

racial and ethnic groups, and in the case of women. At least, the practice will be justified in a narrower range of circumstances and for a shorter span of time than it is for blacks. No other group has been treated quite like this, and no other group is in a comparable status. Hispanic-Americans occupy an intermediate position, but it seems to me frankly absurd to include persons of oriental descent as beneficiaries of affirmative action, strong or weak. They are not a severely deprived and excluded minority, and their eligibility serves only to swell the numbers that can be included on affirmative action reports. It also suggests that there is a drift in the policy toward adopting the goal of racial proportional representation for its own sake. This is a foolish mistake, and should be resisted. The only legitimate goal of the policy is to reduce egregious racial stratification.

With respect to women, I believe that except over the short term, and in professions or institutions from

which their absence is particularly marked, strong affirmative action is not warranted and weak affirmative action is enough. This is based simply on the expectation that the social and economic situation of women will improve quite rapidly under conditions of full equality of opportunity. Recent progress provides some evidence for this. Women do not form a separate hereditary community, characteristically poor and uneducated, and their position is not likely to be self-perpetuating in the same way as that of an outcast race. The process requires less artificial acceleration, and any need for strong affirmative action for women can be expected to end sooner than it ends for blacks.

I said at the outset that there was a tendency to blur the distinction between weak and strong affirmative action. This occurs especially in the use of numerical quotas, a topic on which I want to comment briefly.

A quota may be a method of either weak or strong

The Equal Opportunity Myth

Affirmative action programs have subtly begun to change the tenor of American life. In the past, appointments and promotions to governmental service positions, government contracts, admission to universities depended—at least in theory—on individual achievement. Evasions and abuses there were aplenty. . . . But at least the principle of individual merit went unchallenged, and after World War II became increasingly effective in its enforcement.

L. H. Gann and Alvin Rabushka, "Racial Classification: Politics of the Future?" *Policy Review*, No. 17 (Summer 1981): 87.

There is a common argument, which we are likely to hear with even greater frequency in the Reagan administration, that giving employment preference to blacks (or other minorities or women) violates a widely acknowledged principle which, though not always faithfully followed, has never been challenged or repudiated. The principle is the equal opportunity/merit principle, which says that people ought to be selected for jobs on the basis of their job-related qualifications, and that jobs should go to those best qualified for them. The equal opportunity/merit principle is violated when factors other than an applicant's job-related qualifications—factors such as his or her membership in some group—are allowed a role in selecting or rejecting him or her for the job.

Perhaps all jobs, positions, and contracts ought to be given out on the basis of individual merit so defined. But it is a myth that official American policy has adhered even in theory to the equal opportunity/merit principle. For most of this cen-

tury it has been the explicit and continuous policy of federal and state governments to give preferences in government employment to veterans. Such preferences benefit or hinder the employment ambitions of millions of workers. In some states, non-veterans stand virtually no chance of moving upward into the best classified positions to which veterans' preference applies.

Veterans' preference has been continually upheld by the courts as a legitimate exercise of governmental power, the latest decision coming from the Supreme Court in 1979 (*Personnel Administration Mass. v. Feeney*, 47 LW 4650 [1979]). There has never been a significant popular clamor against veterans' preference nor any popular effort to overthrow it.

The preferences given to veterans cannot be justified on the grounds that they enhance the operations of the equal opportunity/merit principle since they operate most often to defeat it. For example, in Massachusetts, veterans who pass the competitive exam for a job are to be ranked, in order of their scores, above all other candidates. In 1974, to take but one common instance of the operation of the Massachusetts system, Carol Anthony tied for the highest score on the examination for the position of Counsel I; yet she was ranked 57th on the list of eligibles for the job, behind 56 veterans, 54 of whom scored lower than she. (*Anthony v. Commonwealth of Massachusetts*, 415 R. Supp. 485 [1976], at 490). It hardly makes sense to see the Massachusetts law as designed to enhance the chances of the very best qualified applicants to get government positions for which they apply. On the contrary, the law quite obviously reflects the willingness of citizens of the state to deviate from

affirmative action, depending on the circumstances. It amounts to weak affirmative action—a safeguard against discrimination—if, and only if, there is independent evidence that average qualifications for the positions being filled are no lower in the group to which a minimum quota is being assigned than in the applicant group as a whole. This can be presumed true of unskilled jobs that most people can do, but it becomes less likely, and harder to establish, the greater the skill and education required for the position. At these levels, a quota proportional to population, or even to representation of the group in the applicant pool, is almost certain to amount to strong affirmative action. Moreover it is strong affirmative action of a particularly crude and indiscriminate kind, because it permits no variation in the degree of preference on the basis of costs in efficiency, depending on the qualification gap. For this reason I should defend quotas only where they serve the purpose of weak

affirmative action. On the whole, strong affirmative action is better implemented by including group preference as one factor in appointment or admission decisions, and letting the results depend on its interaction with other factors.

I have tried to show that the arguments against strong affirmative action are clearly outweighed at present by the need for exceptional measures to remove the stubborn residues of racial caste. But advocates of the policy should acknowledge the reasons against it, which will ensure its termination when it is no longer necessary. Affirmative action is not an end in itself, but a means of dealing with a social situation that should be intolerable to us all.

—Thomas Nagel

strict merit hiring for a moral reason—because of a sense that it is fitting or worthy to reward in this way veterans for their national service, even at the cost of some inefficiency in state government services.



Courtesy National Archives

One could hold, of course, that although veterans' preference is a common American practice, it is nevertheless an unjustified practice precisely because it does violate the equal opportunity/merit principle. One can condemn both veterans' preferences and racial (or sexual) preferences without inconsistency. If, however, there are thought to be compelling moral reasons to continue to give job preferences to veterans—most of whom completed their service prior to 1960—then might there not be equally compelling moral reasons for extending job preferences at least to some blacks (and women) to make up for a history of exclusion and exploitation? We can certainly ask what distinguishes the moral claim of a veteran to special preference from the moral claim of a black (or woman).

There may be every reason in the world to condemn government practices that foster or require racial (or sexual) preferences. However, such preferences should be condemned for their real faults, if they are intolerable, and not because they violate an American tradition of merit hiring. Racial (or sexual) preference may be morally different from veterans' preference; but the difference cannot be that the one does, and the other does not, deviate from the equal opportunity/merit principle.

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