005, accessed May 31, 2011, <http://www.georgecurry.com/columns/race-gender-and-corporate-america>.

Episodic evidence of racism⁴ in business life is real-world episodes where decisions seem to have been made based on racial distinctions. The venerable clothier Abercrombie & Fitch, which once outfitted JFK and now sells heavily to collegians, garnered considerable (and unwanted) media attention when Jennifer Lu, a former salesperson at the store, took her story to the CBS news program *60 Minutes*. According to Lu, she was fired soon after corporate executives patrolled the store where she worked and informed the store's manager that the staff was supposed to look like the models in the store's display posters. If you've been in Abercrombie, you may remember that they tend to have the blonde, blue-eyed, football team captain look. Like Toby Gerhart. In an interview with *60 Minutes*, Anthony Ocampo says, "The greeters and the people that worked in the in-season clothing, most of them, if not all of them, were white. The people that worked in the stock room, where nobody sees them, were mostly Asian-American, Filipino, Mexican, Latino." Rebecca Leung, "The Look of Abercrombie & Fitch," *60 Minutes*, November 24, 2004, accessed May 31, 2011, <http://www.cbsnews.com/stories/2003/12/05/60minutes/main587099.shtml>.

A lawsuit against the store was settled out of court when Abercrombie agreed to pay almost \$50 million to negatively affected employees and beef up their minority hiring. They also stated that their custom of seeking out new sales staff at predominantly white fraternities and sororities should be modified.

4. Evidence of racism in society gleaned from specific, unplanned occurrences.
5. In a business environment, treating individuals in terms of stereotypes or unverified generalizations and at the expense of professional merit.
6. Discrimination embedded in an organization's culture.
7. Discrimination expressed by an individual within an organization that may not share the outlook.

Categories of Racial Discrimination

When **discrimination**⁵ exists in a business environment, it can be distinguished into several categories. First, there's a division between **institutional**⁶ and **individual discrimination**⁷. Institutional discrimination is exemplified in the Abercrombie lawsuit. The preference given to white, football-player types wasn't one person at one store; it was part of the corporate culture. Managers were instructed to include a certain look while excluding others, and presumably their job depended on their ability to meet that demand. The manager, in other words, who fired Jennifer Lu may (or may not) have thought it was a terrible thing to do. Regardless, the manager's personal feelings had nothing to do with the firing. Instructions were provided by higher-ups, and they were followed.

Individual racial discrimination, on the other hand, can occur in any organization no matter how determined leaders may be to create an organizational culture prohibiting it. The NFL, for example, established a requirement (commonly called “the Rooney Rule”) in 2003 requiring teams to interview minority candidates for football operations posts. It’s part of a broader effort by the league to ensure against racial discrimination. Still, this comes from a 2005 article by *Sports Illustrated* writer Dan Banks: “One Asian stereotype concerns size. A NFL personnel man told me on Thursday the problem with Chang is ‘the kid is short.’ But when I noted that Chang was 6-1½ and 211 pounds, and taller than San Diego’s Drew Brees—the talent scout replied: ‘But he plays short. And he’s 211, but he looks frail.’” Don Banks, “Hurdles to History: From Size, Stereotypes, System, Chang Fights Skeptics,” *Inside the NFL* (blog), *Sports Illustrated*, April 15, 2005, accessed May 31, 2011, http://sportsillustrated.cnn.com/2005/writers/don_banks/04/15/chang/index.html.

A second broad distinction within the category of racial discrimination divides **isolated**⁸ from **regularized**⁹ incidents. An isolated case of racial discrimination is a one-time deal. Regularized incidents are repeated occurrences fitting into a pattern.

The final distinction cuts through all those mentioned so far; it divides **unintentional**¹⁰ from **intentional discrimination**¹¹. Take as a general example a seventy-year-old who grew up in a time and place where racism was normal and accepted almost without objection. For someone coming from those circumstances, it’s hard to imagine that from time to time some of that old way of seeing the world isn’t going to slip through. Of course the fact that racism is unintentional doesn’t make it less racist, but just like in everything else, there’s a difference between doing something without thinking about it and doing something with premeditation and full understanding.

8. An episode of discrimination not indicative of an individual’s or organization’s standard practice.
9. Recurrent episodes of discrimination indicative of an individual’s or organization’s standard practice.
10. Discriminatory acts stemming from unrealized prejudice.
11. Discriminatory acts stemming from explicitly realized prejudice.
12. Federal law banning discrimination in terms of race, color, religion, sex, or national origin.

The Legal Side of Discrimination

A complex web of legal precedents and civil rules apply to racial discrimination. At the center, the **Civil Rights Act of 1964**¹² covers all employers in both private and public organizations that have fifteen or more workers. The act’s crucial language can be found in Title VII, which confronts a host of discriminatory practices:

It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions or privileges of employment, because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate or classify his employees or applicants for

employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin. Civil Rights Act of 1964 (Pub. L. 88-352, 78 Stat. 241, enacted July 2, 1964).

You notice that employee is referred to as “his,” not “his or hers,” and employers are also “his,” not “his or hers.” That’s not a snarky comment; it’s just an example of how treacherous the issues of unfair discrimination are. Even those with the best intentions find it difficult to pull completely away from what others may perceive as signs and appearances of unfair practices.

The difficulty partially explains why the Civil Rights Act has been repeatedly modified and supplemented. The Equal Employment Opportunity Act of 1972 set down new rules and created a powerful commission to enforce and report on the status of antidiscriminatory efforts across the nation. These reports have played a role in many civil lawsuits brought by individuals or groups against employers suspected of discriminatory treatment.

Additional requirements—some involving affirmative action (to be discussed further on)—were compiled for companies doing business with the US government. While these measures don’t bind organizations operating independently of government contracts, the pure size and spending power of Washington, DC, does send the measures far into the world of business.

So the legal and governmental bulwark set up against racial and other types of discrimination stands on four legs:

1. Racial and similar types of discrimination are directly illegal.
2. Civil lawsuits may be filed by those who feel they’ve suffered from discriminatory practices.
3. Government oversight (the Equal Employment Opportunity Commission) is continuous.
4. Government regulations insist that companies wanting to do business with deep-pocketed Washington, DC, implement exemplary antidiscriminatory practices.

The Ethics of Discrimination: Arguments against the Practice

It’s difficult to locate a mainstream ethical theory for workplace life that can be twisted to support racial discrimination as it’s defined in this chapter. The arguments mounted against it generally fall into three groups:

1. Fairness arguments typically operate from the assertion that discrimination divides up society's opportunities in an unacceptable way. (These kinds of arguments are sometimes called "justice arguments.")
2. Rights arguments typically assert that discrimination contradicts the victims' basic human rights.
3. Utilitarianism arguments employed in the economic world frequently assert that discrimination reduces a society's economic productivity and so harms the general welfare, the happiness of the society.

Fairness¹³, as Aristotle defined the term, is to treat equals equally and unequals unequally. People, that means, are to be treated differently if and only if there are job-pertinent differences between them. Burly men should be favored over thin ones when you're hiring an offensive lineman in the NFL, but not when you're looking to contract a coach.

The philosopher John Rawls advocated an ingenious way to, at least as a thought experiment, promote fairness. He proposed that individuals imagine the reality surrounding them as shaken up, with people pulled from their situation and randomly inserted into another. So if you're a white guy in college looking for a summer job, you probably don't mind too much that Abercrombie & Fitch is looking for your type more than any other. But if you imagine getting shaken up with your black, Asian, and Hispanic classmates and you don't know beforehand what race you're going to get assigned, then maybe you think twice about whether Abercrombie should be allowed to hire whites so pervasively. This is called a **veil of ignorance test**¹⁴: you need to imagine how you'd like society to be if you don't know beforehand exactly where you'll be placed in it. The imagined reality, presumably, will be one where everyone gets a chance that's fair.

13. The argument that discrimination is wrong because it treats people unequally for reasons not involving merit.

14. Imagining how you'd like society to be if you don't know beforehand where you'll be placed in it and using that image to test current reality.

15. The argument that discrimination is wrong because as humans we're endowed with a certain dignity and freedom that is abridged by discrimination.

Rights arguments against discrimination¹⁵ typically depart from the premise that as humans we're all endowed with a certain dignity and freedom that abides regardless of circumstances. These attributes are an essential part of what we are: they're like pregnancy in the sense that you can't have them halfway. You're either pregnant or you're not; you either possess full dignity and freedom just like everyone else or you don't. If all of us do possess dignity and freedom, then it's a short step to see that discrimination is an affront to them. Treating one group differently than another is to wrongly claim that they have different levels of basic dignity. Or, from the viewpoint of freedom, discrimination grants one group more freedom in the world than another. Again, the argument here is that dignity and freedom can't be measured or parceled out; as essential rights, everyone must hold them perfectly, and they must be respected fully.

The **utilitarian argument**¹⁶ holds that we ought to act in the business world in a way that maximizes our collective happiness and welfare. If that's right, then we all have an interest in ensuring that the most qualified people occupy the various working slots in our economy. Possibly the examples of professional football and Abercrombie don't lend themselves very well to this argument, but if we move to other professions, the inadvisability of discrimination becomes clearer. In the field of medical research, we wouldn't want to lose a breakthrough because the one person who'd have the idea that could cure cancer happens to be Hispanic. The argument, therefore, is simply that as a society we benefit when each individual member is allowed the maximum opportunity to contribute.

The Ethics of Discrimination: Racism versus Job Qualification

While few argue that discrimination is good or justified, there are equally few who deny that some situations do, in fact, allow for discrimination (the actor hired to play Martin Luther King is black, the person hired to monitor the women's locker room is a woman). Between these extremes there stretches a tense set of debates about where the line gets drawn. When is some limited discrimination acceptable?

The lawsuit against Abercrombie & Fitch alleging that the company hires a disproportionately white sales force and favors white employees for the best positions never went to court. Former employee Jennifer Lu turned up on *60 Minutes*, CBS news started running stories about how Asians and Mexicans were confined to the stockroom, and with the bad publicity storming, Abercrombie opted to settle the matter and move on. That was probably a good business decision.

Others, however, wanted to push the issue out to see the ethical consequences. One of those was lawyer and talk show host Larry Elder. He made this point: "Abercrombie & Fitch ought to have the right to set their own policies. Look, there's a restaurant called Hooters. Hooters requires you to have certain kinds of physical accoutrements, and I think people understand that. Should they have a right to hire waitresses because they want to attract a certain kind of clientele who want to ogle at the waitresses? I think so." Rebecca Leung, "The Look of Abercrombie & Fitch," *60 Minutes*, November 24, 2004, accessed May 31, 2011, <http://www.cbsnews.com/stories/2003/12/05/60minutes/main587099.shtml>.

Closing off the argument with respect to Abercrombie & Fitch, the point is that Abercrombie isn't selling only clothes but also a look, an image, a kind of social message. And that message is crystallized by the kind of people they hire to walk around their showrooms and smile at consumers: white, attractive, fit, upper-middle-class. Not coincidentally, one of the company's subsidiary lines of clothes is called *Prep School*. And if *that's* what they're selling—not just clothes but a social

16. The argument that discrimination is wrong because it fails to maximize our collective happiness and welfare.

message—they should be able to hire the best possible messengers, just as Hooters is allowed to hire the kind of waitresses their clientele wants to ogle and just as the movie producer is allowed to hire a black actor to play Martin Luther King. There's no racial discrimination here; it's just business. At bottom, it's no different from *theGrio.com*, which is selling a specific product and image that naturally leads to an almost entirely black organization. In every case, it's not that the business starts out with a certain racial (or gender) type that they'll contract; it's that they start out with something they want to sell, and as it happens a certain racial type lends itself to the business.

There are two types of responses to this argument. The first is to push back against the premise that the one racial type *really does* serve the business's interest better than the others. Rebecca Leung, the CBS reporter for the Abercrombie & Fitch case, shapes her story this way. The idea, Leung asserts, of prep schools and the all-American pursuit of upper-middle-class life that Abercrombie tries to represent belongs equally to all races. There's no justification, Leung leads viewers to believe, for associating that ideal with a skin color. That's why her report ends this way:

“All-American does not mean all-white,” says Lu.

“An all-American look is every shade,” Lueng asks.

“Yes, absolutely.” Rebecca Leung, “The Look of Abercrombie & Fitch,” *60 Minutes*, November 24, 2004, accessed May 31, 2011, <http://www.cbsnews.com/stories/2003/12/05/60minutes/main587099.shtml>.

The other kind of response to the argument that Abercrombie's business model lends itself to hiring whites is to concede the point but then to insist that it doesn't matter. Because society's general welfare depends on rallying against poisonous discrimination, it should be avoided in every possible case, even those where there might be some rational, business-based reason for engaging in the practice. Abercrombie, the argument goes, may have good reason for seeking out white sales staff. But even so, the larger social goal of developing a color-blind society requires Abercrombie's participation, and the company ought to be required to participate even against its own short-term economic interest.

Conclusion

For historical reasons in the United States, discrimination in the reproachable sense of the word comes into sharpest focus on questions concerning race. *Any* distinguishing characteristic, however, can be levered into a scene of unfair

marginalization. Women, for example, have suffered mistreatment in ways analogous to the kind discussed here for racial groups. And it doesn't stop there. Age, national origin, religion, weight, whatever, *all of us* have features that can be singled out by others and then converted into favoritism or negative prejudice in the workplace. Somewhere there's probably a high executive who's convinced that individuals with knobby knees can't do good work. In ethical terms, all these cases may be understood and handled as the question of race has. That is, by thoughtfully determining whether the identifying feature—the skin color, gender, age, religion, weight, the knobiness of the knees—actually has a bearing on the person's ability to successfully accomplish the tasks fitting the job.

KEY TAKEAWAYS

- Racial discrimination is adverse treatment stemming from unfounded stereotypes about a person's race.
- Favoring or disfavoring members of a racial group may imply racism, or it may reflect a legitimate job requirement.
- Evidence of racial discrimination may be accumulated experimentally, statistically, and episodically.
- Racial discrimination in business can be divided into multiple kinds and intentions.
- The Civil Rights Act of 1964 is a key legal document in the history of discrimination.
- Ethical arguments against discrimination are generally built on theories of fairness, rights, and utilitarian arguments.

REVIEW QUESTIONS

1. In your own words, what are the three steps defining racial discrimination?
2. What's the difference between racial discrimination and a preference for race based on an occupational qualification? Provide an example.
3. List and define the six categories of discrimination in a business environment.
4. What are the main legal and governmental remedies set up against discrimination?
5. Why kind of business may favor Asians when hiring, and draw both reasonable defenses and criticisms of the practice?
6. What is the utilitarian argument against racism in the economic world?

10.2 Gender Discrimination and Occupational Segregation

LEARNING OBJECTIVES

1. Define gender discrimination.
2. Consider the ethics of occupational segregation.
3. Discuss the doctrine of comparable worth.
4. Define the glass ceiling.
5. Examine the case of motherhood.

10.3 Discrimination: Inferiority versus Aptness

Discrimination in the workplace moves in two directions. One is hierarchical, one group or another is stereotyped as simply superior or inferior. Historically, many cases of race discrimination fit on this scale. Discrimination can also move horizontally, however. In this case, divisions are drawn between different groups not so much in terms of general capability, but as naturally suited for some and naturally unsuited for other tasks and occupations. Gender discrimination frequently fits into this category.

Here's a list of professions where the workers are more than 90 percent women:

- Dental hygienists
- Preschool and kindergarten teachers
- Secretaries and administrative assistants
- Dental assistants
- Speech-language pathologists
- Nurses
- Child-care workers
- Hairstylists and cosmetologists
- Receptionists and information clerks
- Payroll clerks

And another where the workers are 99 percent (not a typo) male:

- Logging workers
- Automotive body repairers
- Cement masons
- Bus and truck mechanics
- Electrical power-line installers and repairers
- Tool and die makers
- Roofers
- Heavy vehicle equipment service technicians
- Home appliance repairers
- Crane and tower operators

The lists come from a blog called *The Digerati Life*. Silicon Valley Blogger, "Traditional Jobs for Men and Women and the Gender Divide," *The Digerati Life* (blog), May 29, 2007, accessed May 27, 2011, <http://www.thedigeratilife.com/blog/index.php/2007/05/29/traditional-jobs-for-men-and-women-the-gender-divide>.

The author is a software engineer living in Silicon Valley. Because she's a she, 78 percent of her colleagues don't use the same bathroom. Claire Cain Miller, "Out of the Loop in Silicon Valley," *New York Times*, April 17, 2010, accessed May 31, 2011, <http://www.nytimes.com/2010/04/18/technology/18women.html?pagewanted=1>.

What Exactly Is Gender Discrimination?

Gender discrimination defines analogously with the racial version:

1. An employment decision—hiring, promoting, demoting, firing—adversely or positively affects an employee or applicant
2. The decision is based on the person's gender rather than individual merit.
3. The decision rests on unverified stereotypes or generalizations about members of that gender.

The difference, again, is that the stereotypes and generalizations tending to surround women in the United States during our lifetimes have branded the group as naturally suited to some types of work and not others; and, correspondingly, men also find their natural roles pointing in some directions and not others. This division of labor raises provocative questions. More sparks fly when two other factors add to the mix: concrete and broad statistics showing that women receive lower wages than men when doing distinct but comparable work; and women who do pursue career lines dominated by men can find their advance up the promotion ladder halted by a difficult-to-see barrier, a kind of glass ceiling.

So three ethical issues connecting with gender discrimination in the workplace are occupational segregation, comparable worth, and the glass ceiling.

Occupational Segregation: The Causes

What causes **occupational segregation**¹⁷? One explanation is **biological**¹⁸. Differences, the reasoning goes, that are plainly visible physically also exist on the level of desires and aspirations. Women and men are simply divergent; they pursue distinct goals, define happiness in separate ways, and tend to have dissimilar kinds of abilities. For all those reasons, women gravitate to different kinds of professions. Now, if all those things are true, then we should expect to see just what we do see: significant occupational segregation.

The biological explanation also functions less directly when career paths and family paths conflict. Women who physically carry children find themselves

17. The division of jobs into those appropriate for women and those for men.

18. The belief that men and women are fundamentally different in terms of basic aspirations and capabilities.

removed—willingly or not—from work for significant periods. If you see that coming in your not-distant future, then you may opt into a field where that kind of absence is less damaging to the company and your own long-term prospects.

One clean argument against the biological explanation for gender segregation in the workforce starts with the suspicion that visible physical differences may be leading us to mistakenly believe that there are underlying psychological differences where few actually exist. People, the reasoning goes, are making an invalid argument when they suppose that because women and men look different on the outside, they must be different on the inside too. There's no reason that's necessarily true, just like there's no reason to think that a Cadillac painted blue and one painted pink are going to perform differently on the road.

A second and frequently cited explanation for occupational segregation is **social precedent**¹⁹. Young men and women making career decisions normally have very limited experience in the workplace and so depend on what others have done. It's very reasonable, therefore, for a young man trying to decide between, say, going to work as an assistant to a dentist and going to assist a roofer to notice that a lot of other guys are working on roofs, but not many are in dentists' offices. Women see the same thing, and the occupational segregation that already exists in society gets repeated. In this case, it's the individual men and women themselves who are effectively volunteering for professional separation.

A third explanation—and the one drawing the sharpest ethical attention—is discriminatory prejudice. Those in charge of hiring stack the deck to favor one gender over another because of unverified generalizations about differences between men and women. In his book *Business Ethics*, Manuel Velasquez relates an experiment done by the ABC news program *Primetime Live*. Two early careerists—Chris and Julie—were outfitted with hidden microphones and tiny cameras and sent out to answer the same help-wanted ads. Their experiences were for TV entertainment, not a scientific study, but they do illustrate how discriminatory occupational segregation can work. Manuel Velasquez, *Manual Business Ethics: Concepts and Cases* (New Jersey: Prentice Hall, 2002), 306.

Both she and he were in their midtwenties, blond, and attractive. They presented virtually identical résumés, and both claimed to have management experience. What they got from their interviewers, however, was very different. When Julie appeared at one company, the recruiter spoke only of a position answering phones. The same day the same recruiter offered Chris a management job. In a gotcha-follow-up interview, the flustered recruiter told the camera that he'd never want a man answering his phone.

19. The belief that ingrained customs and habits explain divergent career paths for men and women.

Another instance wasn't quite so clear-cut. The two visited a lawn-care company. Julie received a typing test, some casual questions about her fiancé, and was offered a job as a receptionist. Chris's interview included an aptitude test, some casual talk about keeping the waistline trim, and a job offer as a territory manager. When confronted in his gotcha interview, the owner strongly defended his actions by pointing out that being a manager at a lawn-care service means actually doing some of the outdoor work; and Chris—an objectively stronger candidate in the physical sense—seemed more apt for that. The question to ask here—and it's one that comes up time and again in discussions of occupational segregation—is the extent to which the outdoor work requirement is a legitimate reason for hiring Chris or an excuse for excluding Julie (because the owner doesn't believe women should be in that line of work).

The Ethics of Women's—and Men's—Work

What kind of ethical arguments can be mounted for and against the idea that occupational segregation ought to exist? Possibly the strongest argument in favor runs through a utilitarian theory—one that judges as ethically correct any act that raises a society's overall happiness. The theory's cutting edge is the requirement that individual interests be sacrificed if that serves the greater good. For example, occupations requiring hard physical strength (firefighter, logger, construction) may require strength tests. These tests, which more or less measure brute power, are going to weed out most women—so many, in fact, that it may make practical sense to essentially designate the job as a male realm, and to do so even though it may be unfair to a very few physically strong women. That unfairness is erased, in ethical terms, by the requirement that the general welfare be served.

There are a number of responses to this argument. One is to say that the general position of firefighter should be open to everyone, but every firehouse should make sure there are a few big guys in the mix in case smoke-inhalation victims need to be carried down perilous ladders. Another response is to concede that there are some occupations that may be right for one or another gender but draw the line firmly there and demand equal opportunity everywhere else. Another, more polemical argument is to assert that the goal of a gender-neutral society is so important and worthwhile that if it means sacrificing performance in some occupations, then the sacrifice should be made. The greater good is better served by occupational equality than by the certainty that the 250-pound weight-lifting guy will be the one who happens to be in the firehouse when the alarm goes off even if it goes off because it's your apartment that's on fire.

Another way to argue against occupational segregation of *any* kind, no matter the circumstances, starts from rights theory and the premise that the highest ethical value is personal freedom and opportunity: what's always recommendable is

maximizing our ability to pursue happiness as each of us sees fit. Within this model, it becomes directly unethical to reserve some jobs for women and others for men because that setup limits both men and women; it impinges on their basic freedom.

Like utilitarian theory, this freedom-based argument can be twisted around to work in the other direction. If individual freedom is the highest ethical good, the reasoning goes, then shouldn't business owners be able to hire whomever they like? There may be an owner out there who simply doesn't want to hire guys. Perhaps there's no rational reason for the exclusion, but if individual freedom is the highest good, there's no strong ethical response to the preference. The only open pathway is to say that if you don't like the fact that this owner isn't hiring men, then you should make your own company and you can hire as many of them as you wish.

Comparable Worth

Going back to the list of gender-concentrated occupations, some on the women's side really aren't so different from those on the men's side in terms of skill and training required, effort exerted, and responsibility held. Take hairstylists and cosmetologists from the woman's list and automotive body repairers from the guy's list. While it's true that a lot of the hairdressers wouldn't be caught dead working in the body shop and vice versa, their jobs really aren't so different: fixing hair and giving cars makeovers. The wages *are* different, though, at least according to statistics that come from the *San Jose Mercury News*. Doing hair will net you about \$20,000 a year, and working in the car shop gets you \$35,000. Silicon Valley Blogger, "Traditional Jobs for Men and Women and the Gender Divide," *The Digerati Life* (blog), May 29, 2007, accessed May 27, 2011, <http://www.thedigeratilife.com/blog/index.php/2007/05/29/traditional-jobs-for-men-and-women-the-gender-divide>.

This reality is at odds with the **doctrine of comparable worth**²⁰, which states that when two occupations require comparable levels of skill, training, effort, and responsibility, they should be rewarded with comparable salaries. The gender problem associated with comparable worth is that statistical evidence suggests that so-called women's work has consistently garnered lower wages than men's work. The hairdresser and the body shop example isn't an anomaly but a representative of the larger reality. According to the US government, the median income of American working women is \$27,000, while for men it is \$39,000. More, the differences hold when adjusting for educational levels. For high school grads, it is \$21,000 versus \$32,000. For college grads, it's \$40,000 versus \$60,000. At the PhD level, it's \$55,000 versus \$78,000. "Table PINC-03. Educational Attainment—People 25 Years Old and Over, by Total Money Earnings in 2005, Work Experience in 2005, Age, Race, Hispanic Origin and Sex," Current Population Survey (CPS), accessed May 31, 2011, http://pubdb3.census.gov/macro/032006/perinc/new03_000.htm.

20. Dictates that distinct occupations requiring comparable levels of skill, training, and effort and responsibility should be rewarded with comparable salaries.

These statistics don't tell the whole story, however; they never do. As it happens, statistician is one of those professions where there's a notable pay gap between genders—\$49,000 versus \$36,000 as a median salary—and women get the \$49,000. Jeanne Sahadi, "39 Jobs Where Women Make More than Men," *CNNMoney.com*, February 28, 2006, accessed May 31, 2011, http://money.cnn.com/2006/02/28/commentary/everyday/sahadi_paytable/index.htm.

Glass Ceiling

What happens when a woman goes into a field traditionally dominated by men and starts strong, receiving salary and treatment comparable with her male workmates but then hits a promotion wall? Called the **glass ceiling**²¹, it's the experience of women topping off in their career for, apparently, no reason beyond the womanhood. A good example of the glass ceiling—and also of breaking it—comes from Carly Fiorina, the former CEO of the very masculine Hewlett-Packard. In an interview with the web magazine *Salon*, she discusses the topic candidly. Five of her ideas come through loudly. Rebecca Traister, "The Truth about Carly," *Salon*, October 19, 2006, accessed May 31, 2011, http://www.salon.com/life/feature/2006/10/19/carly_fiorina.

First, in Silicon Valley Fiorina believes there is a glass ceiling at many companies.

Second, she buys the notion that women and men are fundamentally different, at least in this way: they feel comfortable with different kinds of languages and ways of communicating. Compared with Silicon Valley guys, she says, "Women tend to be more communicative, collaborative, expressive. The stylistic differences get in the way [of mutual understanding]. That's why diversity in the workplace takes real work." Rebecca Traister, "The Truth about Carly," *Salon*, October 19, 2006, accessed May 31, 2011, http://www.salon.com/life/feature/2006/10/19/carly_fiorina.

Third, differences in the way women and men communicate ultimately doom many women's professional ascent. As the office culture becomes increasingly male on the way up, women are decreasingly able to communicate with and work well with colleagues.

Fourth, Fiorina believes that given the way things are now in Silicon Valley, if a woman wants to break through to the highest echelons of management, she's probably going to have to learn male rules, and then play by them. For example, she once pulled on cowboy boots and a cowboy hat, stuffed socks down her crotch, and marched into a hall full of (mostly) men to proclaim, "Our balls are as big as anyone's in this room!" In the *Salon* interview, she explains it this way:

21. An unacknowledged block on the advance of qualified people—especially women—to high posts in an organization.

| | |
|---------------------|---|
| Fiorina: | Part of the reason I succeeded in Silicon Valley was that I talked to people in a language they understood. When I negotiated in Italy, I ate a lot of pasta and drank a lot of wine. In bringing a team together to focus on a common goal, you have to find common language. |
| Interviewer: | And the language of the business world remains male? |
| Fiorina: | Yes, and particularly that case you cited, it was an incredibly male-dominated, macho culture. They understood balls and boots, they understood what that meant. Rebecca Traister, "The Truth about Carly," <i>Salon</i> , October 19, 2006, accessed May 31, 2011, http://www.salon.com/life/feature/2006/10/19/carly_fiorina . |

Fifth, in the medium to long term, Fiorina believes the way to truly demolish the glass ceiling is for women to work their way up (like she did) and occupy more high-level posts. "When I went to HP," she says, "I hoped I was advancing women in business by putting women in positions of responsibility. But it's clear that we don't yet play by the same rules and it's clear that there aren't enough women in business, and the stereotypes will exist as long as there aren't enough of us." Rebecca Traister, "The Truth about Carly," *Salon*, October 19, 2006, accessed May 31, 2011, http://www.salon.com/life/feature/2006/10/19/carly_fiorina.

The Special Case of Motherhood

One advantage Carly Fiorina had on the way up was a husband who cooperated extensively in rearing her children. Still, women alone physically bear children and frequently hold principal responsibility for their care at least through the breast-feeding stage or further. For that reason, a discrete area of business ethics has been carved out for managing the tension between the legitimate interest businesses have in employees continuing their labors without the occasional childbearing and rearing interruption, and the legitimate interest professional women and society generally hold in motherhood and in ensuring that a healthy generation will be arriving to take over for the current one.

One proposal has been the creation of a dual-track career system: one for women who plan to have children at some point in the not-so-distant future and another for those who either do not plan to have children or envision someone else as assuming primary child-care responsibility (a husband, a relative, a paid nanny). Under this scenario, companies would channel women planning for motherhood and child rearing into positions where work could be interrupted for months or even years and then resumed more or less from the same spot. A potential mother would receive an at least informal guarantee that her spot would be held for her during the absence, and upon resumption of duties, her career would continue and

advance as though there had been no interruption. In fact, in many European countries including Spain, France, and Germany, such leave is actually required by law. In those countries, the birth of a child automatically qualifies one of the parents (the laws generally treat fathers and mothers indiscriminately as caregivers) for an extended leave with the guarantee of job resumption at the end of the period. Laws in the United States are not so worker oriented (as opposed to business oriented), though some companies have taken the initiative to offer extended parental absences without adverse career effects. These include Abbott Laboratories, General Mills, IKEA, and others.

Theoretically, granting professional leaves for the fulfillment of parental responsibilities makes sense. The problem is that in the real world and in many industries, it's nearly impossible to go away for a long time and then resume responsibilities seamlessly. In the interim, projects have been completed and new ones have begun, clients have changed, subordinates have been promoted, managers have moved on, and the organization's basic strategies have transformed. Reinsertion is difficult, and that leads to the fear that companies and managers—even those with the best intentions—will end up channeling those they presume will seek parental leaves into less important roles. The potential mother won't be the one chosen to pursue research on the company's most exciting new product—even if she's the best researcher—because the firm won't be able to just put product development on hold at some point in the future while she's away. The end result is that the so-called mommy track for professional life becomes the dead end track.

There are no easy solutions to this problem, though there are ways to limit it. Technology can be a major contributor. Just something as simple as Skype can allow parents at home with young children to “come into” the office regularly. Further, companies can, and increasingly are, providing day care facilities in the building.

Ethically, one way to manage the conflict between professional life and parenting is to locate the interests of those involved, set them on a scale, and attempt to determine how the issue weighs out. So, who are the primary stakeholders along the mommy track: whose interests should be considered and weighed? The mother, to begin with, has a right to pursue success in professional life, and she has the choice to embark on motherhood. A born child has a right to nurturing care, and to the love parents give. A business owner has a right to hire employees (and fire) employees in accord with rational decisions about what will benefit the organization and help it reach its goals. The coworkers and subordinates linked to a prospective parent have the right to not be bounced around by someone else's personal choices. Society as a collective has a responsibility to nurture the growth of a new generation fit to replace those who are getting old.

The next step is to put all that on the scale. In the United States today, the general consensus is that the business owners' rights to pursue economic success outweigh the parents' interest in being successful in both professional and family life and society's concern for providing an upcoming generation. That weighing can be contrasted with the one done in most countries of Western Europe where, not incidentally, populations are shrinking because of low birthrates. In Europe, there's a broad consensus that the workers' interest in combining professional and personal lives, along with society's interest in producing a next generation, outweighs the business's interest in efficiency and profit. For that reason, the already-mentioned laws guaranteeing extended family leave have been implemented.

KEY TAKEAWAYS

- Gender discrimination can take the form of occupational segregation.
- Strong ethical arguments may be formed for and against some forms of occupational segregation.
- The doctrine of comparable worth prescribes comparable pay for distinct occupations that require similar capability levels.
- The glass ceiling blocks women from advancing to the highest professional levels for reasons outside of dedication and capability.
- The fact that women can also be mothers introduces a broad set of ethical questions about the rights of employers and a society's priorities.

REVIEW QUESTIONS

1. What are the three steps defining gender discrimination?
2. What are some of the causes of occupational segregation?
3. What is an argument in favor of some occupational segregation? What is an argument against occupational segregation?
4. What is comparable worth?
5. What are two explanations for the existence of a glass ceiling?
6. How might the existence of a career track dedicated to those who expect to rear children be criticized in ethical terms?

10.4 The Diversity of Discrimination and Victimization

LEARNING OBJECTIVES

1. Indicate characteristics beyond race and gender that may be targeted for discrimination.
2. Form a general definition of discrimination in the workplace.
3. Define minority status.
4. Analyze victimization.

The Diversity of Discrimination

There's a difference between history and ethics. Historically, racism and sexism have been the darkest scourges in the realm of discrimination. In straight ethical terms, however, discrimination is discrimination, and any isolatable social group is equally vulnerable to negative prejudice in the workplace. The Civil Rights Act of 1964 extends protection to those stigmatized for their religion or national origin. In subsequent years, amendments and supplements have added more categories, ones for age and disability. Currently, there are no federal laws prohibiting discrimination based on sexual orientation, though measures have been enacted in states and localities. Other measures identifying and protecting further distinct groups exist on local levels.

What holds all these groups together is that they fit into the most general form of the definition of discrimination in the economic realm:

1. A decision affects an individual.
2. The decision is based on personal characteristics clearly removed from job-related merit.
3. The decision rests on unverified generalizations about those characteristics.

Even though discrimination in the realm of business ethics can be wrapped up by one definition, it remains true that distinct groups victimized by discrimination have unique and diverse characteristics affecting the way the issue gets managed. Two types of characteristics will be considered here: discrimination based on traits that are *concealable* and discrimination based on traits that are (eventually) *universal*.

Concealable and Inconcealable Status

One of the enabling aspects of race and gender discrimination is that it's normally easy to peg someone. If you don't think Asians do good work, you're probably going to see who not to hire. The same goes for gender, age, and many disabilities.

Other traditionally discriminated-against groups aren't so readily identifiable, though: the characteristics marking them as targets are **concealable**²². For example, it's not so easy to detect (and not so difficult to hide) religious beliefs or sexual orientation. John F. Kennedy, many young people are surprised to learn today, faced considerable resistance to his presidential ambitions because of his religion. In fact, he considered the fact that he was the first Roman Catholic president of the United States as one of the higher virtues of his story. While the Protestant-Catholic divide has faded from discriminatory action in America, other splits have taken its place—Christian and Muslim, for example. No matter the particular religion, however, most individuals going into the work world do have the opportunity to simply reduce that part of their identity to a nonissue by not commenting on or displaying their religious beliefs.

A similar point can be added to considerations of national identity. Only a generation ago Italians were disdained as “wops.” Legendary football coach Joe Paterno (no stranger to insults himself: “If I ever need a brain transplant, I want it from a sports reporter because I know it's never been used.”) remembers being derided as a wop in his career's early days. If you wander down the street calling people a “wop” today, however, hardly anyone will know what you're talking about, which indicates how quickly discrimination against a group can fade when the source (in this case nationality) isn't readily visible.

Ethical questions raised by the possibility of invisibility include “In the business world, do those who feel they may be discriminated against for a personal characteristic that they can conceal have any responsibility to conceal it?” and “If they choose not to conceal, and they're discriminated against, do they bear any of the blame for the mistreatment?”

Universality versus Individuality

One obvious reason it's easy for white men to discriminate against racial minorities and women is that they don't have to worry about riding in that boat themselves. Age is different, however. All of us have gray years waiting at the end of the line. That hasn't stopped people from denying jobs to older workers, however. Take this report from California:

22. A physical or cultural characteristic that may make one a target of discrimination and that may be concealed if the individual chooses—for example, religious faith.

When a then-emerging Google recruited engineer Brian Reid in the summer of 2002, it appeared to have landed a Silicon Valley superstar. Reid had managed the team that built one of the first Internet search engines at AltaVista. He'd helped co-found the precursor company to Adobe Systems. He'd even worked on Apollo 17.

But within two years, Google decided that the 54-year-old Reid was not a “cultural fit” for the company and fired him, allegedly after co-workers described him as “an old man,” “slow,” “sluggish” and “an old fuddy-duddy.” Reid responded with an age discrimination lawsuit blasting Google’s twentysomething culture for shunning his generation in the workplace. “Ex-Google Worker’s Case Goes to High Court,” *San Jose Mercury News* (CA), May 24, 2010.

Reid can take satisfaction in knowing that, eventually, these twentysomethings are going to get what’s coming to them. Is it more than that, though? Is the fact that they too share that fate a *license* for their discrimination? Assuming those who fired Reid aren’t hypocrites, assuming they accept that one day they too will be subject to the same rules, can Reid really claim any kind of injustice here? In terms of fairness at least, it seems as though the Google whippersnappers should be able to treat others in terms they would accept for themselves.

On the other side, if his work performance matches his younger peers, if the only difference between Reid and the others is that his hair is gray and he doesn’t know who Lady Gaga is, then his case does fit—at least technically—the definition of invidious discrimination. Google might be wrong on this one.

Regardless of which side you take, there’s a fundamental ethical question here about whether discrimination can count when it’s based on a characteristic that’s **universal**²³, that everyone shares.

What Is a Minority?

The boundaries marking who can rightfully claim to belong to a group falling victim to systematic discrimination in the workplace are shifting and uncertain—in different times and places the victims share different characteristics. For that reason, it makes sense to try to form a definition of personal vulnerability that doesn’t rely only on describing specific personal traits like skin color or gender but that can stretch and contract as society evolves. The term **minority**²⁴, as understood within the context of workplace discrimination, is sometimes summoned to perform this role.

23. A physical or cultural characteristic that may make one a target of discrimination and that everyone has.

24. The status of being vulnerable to discrimination.

To be part of a minority means to belong to a group of individuals that are the minority *within a specific organizational context*. Whites, for example, are not a minority population in the United States, but white students are a minority at the University of Texas–San Antonio. Similarly, women make up more than 50 percent of the population but count as a minority in corporate boardrooms where they represent only a small percentage of decision makers.

Being part of a minority doesn't just mean suffering a numerical disadvantage; it also means having so few peers in a situation that you're forced to adapt the language, the styles of dress, the sense of humor, the nonwork interests, and so on of people very different from yourself. In the case of the minority white population at University of Texas–San Antonio, it's difficult to claim that their numerical minority status also forces them to adapt in any significant way to the Hispanic majority—whites can get by just fine, for example, without speaking any Spanish. By contrast, the case of Carly Fiorina wadding up socks in her crotch and screaming out that she has big balls, this is minority behavior. For minorities in a man's world, if you want to get ahead you have to adapt. To a certain extent, you need to speak and act like a man.

The term minority can be defined by three characteristics:

1. Physical and/or cultural traits set a group of individuals within a community apart from the customs and members that dominate the collective.
2. The physical and/or cultural traits that set the group apart are either disapproved of, or not understood by the dominant group. In Carly Fiorina's case, these traits included her gender and, more importantly, her feminine use of language. As she put it, "The stylistic differences get in the way" Rebecca Traister, "The Truth about Carly," *Salon*, October 19, 2006, accessed May 31, 2011, http://www.salon.com/life/feature/2006/10/19/carly_fiorina. of trying to communicate well with male colleagues. She was a minority because she wasn't well understood.
3. A sense of collective identity, mutual understanding, and common burdens are shared by members of the minority group. Fiorina sensed this collective identity and burden very clearly when she said, "I hoped I was advancing women in business by putting women in positions of responsibility. But it's clear that we don't yet play by the same rules as men, and it's clear that stereotypes about women in business will exist as long as there aren't enough of us." Rebecca Traister, "The Truth about Carly," *Salon*, October 19, 2006, accessed May 31, 2011, http://www.salon.com/life/feature/2006/10/19/carly_fiorina.

The advantage of using the term *minority* to name a group vulnerable to discrimination in the workplace is connected to the rapidly changing world, one where those subjected to discriminatory treatment come and go. For example, a tremendous influx of Spanish-speaking immigrants from Mexico have recently made that group a target of sharper discrimination, while the marginalization that the Irish once experienced in the United States no longer seems very threatening. There's no reason to believe that this discriminatory evolution will stop, and in the midst of that shifting, the term *minority* allows the rules of vulnerability to discrimination in the workplace to remain somewhat steady.

What Is a Victim?

As the number of characteristics classified as vulnerable to discriminatory mistreatment has expanded, so too has a suspicion. It's that some of those claiming to suffer from discrimination are actually using the complaints to abuse others, or to make excuses for their own failures. This is called **victimization**.

To accuse someone of being a victim is to charge that they are exploiting society's rejection of discrimination to create an unfair advantage for themselves. There are a range of victimization strategies running from strong to weak. **Strong victimization**²⁵ is individuals in protected groups who aren't suffering any discrimination at all claiming that they are and making the claim for their own immediate benefit. This is what's being alleged in an Internet post where a supervisor writes the following about an employee:

This person came out & stated in this meeting that I use a racial slur on a very regular basis in my vocabulary. With my profession, this is something that is EXTREMELY HARMFUL to my status in my job, my respect in my job & community, my reputation, etc. But that word has NEVER been in my vocabulary. I am SO UPSET I do not know what to do!UT alum, August 24, 2005 (9:09 a.m.), "Falsely Accused of Racist Slur," ExpertLaw Forum, accessed May 31, 2011, <http://www.expertlaw.com/forums/showthread.php?t=2887>.

Assuming this supervisor's allegations are true, then the employee was never subjected to racist language or offended by slurs. There was no workplace discrimination. Instead, it sounds like the employee may actually be disgruntled and is aiming for revenge by getting the supervisor in trouble. If that's what's going on, then the accusation of racial discrimination has become a workplace weapon: the charge can be invented and hurled at another with potent effect.

Weak victimization²⁶ occurs when someone works in a context where discrimination is a constant subject of attention, one permeating daily life in the

25. Claiming to suffer discrimination where it doesn't exist and using the claim to abuse others.

26. Using discrimination as an excuse for one's own failures.

office. In that situation, it can happen that a worker suffering an adverse work evaluation (or worse) comes to the conclusion that it wasn't poor job performance but minority status that actually caused the negative review. (Possibly, one of the few universal human truths is that we all find it easier and more comforting to blame others for our problems than ourselves.) In the interview with Carly Fiorina—which was done not long after she'd been fired from Hewlett-Packard—the interviewer broaches this possibility *very gingerly*. Here's how she puts the question:

I'm predisposed to be sympathetic to the notion that you were treated differently because of your gender. But I've also read a lot about actual business mistakes you made.

Fiorina comes back with an ambiguous answer and the interviewer lets it go. For a while. Suddenly, however, after a few softball questions she tries again, more forcefully:

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| Interviewer: | I want to press you on the fact that you missed a quarter's projections big-time... |
| Fiorina: | Wouldn't be the first top company that missed a quarter either. Or the last. |
| Interviewer: | Right. But that miss was huge. And you wrote in the book that "building a culture of accountability and execution of discipline requires real and clear consequences for failure to perform." If you had been told that you were fired because you missed the quarter, would you have understood? Rebecca Traister, "The Truth about Carly," <i>Salon</i> , October 19, 2006, accessed May 31, 2011, http://www.salon.com/life/feature/2006/10/19/carly_fiorina . |

What's being intimated here is that Fiorina got so caught up in being a woman in a man's world that when she got fired, she was so invested in that battle-of-the-sexes way of seeing things that she ended up suspecting sexist discrimination where maybe there wasn't any.

Weak victimization means that someone is twisting discrimination claims into an excuse for their own imperfections, shortcomings, and failures. Everyone faces adversity in their lives. When that happens, the choices are deal with it or collapse. Accusing someone of being a victim in the weak sense is saying they're collapsing; they're using racism or sexism or whatever as an excuse to not confront what most people face every day: an imperfect and sometimes difficult world. So weak

victimization is an accusation tinged with exasperation. Here's what the accusation sounds like in longer form, as posted on an Internet forum:

I genuinely don't believe that in this country that persecution of minorities exists anymore. This is not to say that these things don't exist, of course they do in isolation, but being black or gay or a woman is not in any way a barrier to achieving anything that you want to achieve.

I told her that she was playing the victim against an oppression that doesn't exist, is looking for excuses about things she can't do rather than looking at what she can do (which is anything she wants) and that she's being patronizing towards all those from 'minority' groups who had gone on to be successful. Thatcher didn't whine about latent sexism, Obama didn't complain that being black meant he wasn't able to do the most powerful job in the world. Gerogerigege, February 26, 2010 (10:27), "Does Racism/Sexism/Homophobia Exist in Any Meaningful Way in Modern Britain?," *DrownedinSound.com*, accessed May 31, 2011, <http://drownedinsound.com/community/boards/social/4248929>.

In the ensuing discussion, quite a few posters pick up on the claim that "being black or gay or a woman is not in any way a barrier to achieving anything that you want to achieve." Some agree, some not so much. What's certain is that somewhere between Carly Fiorina stuffing socks down her pants and Carly Fiorina leading one of the world's most powerful companies, and somewhere between black slavery and a black president, there's a line. No one knows exactly where, but it's there and it divides a reality where sexism and racism are vile scourges from another reality where they're things people whine about.

An ethical argument against victimization—against someone playing the role of a victim of discrimination—can be outlined quickly. It begins with the duty to respect your own dignity, talents, and abilities. Those blaming their failures on others are essentially giving up on their own skills; they are concluding that their abilities are worthless when they may not be. If Carly Fiorina believes that her gender makes success in Silicon Valley impossible, and it really doesn't, then by denying her own talent she's subtracting from her own dignity.

KEY TAKEAWAYS

- Discrimination may be applied in a society to a group defined by any physical or cultural trait.
- A successful general definition of discrimination in the workplace must evolve as society and the face of discrimination change.
- Minority is a general category meant to include those vulnerable to discrimination.
- Victimization occurs when vulnerability to discrimination converts into a weapon to use against others, or an excuse for failure.

REVIEW QUESTIONS

1. In your own words, explain the general definition of discrimination.
2. What's the difference between a concealable and inconcealable characteristic that may leave one vulnerable to discrimination?
3. In your own words, define what it means to be a minority.
4. What's the difference between strong and weak victimization?

10.5 The Prevention and Rectification of Discrimination: Affirmative Action

LEARNING OBJECTIVES

1. Define affirmative action.
2. Elaborate arguments for and against affirmative action.
3. Discuss the ethics of affirmative action.
4. Indicate why some organizations implement affirmative action policies.

Race-Based Scholarships

“The scholarship,” according to Carlos Gonzalez, an overseer appointed by a federal court, “was designed essentially as a jump-start effort to get the process of desegregation under way.” He was talking about a new **race-based scholarship**²⁷ at Alabama State University (ASU). It was triggered by a federal court’s finding that “vestiges” of segregation remained within the Alabama university system: the state was ordered to spend about \$100 million to racially diversify the student body.

Two years later, 40 percent of ASU’s budget for academic grants went to minority students even though they represented only about 10 percent of the student population. That meant minority students got about \$6 of aid for every \$1 going to everyone else.

One beneficiary of diversification was a grad student who accumulated \$30,000 in scholarship money. She said that she would’ve attended the school anyway, but getting the money because of her skin color was an added bonus. “I think it’s wonderful,” she exclaimed, according to a CNN report. Brian Cabell, “Whites-only Alabama Scholarship Program Raising Eyebrows,” *CNN*, October 30, 1999, accessed May 31, 2011, <http://www.cnn.com/US/9910/30/white.scholarships/index.html>.

Not everyone came off so well. One big loser was another grad student, Jessie Tompkins. The effort to balance the student body racially meant funding he’d been promised got reassigned to others. He remembered the moment vividly. He’d received an assistantship for three years, but when he went to apply the next year, he learned that the scholarships had been reserved for those with a different skin color. “I said, ‘Ma’am?’ She said, ‘You can apply, but you won’t get it.’” June Kronholz, “Double Reverse: Scholarship Program for whites Becomes a Test of

27. Scholarships open only to specific racial (or ethnic) groups

Preferences,” The Center for Individual Rights, *Wall Street Journal*, December 23, 1997, accessed May 31, 2011, <http://www.cir-usa.org/articles/103.html>.

As word of the new scholarship policy circulated, temperatures rose. They heightened even more when news got out that the race balancers were more lucrative than the old funding mechanisms that had been available to everyone. The minority set-asides paid for tuition, books, and for room and board, and then added on almost \$1,000 for personal use. While the new students got all that just for showing up inside their color-appropriate skin, Tompkins remembered that he hadn't even received enough to fully cover tuition; in exchange for his aid, he'd worked for the school by helping coach the track team and by scheduling tennis court use.

The situation reached a boil with one more detail: the revelation that the minority scholarship recipients weren't as academically qualified as those including Tompkins who were now suddenly being turned down at the funding office. To qualify for financial aid, the new recipients only needed a C average, significantly below what had been required of all applicants in the earlier, color-blind system. That led the editor of the university newspaper, Brandon Tanksley II, to express his frustration and anger this way, “It's not that they're minority students, it's that they're not competitive.” June Kronholz, “Double Reverse: Scholarship Program for whites Becomes a Test of Preferences,” The Center for Individual Rights, *Wall Street Journal*, December 23, 1997, accessed May 31, 2011, <http://www.cir-usa.org/articles/103.html>.

As for Jessie Tompkins, with his scholarship no longer available, he was forced to drop out and take a job handling packages at United Parcel Service. The next year he returned on a part-time-student basis and once again applied for his old scholarship. Again he was rejected. In a newspaper interview he said, “We don't need race-based quotas. I don't want anyone telling my children they're the wrong color. If you want something, you work for it; you just work for it.” June Kronholz, “Double Reverse: Scholarship Program for whites Becomes a Test of Preferences,” The Center for Individual Rights, *Wall Street Journal*, December 23, 1997, accessed May 31, 2011, <http://www.cir-usa.org/articles/103.html>.

Eventually, Tomkins connected with the Center for Individual Rights, a nonprofit public interest law firm with conservative and libertarian leanings. The firm was experienced with this kind of complaint: it had previously led a charge against the University of Texas's affirmative action program. In an article in the *Wall Street Journal*, Tompkins compares himself to a plaintiff in that important case, Cheryl Hopwood: “We were bumped aside, regardless of our qualifications, because of our race.” June Kronholz, “Double Reverse: Scholarship Program for whites Becomes a

Test of Preferences,” The Center for Individual Rights, *Wall Street Journal*, December 23, 1997, accessed May 31, 2011, <http://www.cir-usa.org/articles/103.html>.

Tompkins says he’s just like Hopwood, even though she’s a woman and he’s a man, and even though she’s white and he’s black.

As for the administration at the traditionally black Alabama State, they chose not to respond to Tompkins directly, but they did stand behind their affirmative action program. William Hamilton Harris, president at ASU, defended the set-asides this way, “Bringing whites and blacks together on campus will broaden the quality of education and the quality of life at Alabama State.” June Kronholz, “Double Reverse: Scholarship Program for whites Becomes a Test of Preferences,” The Center for Individual Rights, *Wall Street Journal*, December 23, 1997, accessed May 31, 2011, <http://www.cir-usa.org/articles/103.html>.

What Is Affirmative Action?

The Civil Rights Act aimed to blind organizations to gender and race and similar distinctions removed from merit. The idea behind the law is an ideal, a theoretically perfect society where discrimination in the invidious sense doesn’t exist. Unfortunately, the real world rarely lives up to ideals. **Affirmative action**²⁸ enters here, at the realization that things won’t be perfect just because we make laws saying they should be. What affirmative action does—as its name indicates—is *act*. It’s not a requirement that organizations stop discriminating; it’s a set of preferences and policies that aggressively counter discrimination, usually in ways that themselves hint at discrimination. There is, even ardent defenders admit, a troubling element of fighting fire with fire where affirmative action operates.

In practice, affirmative action comes in various strengths:

- In the strongest form, quotas are employed to guarantee that individuals from disadvantaged groups gain admittance to an organization. A number of slots—whether they are seats in a classroom or posts in an office—are simply reserved for individuals fitting the criterion. Since quotas inescapably mean that certain individuals will be excluded from consideration for certain posts because of their race, gender, or similar trait, they’re relied on only infrequently.
- In strong form, significant incentives are deployed to encourage the participation of minority groups. In universities, including the historically black Alabama State University, special scholarships may be assigned to attract whites to campus. In private companies, bonuses may be offered or special accommodations made for targeted

28. Measures implemented to advance toward fairness for minorities in the workplace, usually including some form of preferences for certain minority groups.

individuals. A mentor may be assigned to guide their progress. Statistics may be accumulated and care taken to ensure that salary hikes and promotions are being distributed to members of the aggrieved demographic.

- Moderate affirmative action measures typically mean something akin to *the tie goes to the minority*. Whether a university is admitting students to next year's class or a business is hiring new sales representatives, the philosophy here is that if two candidates are essentially equally qualified, the one representing a disadvantaged group will be selected.
- Weak affirmative action measures refuse to directly benefit one or another identity group. Steps are undertaken, however, to ensure that *opportunity* is spread to include minority candidates. Frequently, this means ensuring that the application pool of candidates for a post or promotion includes individuals from across the spectrum of genders, races, and similar. A commitment to implement his policy was part of the Abercrombie & Fitch discrimination lawsuit settlement. The company in essence said they'd been doing too much recruiting at overwhelmingly white fraternities and sororities, and they promised to branch out.

The history of affirmative action has been brief and turbulent. Since the early 1970s, the courts—including the US Supreme Court—have visited and revisited the issue, and repeatedly reformed the legally required and allowed strength of affirmative action. The specific physical and cultural traits affirmative action policies address have also stretched and contracted. In the midst of all that, individual states have formed their own rules and guidelines. And for their part, companies have scrambled to bring policies into line with accepted practice and, in some cases, to take the lead in establishing standards. Because there's no sign that the legal and historical developments will settle in the near future, this section will concentrate only on the ethics and the broad arguments surrounding affirmative action.

Arguments for and against Affirmative Action Policies

Arguments in favor of affirmative action include the following:

1. Affirmative action is necessary to create fairness and equal opportunity in organizations because discrimination is so ingrained. When Carly Fiorina went to Hewlett-Packard, she found a culture so thoroughly masculine that it was difficult for her to communicate well with her colleagues. In that kind of environment, one where it's difficult for a woman to really make herself understood, forcing women into the workforce is necessary to open channels of

communication so that more may flow without needing the help. Similarly at the historically black Alabama State University, the concern was that few white students would want to be the first to confront the specific traditions and customs of the longtime black school. Consequently, it's necessary to force the doors open with attractive scholarships so that later, with the comfort level raised, more whites will follow.

2. Affirmative action will stimulate interest in advancing at lower levels of the organization. Even if Hewlett-Packard *really* is gender neutral with respect to picking a CEO, it may be necessary to put a woman in the post so that younger women at the company feel that the way is open to the very highest levels. In other words, it's not until people actually *see* that they can become a CEO or enroll at Alabama State that they really make the attempt. In the absence of that seeing, the aspiring may not be there and the result is a company without women leaders, or a historically black university without whites, even though the doorways are wide open to them.
3. Affirmative action benefits third parties. Sometimes we think of affirmative action as being about a tight set of winners and losers. When Carly Fiorina went to HP, it's very possible that a white guy didn't get the job. When a white student got a scholarship at Alabama State, Tompkins lost his. But the stakeholders don't end there. Society *as a whole* will be more harmonious as discrimination recedes. To the extent that's true, the tangible benefits of affirmative action climb significantly even while it remains true that there are individual losers.
4. Affirmative action can reduce tensions in a university, an office, or any organization by offering assurances that discrimination of minorities will not be tolerated, and also by opening the workplace to a diversity of viewpoints.
5. Affirmative action benefits organizations by helping them reach their goals. The more open an organization is to all candidates for all positions, the better the chance that they'll find someone truly excellent to fill the role. Affirmative action, by expanding the range of people considered for posts, helps the organization excel in the long term.
6. Affirmative action is necessary as compensation for past wrongs. Even if tomorrow all discrimination magically disappears, there'd still be a long legacy of suffering by minorities who didn't get the opportunities available to their children. By giving those children a little advantage, some of the historical unfairness balances out.

Common arguments against affirmative action include the following:

1. Affirmative action is discrimination (just in reversed form), and therefore it's wrong. When you privilege a minority at the expense of, say, a white male, you're treating the white male unfairly because of skin color and gender, and that *must* be unacceptable because the reason we have affirmative action in the first place is that we've all agreed that racial and gender discrimination are unacceptable.
2. Affirmative action is discrimination (just in reversed form), and therefore it reinforces what it combats. When you privilege a minority at the expense of, say, a white male, you're treating the white male unfairly, and so you're sanctioning the way of thinking that caused the problem in the first place. When you start selecting people for scholarships or jobs because of their skin color or gender, the larger point is you're reinforcing the habits of discrimination, not eliminating them.
3. The best way to eliminate discrimination is to let the law, markets, and time do their work. The law, which prohibits discrimination, should be enforced scrupulously, no matter who the infractor might be. More, companies that *are* discriminatory will put *themselves* out of business in the long term because competitors that hire the best talent regardless of minority status will eventually win out. With time, the conclusion is, discrimination will be stamped out, but trying to hurry the process may just create social rancor.
4. Affirmative action can be unfair and damaging to third parties. Surgeons, firefighters—those kinds of jobs are vital to all individuals. Lives are at stake. If a surgeon who otherwise would have failed medical school eventually got her degree because the school needed to graduate a few minority female doctors to fulfill their affirmative action requirements, the people who pay may be patients.
5. Affirmative action is unfair to minorities who are treated as tokens. Minority candidates for positions who would win the post on merit alone see their hard work and accomplishments tarnished by suspicion that they didn't really earn what they've achieved. Minorities, consequently, can *never* be successful because even when they merit respect in the classroom or in the workplace, they won't get it.
6. Affirmative action creates a tense organization. The web of resentments lacing through classrooms and offices touched by affirmative action are multiple and complex. Nonminority workers may resent special privileges given to those favored by affirmative action. Also, because such privileges are handled discretely by HR departments, the tensions might exist even where affirmative action isn't active: suspicion that others are receiving special treatment can be as aggravating as the certainty that they are. The list of potential angers continues, but the larger problem with affirmative action is the social stress it may create.

7. Affirmative action damages organizations. By forcing them to evaluate talent in ways outside of merit, it diminishes their competitiveness, especially against companies from other states or nations where affirmative action implementation is less rigid.
8. Affirmative action doesn't compensate past wrongs. Those who suffer today because their scholarship or their promotion is taken by an otherwise undeserving minority are paying the price for past discrimination even though they may have never discriminated against anyone. Further, those who benefit today aren't the ones who suffered in the past.

Finally, an important point to note about the debate swirling around affirmative action is that there's broad agreement on the goal: diminishing and eliminating discrimination in organizations. The conflicts are about how best to do that.

The Greater Good versus Individual Rights: The Ethical Prism of Affirmative Action

In business ethics, few subjects raise emotions like affirmative action. There are a number of reasons, and one is that the ethics are so clear. In all but its weakest form, affirmative action stands almost straight up on the divide between individualism and collectivism.

- Do you believe ethics are about individual rights and responsibilities, or should ethics revolve around society and what benefits the larger community?
- Where does right and wrong *begin*? Is it with you and me and what we do? Or is it the society as a whole that must be set at the start and before any other concern?

If you believe that individuals center ethics, it's going to be hard (not impossible) to defend favoritism, no matter how noble the goal. An ethics based on fundamental personal duties—especially the requirement for fairness—demands that all men and women get an even shot in the workplace. Any swerve away from that principle, whether it's to favor whites at a historically black university in Alabama, or women in Silicon Valley, or any other minority group anywhere else, is going to be extremely difficult to justify. Further, if you believe that ethics begins with individuals and their rights to freedom and to pursue happiness, then blocking the opportunities allowed for some just because they don't fit into a specific race or gender category becomes automatically objectionable.

On the other side, if you believe in the community first, if you think that society's overall welfare must be the highest goal of ethical action, then it's going to be hard (not impossible) to deny that some form of affirmative action balancing, at some places and times, does serve the general welfare and therefore is ethically required. Thinking based on utilitarianism accepts that divvying out opportunities in terms of minority status will harm some individuals, but the perspective demands that we only bear in mind the *total* good (or harm) an action ultimately does. With respect to affirmative action, it may be true that its proponents sometimes push too far, but it's very difficult to look at workplaces and schools through the second half of the twentieth century and not concede that society as a whole does in fact benefit in at least some of the instances where special efforts are made to support the opportunities of some historically disadvantaged groups. Specific individuals may suffer when these social engineering strategies are implemented, but the general benefit outweighs the concern.

Why Do Public Institutions and Private Companies Implement Affirmative Action Policies?

There are a number of reasons organizations implement affirmative action policies, and not all are motivated by social idealism. First, some companies are simply required to do so because they want to work for the US government. According to current law, all businesses holding contracts with Washington, DC, in excess of \$10,000 are required to have at least a weak affirmative action program in place. With respect to public institutions including universities, since their funding derives to a significant extent from the government, they typically are subject to governmental policy directives.

Another very practical reason affirmative action policies are implemented is to prevent future lawsuits. The suing of organizations, businesses, and individuals for damages alleging discrimination can be quite lucrative, as the \$40 million lawsuit against Abercrombie & Fitch indicates. More, a business may even choose to quickly hand over millions of dollars to settle a lawsuit of dubious merit just to avoid the bad publicity of a nasty, public, and prolonged court fight. Lawyers, of course, have picked up on this and are constantly probing for weak organizations, ones where just the appearance of some kind of discrimination may be enough for a shakedown. Given that reality, prudent companies will take preventative action to insulate themselves from claims that they're discriminatory, and an affirmative action policy may serve that purpose.

A set of more positive reasons for an organization to implement affirmative action policies surrounds the belief that companies benefit from a diverse workforce:

- Diversity may help win business with a new consumer group.
- Diversity may help break minds out of ruts or just shake things up creatively.
- An affirmative action policy may be part of an organizational strategy to benefit from underused human resources in an area. This strategy generally begins with a **utilization analysis**²⁹, which is a spreadsheet representation of all the work positions in an organization, along with the characteristics of those filling the slots and then a comparison between those numbers and the demographic of qualified people in the immediate geographic region. If, to take a simple example, the company's legal team is 90 percent white, and local data shows that 50 percent of the area's lawyers are Asian, that tends to indicate the area's legal resources are being underutilized: there are a lot of good Asian legal minds out there that for some reason aren't getting into the company workforce.

Finally, regardless of whether an affirmative action policy may help the bottom line by protecting against lawsuits or by improving employee performance, some organizations will implement a program because they believe it's part of their responsibility as good corporate citizens in a community to take steps to serve the general welfare.

KEY TAKEAWAYS

- Affirmative action seeks to end discrimination by giving some amount of preference to minorities.
- There are multiple strong arguments in favor of and against affirmative action.
- The ethics of affirmative action center on the question of whether the individual or the community should receive priority.
- Organizations implement affirmative action policies for reasons of self-interest or for altruistic reasons.

29. A study of whether an organization is taking full advantage of the human resources available in its geographic area.

REVIEW QUESTIONS

1. What are the differences between strong and weak affirmative action?
2. Explain two arguments in favor of affirmative action.
3. Explain two arguments against affirmative action.
4. Why does conflict between individualism and collectivism exist at the core of the ethics of affirmative action?
5. Why may a company pursue a strong affirmative action policy?

10.6 Case Studies

The Zinger and the Slur



Source: Photo courtesy of David Goehring,
<http://www.flickr.com/photos/carbonnyc/99785459/>.

Football coach Joe Paterno's on-field prowess is only slightly more legendary than his sharp tongue. This is one crowd favorite: "If I ever need a brain transplant, I want one from a sports writer because I'll know it's never been used." Mike Bianchi, "Panthers Gm Proves Paterno Barb Wrong," *Orlando Sentinel*, January 31, 2004, accessed May 31, 2011, http://articles.orlandosentinel.com/2004-01-31/sports/0401310276_1_sports-writer-silly-stuff-recruiting-visits.

Most people find this to be pretty funny. And though it rubs some sports writers the wrong way, no one is going to file a lawsuit or claim antidiscriminatory protection is needed to protect the offended. On the other hand, JoePa—as he's called around Pennsylvania—himself suffered taunting as a younger man. People called him a "wop," a slur attacking someone's Italian heritage (like the more common "guido" or calling a Chinese person a "Chink").

QUESTION

1. From an ethical viewpoint, and within a discussion of discrimination, why does the brain transplant zinger get a green light while the wop slur seems objectionable?

Working at Columbia University



Source: Photo courtesy of Tim Schapker,
http://www.flickr.com/photos/albany_tim/3536902765.

This comes from the Columbia University website: “As an equal opportunity and affirmative action employer, the University does not discriminate against or permit harassment of employees or applicants for employment on the basis of race, color, sex, gender (including gender identity and expression), pregnancy, religion, creed, national origin, age, alienage and citizenship, status as a perceived or actual victim of domestic violence, disability, marital status, sexual orientation, military status, partnership status, genetic predisposition or carrier status, arrest record, or any other legally protected status.” “Office of Equal Opportunity and Affirmative Action,” Columbia University, accessed May 31, 2011, <http://www.columbia.edu/cu/vpaa/eoaa>.

QUESTIONS

1. Looking at this list of characteristics that Columbia doesn't discriminate against, can you quickly put in your own words what each of them means?
2. What's the difference between unintentional and intentional discrimination?
 - Are some of these characteristics more vulnerable than others to unintentional discrimination? Which ones? Why?
 - Are some of these characteristics more vulnerable than others to intentional discrimination? Which ones? Why?
3. Which of the protected characteristics are concealable, meaning that in most cases a job applicant could fairly easily hide or not reveal whether he or she has the trait? Which aren't so concealable?
4. Which characteristics are universal (we're *all* afflicted and therefore vulnerable to discrimination) and which ones are individual (some of us have the trait and some don't)? In your opinion is one group more vulnerable to discrimination? Why?
5. If you wanted to stop discrimination at Columbia University, could you rank the protected characteristics in terms of their importance? Which forms of discrimination would be most important to combat and which wouldn't matter so much? Or are they all equally important? Justify your answer.
6. Are there any characteristics you would add to the list? In terms of doing ethics, is there any problem with a list this long?
7. Are there any characteristics that really shouldn't be on the list? Which ones? Why?
8. Hypothetically, John Smith has applied for a maintenance post at Columbia. The job entails routine and emergency plumbing and fixing of general problems, everything from burned-out lightbulbs to graffiti. More or less, the job is to walk around and make sure things are in working order. He'd be working the night shift from 11 p.m. to 7 a.m. His assigned buildings would be a classroom and three coed dorms. He has been arrested three times for attempted rape of young women, but there was never enough evidence to convict.
 - Susan Rieger heads the Columbia University employment office. It's part of her job to defend the school's policies. In

ethical terms, how do you suppose she might defend Columbia's refusal to discriminate on the basis of arrest record?

9. Columbia won't discriminate on the basis of religious belief. Historically, some creeds have been singled out more than others for abuse, but one that's not often found on the list of mistreatment is Haitian Voodoo. Houngan Hector of New Jersey identifies himself as an *asogwe* priest of Haitian voodoo. His story is interesting. He claims to have been "mounted" by an ancestor at the age of seven, and so began his spiritual journey. Eventually, it led Houngan Hector to perform spiritual cleansings for money. They haven't always gone well. According to this newspaper story in the *Philadelphia Daily News*: "Lucille Hamilton paid \$621 to have her 'spiritual grime' removed by voodoo high priest Houngan Hector in an ordinary townhouse in Camden County. Hamilton, 21, a male living as a woman, flew in on Friday from her home in Little Rock, Arkansas to take part in the three-day spiritual cleansing. By Saturday night Hamilton was dead, and authorities are awaiting results of an autopsy and toxicology tests to determine exactly what happened." "Transvestite Dies At Voodoo Ceremony," *OddCulture*, accessed May 31, 2011, <http://oddculture.com/culture/transvestite-dies-at-voodoo-ceremony>.

Here's Houngan Hector's advertisement for his services on his MySpace page, as it was reported in *OddCulture*: "I have over 15 years of experience helping individuals resolve their issues, and well over 9 years of helping people through the means of the Haitian Voodoo tradition. Having gotten individuals out of jail, brought lovers back, and improved people's financial situation, I keep myself humble remembering it is not I who does it. It is God and Ginen who resolves." "Transvestite Dies At Voodoo Ceremony," *OddCulture*, accessed May 31, 2011, <http://oddculture.com/culture/transvestite-dies-at-voodoo-ceremony>.

The three basic ethical arguments against discrimination (and, in this case, discrimination based on personal religious belief) are *fairness, rights, and utilitarianism*.

- Choose one and make the case that Houngan Hector—who was never charged with any crime—should be treated like any other applicant for a job at Columbia University.
- Can any of the three arguments be used to show that discriminating against Haitian voodoo believers is ethically acceptable, even recommendable?

Susan Rieger in Trouble: Randy Raghavendra and Zenobia White-Farrell



Source: Photo courtesy of
Richard Rutter,
[http://www.flickr.com/photos/
clagnut/46815739](http://www.flickr.com/photos/clagnut/46815739).

Susan Rieger heads Columbia University's Office of Equal Opportunity and Affirmative Action, and she has a tough case with Randy Raghavendra. He's an analyst at Columbia's Office of Institutional Real Estate who got passed over for a promotion. The spot went to a younger white woman. Raghavendra, who's a dark-skinned Indian American, accused that "Columbia practices blatant racial discrimination and various deceptive tactics to keep out blacks and other dark-skinned minorities from higher-paying managerial and executive positions of power." "NRI Sues Columbia University for Racism, *Times of India*, November 22, 2003, accessed May 31, 2011, http://businessethicsworkshop.com/Chapter_10/susan_rieger_in_trouble.html.

QUESTIONS

The case's specifics go back and forth:

1. Raghavendra points out that when he interviewed for the promotion, it had *already* been given to the white woman. His interview, therefore, was a “joke,” as he put it, “a fake interview.” The university answered that the hiring for that post had been handled by an outside headhunting company, which was a common practice at Columbia.

Assume the outside company did engage in discriminatory practices. Does the fact that it's an independent enterprise cleanse Columbia University of responsibility? Or is the university equally responsible? Or is it actually worse that they're hiding behind an outside firm? Justify your answer.

2. An administrator at the university once asked Raghavendra, “Do you often get hassled at airport security?” The suggestion, according to Raghavendra, was that he looked like a potential terrorist. The administrator didn't deny the comment but affirmed that the idea that it was racist was “bizarre” and “silly beyond belief.”
 - How could you make the case that this is an example, of individual, isolated, unintentional discrimination?
 - Who gets to decide whether a comment is racist? How is the decision made? Does or doesn't this conflict resemble the one you see on MTV videos where blacks openly refer to each other with a specific term that would earn a white person who used the word a lifetime ban from the channel?
3. Raghavendra argues that he didn't get his own office while several white workers in lower posts did have their own office as well as a separate mailbox. The university responded that office and mailbox space is distributed by seniority: the lower-level white workers who had their own office had worked there longer.

Seniority is viewed by most as a generally fair way of distributing offices. It's also fair, according to common opinion, to divide

them up in terms of rank. Would it be right or wrong, however, for Columbia to simply say that either of the two systems will be used interchangeably, but the choice will be made in terms of minorities: whichever system allots the best offices to minorities will be implemented? Justify your answer.

4. Raghavendra originally took his case to Susan Rieger, head of the Office of Equal Opportunity and Affirmative Action. After three months he withdrew it, however, claiming that they played games with him and never really investigated the charges. The university responded that he “failed to utilize internal administrative remedies provided by Columbia.”

Raghavendra is claiming that Columbia discriminates against him. As an employee of Columbia, does he have any ethical responsibility to try to work out the issue inside that organization? If so, what is the responsibility? As a member of society, does he have an obligation to take his claim outside the university? If so, what is the responsibility?

5. Raghavendra sued for punitive damages. That’s money as punishment for discrimination, and it’s an amount beyond that which may have been lost in wages and benefits because of mistreatment. More, as part of any settlement, Raghavendra wanted to be awarded a job assignment as manager of finance and accounting at Columbia. He says he’d like to stay at the university after the suit is settled. Does this decision affect the way you see his case against Columbia? Why or why not? Should it? Why or why not?
6. Raghavendra notes that there are no African Americans in higher-level positions in his office. There is a Pakistani who has a higher title, but Raghavendra points out “he’s not really that dark-skinned.”

Within the context of the ethics of discrimination, what does it mean to be a victim? What types of victimhood are there? Is there any reason to ask here whether Raghavendra might be one of these kinds of victims? If so, what is it? If not, why not?

7. What makes the case especially difficult for Rieger, the Columbia point person on all this, is that she’s trying to balance discrimination claims while fending off a lawsuit herself. Her

post had been occupied—on a provisional basis—by Zenobia White-Farrell, a black woman. Columbia offered to make the job permanent with a salary of \$80,000. White-Farrell responded that she'd accept but only on the condition that the salary was upped to \$100,000. Columbia offered only \$83,000. White-Farrell resigned. Soon after, Columbia hired Rieger at a salary of \$107,000. White-Farrell sued, alleging discrimination.

- What factors could possibly have justified offering Rieger so much more than White-Farrell?
 - How could you describe this case as an example of a glass ceiling for minority women?
 - The Columbia nondiscrimination code protects both gender minorities (women) and racial minorities. Is White-Farrell *more* protected than Rieger because she fits two categories and Rieger only one? Does the answer affect the ethical strength of White-Farrell's case? Justify your answer.
 - Assume that, strictly in terms of merit, Rieger deserved a higher salary than White-Farrell for the same job. Rieger had, say, more years of experience and a higher degree. Could you make a utilitarian argument that because the ethically right thing to do is just that which serves the general society's welfare, White-Farrell should have been offered \$100,000, even though, again, strictly in terms of merit, she didn't deserve that much?
8. Columbia University is an Affirmative Action institution. They aren't satisfied with gender and racial neutrality; it's the institution's policy to promote and to some extent favor minority candidates for jobs.
- Can you make the case that, with respect to the particular job of overseeing all hiring at the university, there's a good practical reason—which is also ethically acceptable—to seek a white male to direct the office? What is the case?
 - Can you make the case that with respect to this particular job, there's a good practical reason—which is also ethically acceptable—to seek a multiple minority (a gender plus racial minority or some similar combination) to direct and oversee hiring? What is the case?
9. The name of the office Susan Rieger leads is the *Office of Equal Opportunity and Affirmative Action*. What is "Equal Opportunity?" What is

“Affirmative Action?” Does the title of this office make sense? If so, how? If not, why not?

Google Celebrates Diversity...and Profit



Source: Photo courtesy of
dichohecho,
[http://www.flickr.com/photos/
dichohecho/2545363497](http://www.flickr.com/photos/dichohecho/2545363497).

This statement comes from Google CEO Eric Schmidt on the corporate web page titled “Google Celebrates Diversity”: “Our products and tools serve an audience that is globally and culturally diverse—so it’s a strategic advantage that our teams not only encompass the world’s best talent but also reflect the rich diversity of our customers, users, and publishers. It is imperative that we hire people with disparate perspectives and ideas, and from a broad range of cultures and backgrounds. This philosophy won’t just ensure our access to the most gifted employees; it will also lead to better products and create more engaged and interesting teams.” “Diversity@Google: A place to be you,” Google, accessed May 31, 2011, [http://www.google.com/corporate/diversity/
index.html](http://www.google.com/corporate/diversity/index.html).

This is a very carefully worded paragraph, and beneath its motivational tone there are firm statements about diversity in the Google workplace. They include the following:

- Google carefully avoids mentioning race, gender, and similar requirements for any particular position. The company doesn’t get involved in discussions about how many Catholic females over fifty years old and with a disability work there. Like most contemporary organizations, Google avoids strict quota systems.
- Google will seek to hire “the world’s best talent.”
- Google, *apart from hiring the best raw talent*, will seek employees reflecting “the rich diversity of our customers.”

There are also clear justifications for the diversity side of the hiring strategy. Google will take action to contract a rainbow of workers because

- diversity in hiring will help Google connect with its diverse consumer base,
- diversity in hiring will ensure Google has access to all gifted employees,
- diversity in hiring will help Google produce better products,
- diversity in hiring will help Google create more engaged and interesting teams.

Concretely, what is Google doing to diversify the people forming its company? Besides directly hiring a diverse workforce, the company offers a number of scholarships and internships aimed at those historically underrepresented in the technology industry. “Diversity and students,” Google, accessed May 31, 2011, <http://www.google.com/diversity/students.html>.

QUESTIONS

1. In a nutshell, the commonly cited arguments in favor of affirmative action include the following:
 - It creates fairness and equal opportunity within organizations.
 - It benefits third parties: society *as a whole* will be more harmonious as discrimination recedes.
 - It reduces tensions in an organization.
 - It benefits organizations by helping them reach their goals.
 - It is compensation for past wrongs.

Which of these arguments appear to stand behind affirmative action at Google? Explain. Are any of the other justifications applicable even though they may not be the *reason* Google seeks diverse talent?

2. In sweeping terms there are two types of arguments in favor of affirmative action. First, it serves a broad social good by integrating society. Second, companies employing affirmative action do better in the marketplace than those that don't. If you had to choose one of these as a better and more persuasive argument for affirmative action, which would you choose? Why?
3. At some publicly funded universities, scholarships are, in essence, set aside for minorities. Google privately funds scholarships that are, in essence, set aside for minorities. Taxpayers, in other words, fund one affirmative action endeavor and private investors the other. Now, is one endeavor ethically superior to the other? Why or why not?
4. In a nutshell, the basic arguments against affirmative action include the following:
 - It is essentially discrimination, and therefore it reinforces what it combats.
 - The best way to eliminate discrimination is to let equal opportunity law, markets, and time do their work.
 - It is unfair to minorities who are treated as tokens.
 - Forcing organizations to evaluate talent in ways outside of merit diminishes their competitiveness.
 - It creates resentment and tensions in an organization.

- It doesn't compensate past wrongs (because those benefitting and suffering today aren't those who suffered and benefitted in the past).

Looking at this list, how do you suppose Google CEO Eric Schmidt might argue against each item?

5. With an eye on these arguments against affirmative action, can you make the case that Google's efforts are ethically reproachable?
6. What does the *veil of ignorance* test for discrimination? Put yourself under the veil of ignorance. Now, do you believe Google's hiring policies are ethically good or bad? Why?

Susan Rieger in More Trouble: Madonna Constantine



Source: Photo courtesy of BY-YOUR-?, <http://www.flickr.com/photos/aparejador/2482604806>.

Madonna Constantine is a professor of psychology and education specializing in race studies and prejudice. Growing up as one of five children in a lower-middle-class family in Lafayette, Louisiana, she'd benefitted from parents who never finished college and vowed she would: they saved and scrimped together enough money to get her started at the upper level. Constantine took it from there. She began her remarkable journey at Xavier in New Orleans. Next, she went to the University of Memphis, and then to the University of Texas, and Temple University, and finally to the Ivy League's prestigious Columbia, where she earned tenure with more than thirty articles authored and published: "Most people may go up for tenure with 15 or 20 articles," she said. "I figured as a black woman, I needed at least double that." Elissa Gootman, "Noose Case Puts Focus on a Scholar of Race," *New York Times*, October 12, 2007, accessed May 31, 2011, http://www.nytimes.com/2007/10/12/education/12columbia.html?_r=1&pagewanted=all.

As it turned out, the numbers weren't the whole truth. Constantine had plagiarized significant amounts of her writings from students and another professor. Upon discovering the truth, Columbia fired her. Constantine responded, "I am left to wonder whether a white faculty member would have been treated in such a publicly disrespectful and disparaging manner." Karen W. Arenson and Elissa Gootman, "Columbia Cites Plagiarism by a Professor," *New York Times*, February 21, 2008, accessed May 31, 2011, <http://www.nytimes.com/2008/02/21/education/21prof.html>.

Next, she sued Columbia for racial discrimination.

Columbia University is having a rough time: Randy Raghavendra, Zenobia White-Farrell, and Madonna Constantine are all suing the traditionally very white institution for color discrimination.

QUESTIONS

1. In your own words, and in general terms since there isn't space here to provide every detail of every case, what would it mean to accuse these people of being victims? What's the difference between strong and weak victimhood?
2. With the facts provided, create a picture of Madonna Constantine as a victim. What kind of victim would she be? How could that conclusion be supported?
3. Sketch an argument that society *as a whole* is better off with occasional cases of discrimination than it is with occasional cases of victimhood.
4. Use a utilitarian argument to make the case that *even if* Columbia's affirmative action policies are fostering cases of victimization, they should maintain those policies.