

Discrimination: An Interdisciplinary Analysis*

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ABSTRACT. Discrimination on the basis of race, sex, national origin, etc., is often morally wrong. But should such behaviour be proscribed by legislation, and penalized by fines or jail sentences? This paper argues that such enactments are incompatible with the law of free association, and with the concept of economic liberty and civil rights.

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Discrimination has been treated by large parts of the academic community as though it were not amenable to logical analysis, be it economic, ethical or political; as though the very consideration of alternative viewpoints were somehow unsavory. The philosophy of "feminism," "human rights," "multiculturalism," and "political correctness" have so permeated intellectual discussion that criticisms of the mainstream view take on an aura of illegitimacy at the outset, even before arguments are heard in their behalf. This is highly unfortunate. If nothing else, John Stuart Mill's "On Liberty" should give us pause before closing our minds to alternative perspectives.

At one time in our recent history, the term "discriminating" had a positive value. It was a compliment. To say that a person was discriminating was to say that he was able to make fine distinctions. Today, of course, to say that someone is discriminating is to charge him with prejudice. This modern view is embodied in the so-called human rights codes of society, wherein it is illegal to discriminate against people on the basis of race, religion, sex, national origin, handicap, sexual preference, age, etc. Discrimination now carries a legal penalty — a fine, and even a jail sentence to back up the prohibition.

I. Classical liberalism

Let us then consider an alternative philosophical treatment of discrimination, sometimes known as classical liberalism.¹ It asks one and only one question: "When is the use of (state) force justified?" and gives one and only one answer: "Only in response to a prior rights violation." As such, this view must be sharply distinguished from theories of ethics. This is crucial, because there is all the difference in the

world between claiming that a person should not be imprisoned or legally penalized for engaging in act X, and claiming that act X is moral. It is no contradiction to oppose the criminalization of discrimination on the basis of race, sex, national origin, etc., while at the same time declaring that such behavior is immoral and unethical. And that, indeed, is that stance maintained in the present paper. Discrimination is defended, here, in the very limited sense that perpetrators should not be incarcerated, fined, or otherwise interfered with by governmental authorities. The present writer, however, finds such behavior odious, and morally repugnant in the extreme.

Classical liberalism is predicated on the premise that we each own our own persons; we are sovereign over ourselves. We have property rights over our own bodies, and in the things we purchase, or receive through any other legitimate mode, such as gifts, inheritance, gambling, etc. (Nozick, 1974, pp. 149–182). Intrinsic to this way of looking at things is that there are boundaries. My fist ends here, your chin begins there. If the former touches the latter, without being invited to do so, I have invaded you. The essence of this philosophy is that any barrier invasions such as rape, murder, theft, trespass or fraud are strictly prohibited.

Conversely, within one's own sphere the individual is free to do anything he wishes, provided only that he does not violate the rights or borders of others. Conceivably, people might be hurt deeply by friendship or patronage withheld, but it is the individual's right to withhold benefits of this sort, since such acts of omission cannot rationally be interpreted as a boundary crossing. As long as an individual's person or property is not invaded, no indictable offence has occurred and, accordingly, no penalty — no fine or jail sentence — should ensue.

From this philosophy is derived "the law of association," namely, that all interaction between free, sovereign, independent individuals should be voluntary and on the basis of mutual consent. On issues of pornography, prostitution, free speech and drugs, the well-known phrase "anything between consenting adults should be allowed" demonstrates this philosophy. The classical liberal variant of this expression, in Robert Nozick's (1974) felicitous phraseology, is that "all capitalist acts between consenting adults" should likewise be allowed.

All acts, whether personal or commercial, should

take place on the basis of mutuality. From this we derive that discrimination too is a right and, therefore, it should not be a criminal act to indulge — on whatever basis one chooses. But here it is important to emphasize that what is meant by "discriminate" is something very particular. It is to ignore, avoid, evade, have nothing to do with, another person. It most certainly does not imply the "right" to lynch or beat up or enslave or commit assault and battery upon someone from a despised group. If I don't like bald people with beards who wear glasses, for example, I don't have to have anything to do with them. I shouldn't be fined or jailed for refraining from dealing with them, according to this philosophy. On the other hand, I can't approach such people and punch them in the nose. I should be incarcerated if I indulge any acts of this sort. In other words, I can do anything I wish to people against whom I hold prejudices — provided only that I do not engage in border crossings, or violation of their space (persons and property rights). I can "cut them dead" (socially and commercially), but I cannot commit even the slightest violence against them.

Is it "nice" to discriminate against people? Is it "reasonable" to prejudge an entire group or persons, based on negative experiences with a small sample? Certainly not.² In the popular belief, discriminators are hateful and wicked for not wanting to have anything to do with certain groups of people. As well, they are deemed illogical in that they over-generalize from a small sample to an entire population.³ However, the issue presently facing us is not the moral or scientific status of discriminators. We are primarily concerned whether the individual has a right to act in this way, and with the economic implications of this philosophy, not with whether or not it is nice or reasonable for him to do so.

II. Human rights

Let us examine the "human rights" viewpoint in light of classical liberalism. Current "human rights" legislation only applies to commerce and sometimes to clubs, but not to personal interactions. This is puzzling because the advocates of such laws usually regard interpersonal relations as more important than commerce. Contemplate the fact that all

heterosexuals discriminate against half the population in the choice of sexual partners. As do homosexuals. It is only bi-sexuals who are not guilty of this practice. (But most bisexuals presumably discriminate on other criteria: beauty, health, youth, wealth, honesty, sense of humour, common interests, personality, etc.) Therefore, if we consistently carry through on the anti-discrimination philosophy, we ought to punish everyone except bi-sexuals. Or consider marriage patterns. There is very little inter-marriage, relative to the totals, across racial, ethnic and religious categories. From this one can deduce that racism in general, or discrimination in particular, plays a significant role in marriage choices. To be consistent with the underlying philosophy of "human rights" advocates, when people apply for marriage licenses they should be asked: "Have you dated people from other backgrounds; did you give them a fair chance?" If not, no marriage should be permitted. Certainly, friendship patterns are based on all sorts of discriminatory patterns. Is this wrong? Perhaps; it might well be. Should this be punished by law? Hardly.

Some people maintain that we should enforce anti-discrimination legislation in commerce but not in personal relations⁴ because a store, office, factory or workplace is "open to the public," while no such stricture applies to friendship and other personal relationships. Such a claim is hard to defend, however. A store could conceivably be open only to the blond blue-eyed public — all others are advised go elsewhere — or to the left-handed redheaded public — or base its clientele on whatever criterion it wishes to employ. There is no logical reason why an offer to commercially interact with some people should be interpreted as an offer to business with all.

Secondly, "human rights" legislation is applied in a biased way. For example, with regard to considerations of national origin, many countries discriminate against foreign investment and treat the domestic variety more favorably. Tariffs discriminate against foreigners, so do immigration policies. University students from other nations commonly have to pay more for their education than citizens of the host country. These are all forms of discrimination based on national origin. And yet the response to these rights violations on the part of the human rights advocates, and civil libertarians, is curiously muted. This is difficult to reconcile with their position, since

in other contexts they single out discrimination in business for particular opprobrium.

Let us consider some other examples. Women's consciousness-raising groups are not open to men, while legal sanctions have been applied against men's only private clubs. Black Muslims do not allow white people to join them in prayer.⁵ Similarly, Sikhs and Orthodox Jews, among many other religious groups, confine their prayer meetings to like-minded people. Boycotts of lettuce, grapes and other such union inspired activities certainly discriminate against people who are despised, at least within parts of the counterculture. The Brownies, the Girl Guides, Boy Scouts, the YMCA, the YWCA, the Young Men's Hebrew Association or the Young Women's Hebrew Association, all discriminate on the basis of gender.

While some of these examples may seem frivolous, there is an important point to be made. Non-discrimination is put forth as a basic human right. How, then, can there be exceptions? Surely, it is a basic human right not to be raped. Do we have exceptions incorporated into the law? No; the very idea is ludicrous. It is likewise a basic human right not to be murdered. Again, there are no exceptions. If it is a basic human right, we infer, exceptions are intolerable. The fact that exceptions to the laws prohibiting discrimination are not only intolerable but are instead widely espoused, even by defenders of the philosophy, indicates that is not at all a basic human right not to be "victimized" by discrimination.

As well, many of these distinctions have been made with a certain amount of hypocrisy. Women's consciousness raising groups are widely considered to be properly closed to men, but male-only private clubs have been subjected to intensive governmental pressure to change their membership practices. In many cities, women are allowed to join the Young Men's Christian Association, but men are not allowed to enroll in the Young Women's Christian Association. On many university campuses, there is provision for blacks-only dormitories and cafeterias; providing the same amenities for whites would be widely seen as anathema. At one major Pacific coast university, the administration had organized a homosexual appreciation week; when students organized a heterosexual appreciation week, they were punished by university authorities. In the U.S. House of

Representatives, there is a widely recognized Black Caucus; no such white counterpart can even be contemplated, given the likely outraged response. "Black is beautiful" is a respected rallying cry for a significant minority of the population; anyone attempting to promote the counterpart "white is beautiful" would be summarily dismissed as a racist.

A possible defence of this state of affairs is that it is justified for the downtrodden and denigrated minority to discriminate against the majority, but not for the latter to undertake such actions with regard to the former. There is one obvious difficulty with such a response: it cannot be made compatible with the view that non-discrimination is a basic human right. If it were so, then no one would have the right to discriminate against anyone at any time, for any reason.⁶

Another important point to consider is the backlash that special government treatment for minority groups has engendered. States Thomas Sowell (1990, p. 28): "One of the clearly undesired and uncontrolled consequences of preferential policies has been a backlash by non-preferred groups. This backlash has ranged from campus racial incidents in the United States to a bloody civil war in Sri Lanka." In Canada, Marc Lepine entered the engineering school of the University of Montreal, and at gunpoint forcibly separated the male and the female students. Whereupon this person, who had previously complained about affirmative action benefits of women, cold bloodedly murdered over a dozen co-eds. Feminists in Canada and elsewhere have unsuccessfully attempted to deny any connection whatsoever between this brutal and dastardly act, on the one hand, and resentment against governmentally imposed preferential treatment for women on the other.

Why only include race, religion, sex, national origin, handicap, sexual preference, and age among the categories upon which it is illegitimate to discriminate? Why not also consider under this rubric people who are fat, drunk, stupid, smelly, ugly, short, bald, color blind, tone deaf, humorless? One response to this *reductio ad absurdum* might be that the presently legally protected categories are justified in terms of one's ability to change. If a person cannot alter his condition, it becomes impermissible to discriminate against him; if he can, it is not permissible.

But there are difficulties with this rejoinder. First, why is it morally relevant? Even if an inveterate rapist for some reason could not change his desire to indulge in such activity, it would still be just to visit physically violent sanctions against him to make him cease and desist. Second, this argument cannot possibly explain the present distinction between categories which are and which are not legally protected from discrimination. For example, changes in religion are relatively easy to incorporate, at least in comparison to an alteration in height. And yet discrimination on the basis of religious belief is commonly proscribed, but not that based on bodily size.

Another response might be that such categorization is made on the basis of the level of suffering undergone by the minority group. But those who are fat, drunk, stupid, smelly, ugly, short, bald are also denigrated. Surely these people suffer just as much if not more from discrimination as do some of those who are not legally recognized as "minorities."

Many so-called human rights advocates would happily add these additional categories to the list of people against whom it would be illegal to discriminate. While a short fat bald man with splotchy skin, glasses and a squeaky voice can make an important contribution to society, he does not look the part, and is usually reimbursed and befriended accordingly. Maybe we should incorporate into the law a prohibition against discriminating against such persons. However, if we keep adding to the list, no one in our society will be able to interact on *anyone* on a truly voluntary basis.

III. Harm from discrimination?

Why do the "human rights" advocates champion these ideas? One possibility may be that they identify with and want to protect the underdog against suffering. But there is a strong objection to this view: the underdog does not greatly suffer — at least in the economic sense — from private discrimination. To be sure, there is some harm which does befall a minority group which is the target of discriminatory behavior. Certainly, such groups of people are better off if the majority is favorable to them, or at least views them with indifference. But the injury is minimal. It could not be otherwise, given that Jews

and Chinese have long been amongst the groups most highly discriminated against in our society, and yet have incomes far in excess of the average (Sowell, 1981a; 1981b; 1983).

In order to see why this is so, it is incumbent upon us to briefly review the economics of boycotts, of which discrimination is only a particular case. The reason boycotts are almost always relatively unsuccessful (even when engaged in on the part of millions of people, over many years, such as in the case of South Africa) is because of the fail-safe mechanism which necessarily accompanies them (Abedian and Standish, 1985; Hutt, 1964). To the extent that a boycott is successful, it worsens the economic condition of the "victimized" group — at least initially. For example, if the boycott is through employment — the majority will not hire the minority — the wages of the minority decrease, and/or their unemployment rate increases. If the majority will not sell food to them, the price they become willing to pay for these items rises. As this process continues, their plight worsens. But, as their condition declines, it becomes more and more financially tempting on the part of both boycotters and non-boycotters to deal with these targets of the discriminatory behaviour, in spite of the initial prejudice which led to the boycott in the first place. For example, if racial prejudice leads to whites refusing to hire blacks, thus lowering their wage levels, "this would mean an opportunity for some employers to reap unusually high profits by concentrating on hiring members of such low-wage groups. Even if employers of all other groups were too blinded by prejudice to seize this opportunity, it would leave a great opportunity for extra high profits by employers belonging to the same ethnic group" (Sowell, 1975, p. 165). A successful boycott, in other words, carries within it the very seeds of its ultimate failure.⁷

But what of the plight of the minority during this process? Are they not grievously harmed in the interim? Not at all. So well does this "fail safe" mechanism operate that it is all but impossible to find evidence of the incidence of such boycotts. That is, it cannot be shown that there are greater profits to be earned in hiring such minority members, as there would be were they being victimized by discriminatory boycotts. "... the experience of employers hiring members of an ethnic group that has lower earning and/or higher unemployment rates does not

show remarkable success, and in many cases elaborate and costly programs have produced very meager results, even when subsidized by large government grants." (Sowell, 1975, p. 165)

Abella (1984) claims to have shown harmful effects on the well-being of minority groups as a result of discrimination, but her methodology is questionable on several grounds (Block and Walker, 1985). For example, she allocates the entire difference between black and white earnings (that cannot be statistically explained by quantifiable variables) to discrimination, thus ignoring other possible sociological and cultural differences which cannot be so easily quantified; to wit, she regards years of schooling as a homogeneous good, even though there are great disparities in the quality of schooling received across racial categories, even though the subject specializations are widely disparate — and correlated with income. That is to say, blacks are often concentrated in fields with lower average earnings.

Perhaps the best refutation of the methodology has been penned by Sowell (1990, p. 25), who states:

When two groups differ in some way — in income for example — and 20% of that difference is eliminated by holding constant some factor *x* (years of education, for instance) then in a purely definitional sense statisticians say that factor *x* "explains" 20% of the difference between the groups. . .

The potential for misleading explanations can be illustrated with a simple example. Shoe size undoubtedly correlates with test scores on advanced mathematics examinations, in the sense that people with size-3 shoes probably cannot on average, answer as many questions as correctly as people with size-12 shoes — the former being much more likely to be young children and the latter more likely to be older children or adults. Thus shoe size "explains" part of the math-score difference — in the special sense in which statisticians use the word. But nobody can expect to do better on a math test by wearing larger shoes on the day it is taken. In the real sense of the word, shoe size *explains* nothing.

When a statistician testifies in court that his data can "explain" only 40% of income disparities between groups by "controlling" for age, education, urbanization, and whatever other variable may be cited, the judge and jury may not realize how little the words "explain" and "control" mean in this context. Judge and jury may conclude the other 60% must represent discrimination. But virtually no statistical study can control for all the relevant variables simultaneously, because the in-depth data, especially along qualitative dimensions, are often simply not available. By controlling

for the available variables and implicitly assuming the unaccounted-for variables do not differ significantly between groups, one can generate considerable residual "unexplained" statistical disparity. It is arbitrary to call that residual "discrimination."

Looked at another way, groups with visible, quantifiable disadvantages often have other, not-so-visible, not-so-quantifiable disadvantages as well. If statistics manage to capture the effect of the first kinds of disadvantages, the effects of the second kind become part of an unexplained residual. It is equating that residual with discrimination that is the fatal leap in logic.

IV. The economics of the "pay gap"

There is an objection often put forth against our claim that the people subjected to private discriminatory behaviour are not harmed by it. Are not the wages, salaries and incomes of women reduced because of economic discrimination against them? The so-called wage gap is offered as contrary evidence to our thesis. The fact is that at present the female/male income ratio is about 0.65. This ratio has been rising very slightly for the last few years, but over the past few decades has shown a great stability. (Block and Williams, 1981; Block and Walker, 1985; Paul, 1989; Levin, 1984; 1987). For every dollar the male earns, the female earns 65 cents. Isn't this evidence of actual harm not based on law or government or violence or coercion or boundary trespasses but rather on private discrimination? Paradoxically, the answer is No.

There are two reasons for taking this stance. First of all, there is the statistical explanation. Yes, the average wage of all females divided by the average wage of all males is 0.65 — there is no dispute about that. But this gross statistic hides more than it reveals. As it turns out, the explanation for this state of affairs is not at all discrimination against women, but rather the asymmetrical effects of the institution of marriage on male and female incomes. Matrimony is strongly associated with increased male incomes and decreased female incomes. The so-called "pay gap" of 35% associated with the wage ratio of 0.65 is almost entirely due to the asymmetrical effects of marriage. The plain fact of the matter is that the division of housework, child-care, shopping, cooking and other such activities is very unequal within most marriages. As well, married

women's attachment to the labor force is vastly below that of men (Hoffmann and Reed, 1982; Sowell, 1984).

This can be shown in two ways. First, segregate the population by marital status, and derive a female/male income ratio for each sub-category. Block and Walker (1985a,b) divided their sample, into the ever and the never married. (The former classification consists of married, divorced, separated and widowed; the latter, as its name implies, is compared only of those people who have never been married.) When calculated in this manner, the ratio for the ever marrieds falls to below 0.40; that for the never marrieds rises to unity. In other words, the "pay gap" increases from 35% for all females to a truly horrendous 60% for the ever married females. By contrast, the pay gap for all females decreases from the 35% level to virtually zero for the never married females. Does this mean that the employer has a particular hatred for married women? This is the only interpretation consistent with the "feminist" mythology. However, contradictorily, in this view, the prejudiced male is supposed to favor married women, given, of course, that they are "barefoot, pregnant and in the kitchen." He is presumed to hate single women — those who do not marry, presumably because they have no respect for men and patriarchal institutions. But the statistical findings indicate the very opposite. When the data are broken down by marital status, it is not the single women, the never marrieds, who "suffer." Rather, it is the marrieds who do.

The ratio for full time employed never marrieds in Canada ranges between 82.9 and 109.8, depending upon date (1971 or 1981), and educational background. (Block and Walker, 1985, p. 51.) For never married persons aged 30 years old and above, Block and Walker (1982, p. 112) found a female-male income ratio of 0.992 for 1971; for comparable ever married, the ratio was 0.334. For U.S. data, Sowell (1984, p. 92) reports: "Women who remain single earn 91% of the income of men who remain single, in the age bracket from 25 to 64 years old. Nor can the other 9% automatically be attributed to employer discrimination, since women are typically not educated as often in such highly paid fields as mathematics, science, and engineering, nor attracted to physically taxing and well paid fields as construction work, lumberjacking, coal mining, and the like.

Moreover, the rise of unwed motherhood means that even among women who never married, the economic constraints of motherhood have not been entirely eliminated."

As it happens, the wage ratio of non-married males to married males is about the same as between all females and all males. Namely, there is a "gap" of some 35%. Interestingly, there have been no analysts who have come forth with the claim that this is due to discrimination. Does this finding indicate that employers discriminate against bachelors? No. It is due to accounting practices which are not designed for economic analysis. The married male has an "assistant" — in effect — helping him to earn that income. It is true that only his name appears on the check, but she is earning it too. She might have helped put him through college. She engages in all sorts of ancillary activities which contribute to his success. However, in the statistical accounts, she is not credited with helping to earn this money. She spends this money in many cases, but governmental statistical agencies typically do not take cognizance of the fact that she has helped to earn it.

It is thus erroneous to deduce from these statistics that discrimination can account for the male-female wage disparity. The reason women on average only earn 65% as much as males is because their productivity is only 65% of theirs. This is not necessarily due to any inherent economic weaknesses on their part, however. As we have seen, the explanation is marital status. According to the best statistical estimations, never married women and never married men have equal productivity, and thus equal salaries. Married women are only 65 percent as productive as men in the market on average because they specialize in raising children and taking care of the household. Even those women who have advanced degrees or training do not typically keep up with the least developments in their professions; at least, they do not do so as assiduously as their married male counterparts.

Now let us consider the second reason in favour of the marriage asymmetry explanation of the wage "gap," *vis-à-vis* the discrimination or exploitation hypothesis. Notice the logical implications of the discrimination model. Assume that the productivity of males and females is exactly equal to each other. Assume the productivity of both to be at the level of \$10 per hour.⁸ Suppose further that the wage for

males is \$10 and for females it's \$6.50 an hour, in order to maintain our ratio of 65%. Under these conditions, it would be as if the woman has a little sign on her lapel stating, "Hire me, and if you do I'll bring you an extra \$3.50 an hour in pure profit." If the employer hires a woman, he can keep this \$3.50, with no extra effort on his part. It goes without saying that all profit-maximizing employers would be vitally interested in discriminating in favour of additional returns. Without question, they would hire the women. But suppose that the employer is a sexist, who hires the man. If so, he will tend to go broke. His competitors, the employers who hire females, will be able to undersell and drive him to the wall.

It is ludicrous, economically speaking, to suppose that anything like this could long endure: that employers could discriminate against equally productive women, and yet remain in business for any appreciable amount of time. Yet, this is precisely the scenario implied by the discrimination hypothesis. Similarly, it is also an implication of this discrimination theory that profits would be positively correlated with the proportion of female employees, both across firms and industries. That is to say, if employers can really exploit women by paying them less — due to rampant discrimination — then they would earn more profits, the more women they have on their payrolls. But this, too, bespeaks economic illiteracy. Profits tend to equalize, *ceteris paribus*. If 50% profits can be earned in industry A, and 1% in B, then investment will tend to leave the latter for the former. But as capital leaves B, this raises the profit level to be derived there; similarly, as money comes flooding in to the greener pastures of A, it lowers returns. What will be the effect of a law that compels employer to pay "equal pay for work of equal value?" Suppose the law requires employers to pay women \$10 an hour when their productivity is really only worth \$6.50, on average. An employer would be very reluctant to hire such people. If he does, he will lose money on each employee he takes on; eventually he will be forced into bankruptcy. As a result, the unemployment rate for women will be higher than it would otherwise have been, in the absence of such pernicious legislation. This is precisely the same effect as that of the minimum wage law. It functions so as to price women out of the labor market.

Consider the case of the ugly secretary and the beautiful secretary. In the real world, beautiful secretaries have an advantage over ugly ones. It may not be appropriate to discuss this economic phenomenon in certain circles; beauty may be strictly irrelevant to the job at hand; this phenomenon may be hurtful to non-attractive women, but that is the way the actual economy, and general society, functions. One might ask, how is it that ugly secretaries ever get a job if just about everyone is prejudiced in favor of beauty? The answer is an phenomenon expressed in economic jargon as "compensating differentials." The market works in such a way that the salaries that less fortunate women can attract decreases, making them a better bargain in the labor market. Comeliness is preferred, other things equal, but if other things are not equal, namely wages, then even those who discriminate in its favor may not choose to indulge their tastes in this way.

If the law mandates that all women be paid the same salaries, however, the underdog (the unattractive secretary) would be hurt the most. For under this condition it would be more difficult for those women to obtain jobs in the first place. Under the present system of free and flexible market wages, at least they can find employment. The same analysis applies to any despised group, whether discriminated against on the basis of gender, race, national origin, beauty or age.

If a law is passed saying a young person can not be paid less than an older one, that deprives the young person of his saving grace in the market, namely, the ability to work for slightly less money. In nature, weak animals have a compensating differential. The porcupine is otherwise frail, but it has quills; the skunk is powerless but it uses odour as a defense; the deer is fragile, but it can run very fast. If these compensating differentials were somehow to be taken away, these animals would be well nigh doomed to extinction. In like manner, if the ability to work for less until they can gain experience is taken away from young people, their unemployment rate increases. This is precisely the scenario which obtains in the modern era, due to minimum wage legislation. Equal pay legislation would do for women what the minimum wage has done for teenagers. All true feminists — those who espouse public policies which have the effect of benefitting women, as opposed to mouthing pious platitudes

about their intentions to this end — must therefore oppose such wage controls.

V. Rights and discrimination

If private discrimination is virtually powerless to harm its intended victims, government discrimination (Demsetz, 1965; Higgs, 1977; Lundahl and Wadensjo, 1984; Stiglitz, 1973) and state and private violence are entirely another matter (Kendall and Louw, 1986; Williams, 1989). The confusion between these two superficially similar phenomena⁹ may account for the popularity of "human rights" legislation on the part of people who favor the downtrodden. In the 1940s and 1950s blacks in the South Eastern United States certainly did suffer from private violence. The Ku Klux Klan and others engaged in lynchings, cross burnings, and other terroristic activities. This is certainly an uninvited border crossing — the chins of these downtrodden groups were infringed upon by the fists of the aggressors. However, this is not at all what is meant by private discrimination.

Before proceeding further, therefore, a sharp distinction must be made between public and private discrimination. In the classical liberal world view, only private individuals have a right to discriminate. Government may not legitimately engage in such behavior. We all pay taxes in order to finance government services. If the state singles out one group, Catholics or Punjabis for instance, and either subsidizes or penalizes them, this is unfair and improper. Affirmative action is an instance of government discrimination. For devastating critiques of this program, see Levin (1987), Roberts (1979, 1982), Sowell (1982, 1990), Williams (1982a).

There is a very important implication of this premise for public universities. To be admitted to state institutions of higher learning, entrance exams — usually based on intelligence and/or knowledge — have to be passed. In the terminology we are now using (Hagen 1977), the university discriminates on behalf of those who are thereby accepted as students. But other people were rejected; that is, they were discriminated against on the basis of their lack of knowledge or intelligence. This is improper and should not exist, in the philosophy under discussion. True, if public universities were to adopt a strict

policy of non-discrimination on the basis of mental acuity, they would cease to exist as centers of higher learning; if they wished to continue to discriminate on this ground, and to do so legitimately, they would have to be privatized.

Another very important distinction to be drawn in this regard is that between discrimination and the initiation of violence. The former is (relatively) benign, the latter malignant. Only the former is compatible with a regime which respects individual rights as adumbrated above; the latter certainly does not. However, it is also crucial to differentiate between private and public discrimination. It is vitally important to do so, because there is often a superficial resemblance between the two phenomena. Yet, as the latter but not the former also incorporates the initiation of violence, it and it alone is intractable from the point of view of the victims.

Consider in this regard that spate of infamous legislation known as Jim Crow (Williams, 1982b).¹⁰ Here, rights were violated on a massive scale, and great harm was perpetrated. Blacks had to sit at the back of the bus because of legal requirements. If they tried to take a seat anywhere else, they would be jailed. Similarly, they were legally restricted in terms of the washroom and drinking fountain facilities (Wharton, 1947; Welch, 1967).

Contrast this with a very different scenario. Instead of this back-of-the-bus practice being mandated by law, suppose that it were the result of merely private discrimination. We assume, then, that in the ex-Confederate states of Dixie that a view existed to the effect that the appropriate place for blacks was in the back of the bus, and that this is a widely upheld belief on the part of the majority white population, although not — and this crucial — buttressed by supportive state intervention. In such a case, the typical entrepreneur would say to himself, "How can I maximize profits, given this situation?" On the assumption that blacks wanted to ride on the front of the bus, but were prevented from doing so by the owners of the extant bus firms, this entrepreneur would start another bus line, one on which blacks can ride anywhere they want — front or back — as long as they pay for this privilege.

The problem in the Jim Crow South was that this would have been illegal. Entrepreneurs were required to obtain a permit or franchise in order to start up a competing bus line. But the same statist

powers that forbade blacks the front of the bus also prohibited entrepreneurs from coming to the rescue of the minority group in this commercially competitive way. Operation permits to alternative bus firms were simply not granted (Wiprud, 1945; Moore, 1961; Eckert and Hilton, 1972). In this instance the underdog could not be helped by the market — not through any fault of private discrimination, but because of the far more deleterious public variety.¹¹

In the event, to continue our historical exegesis, blacks had to wait decades until the political realities became such that a majority of the electorate finally repealed Jim Crow. Had the market been allowed to operate freely at the outset, the effects of this pernicious legislation could have been rendered ineffective in the short time that it would have taken an entrepreneur — black or white, it makes no difference — to set up a competing bus line. The market, in other words, is potentially the best friend of the downtrodden black minority group. Free enterprise is not the enemy. When it is obviated by state power, however, as occurred, unfortunately, in the case we are considering, this help remains only that — a potential.

"Human rights" advocates are so enthused about the so-called rights of people not to be discriminated against, that they neglect the real rights of people to engage in discrimination. Consider people forced to send their children to school where the teacher is gay. Parents resent this strongly, but are often unable to resist. Why not look at these people as underdogs and defend their rights? Surely, homosexuals have a right to practice the lifestyle of their choice. But inflicting themselves upon unwilling recipients is hardly consonant with the law of free association.

There is also the case of Nova Scotia school board which ruled that a teacher who carried the AIDS antibody and thus might likely develop this dread disease was to be returned back into his sixth grade classroom. Imagine the agony of parents forced to send a child to a place where they think there might be a chance of his contracting a fatal disease.¹² A case could easily be made that these parents are the underdogs. Our failure to defend people in such a position stems from moral myopia — the rights of some people are more important than the rights of others.

Expressing it that way implies, however, that rights can conflict with one another.¹³ Properly

understood, however, this cannot occur. If there is a seeming contradiction between rights, one of them is not really a right. People do not have a right against other people that they have to interact with them whether they want to or not, as the so-called human rights philosophy would have it.¹⁴ Rather, in the classical liberal philosophy, people should be free to do whatever they please as long as they don't violate the space of other people by invasion.

What are the free speech implications of our analysis? Statements specifically discriminating against particular groups of people have a long pedigree in the civil liberties debate. They have been characterized as "hate literature." They are displeasing, even malevolent. But banning them is a clear violation of free speech rights.¹⁵ Surely, any philosophy which takes serious our rights of free expression would be exceedingly uncomfortable with a juridical proscription of "racist" statements.

VI. The sociobiology of sexism

Now that we have established that private sexism, like racism, is impotent to greatly harm the economic well-being of the "victimized" group (in sharp contradistinction to sexist and racist policies pursued by government bodies, or the violence employed by states or individuals), we venture into an exploration of the question of why it is that sex discrimination exists in the first place. (What is meant by sexism in this account is first making distinctions between men and women, and then treating members of the two genders differently.) The most common explanation for this is that people are nasty, perverse and misanthropic. The problem with this hypothesis, apart from being circular, is that it in no way comes to grips with why the nastiness and perversity which is undoubtedly part of the human condition is channeled into "anti-female" directions.

The sociobiological account of sexism does not fail on these grounds. Consider the following case: a ferry boat capsizes and there is only one lifeboat available. The common sexist order of preference is women (and children) first and only then men, a long way second. Why is it that we have this deeply embedded sexist idea that women are to be placed on a pedestal in this way? Why not let women take their chances along with men, in the mad dash

for the lifeboat? In the widely popular "feminist" analysis, this is because men regard women as little better than children in terms of intelligence, physical strength and maturity, and if children should be saved first because of their relative weakness, then so should women.

The sociobiological explanation of this event provides a sharp contrast (Wilson, 1974). In this view, the women-and-children-first rule came about because it ensured the survival of our species. Women are biologically far more precious than men, and any species that does not base its actions on this rule is thus far less likely to survive than one that does. This is why the chivalristic notions are so deeply embedded in our psyches: the human race has been acting on these principles for aeons of time. Those parts of the race which did not have along ago died out.

Consider Germany, Poland and the Soviet Union after World War II; practically an entire generation of men in these countries were killed; the lives of the women were, by and large, spared, at least relatively speaking. A gigantic proportion of men in each military age cohort were wiped out: women of child bearing age tended to survive. Is this even noticed by the Germans, Poles and Soviets very much in the modern day, in terms of demographic implications? No. The next generation is just as large and just as well educated. It was almost as if this tragic loss had simply not occurred. Compare that scenario to the following hypothetical case. Suppose three-quarters of the women of the Soviet Union of childbearing age were killed, but hardly any of the men, the exact reverse of what actually occurred. What would be the demographic results in such a case? They would be no less than catastrophic. Not only would there be great danger for the next generation in these countries: the real question would be whether there would *be* any next generation or not!

Suppose that there were two races of apes, otherwise equally fit to survive, which had different customs regarding warfare. One group of apes (call them the human apes) did not allow their females to fight: instead, they tried to protect them as much as possible. When fighting took place it was with the expendable males in the front lines. The other group of apes (call them extinct) either pushed the women forward to front lines of battle or were egalitarian — no "spurious" distinctions were made between the

males and the females, they all went out and fought on an equal basis. Which group would survive? Obviously, the first group, the “human” apes, because like it or not women are more precious when it comes to survival of the species. This is so because one male and 25 females can leave as much progeny as 25 males and 25 females are capable of producing. That is, 24 of the males are all but extraneous to the process. It may be nice to have them around — at the very least they can furnish added protection — but biologically speaking their roles are as necessary for the survival of the human species as are drones for the survival of bees. That is why farmers commonly keep one bull for 25 cows — and not the other way around. However incompatible with the “feminist” view of the world, this biological fact simply cannot be denied.

This is a very powerful explanation of why women are dealt with as if they are much more precious than men. Because they *are*. Some people don’t care about the survival of the human race, but this is irrelevant. We are now trying to understand why discrimination between men and women is so deeply imbedded in the human psyche, and in the sociobiological analysis we have found a logical explanation. This is a positive enterprise, to which truth and falsity apply, not a normative one, which pertains to the categories of good and bad, like and dislike. In other words, this perspective may be incompatible with the world view of the “feminists,” but the evidence in its behalf is overwhelming, nonetheless.

VII. Conclusion

Our interdisciplinary account of the discrimination — utilizing insights from economics, politics, philosophy, sociology, biology, statistics and history — lends credence to our public policy recommendation: that this behaviour, although immoral in many cases, should not be prohibited by law. Many of the goals of people of good will — for peace, prosperity and tolerance — will, paradoxically, be more likely of attainment under a legal regime which allows for the free association of individuals on a strictly voluntary basis, rather than under one which compels such interaction. The latter can often backfire, as racial violence on university campuses, following affirma-

tive action and mandatory “politically correct” thought eloquently attest. So far has our present society lost sight of its classical liberal historical roots that the case for liberty in human relationships may seem to some to be vaguely racist, sexist, or otherwise morally objectionable.

Notes

* The author would like to thank an anonymous referee for numerous helpful, insightful and constructive criticisms. All remaining errors and infelicities are of course his own responsibility.

¹ This paper was written before the present author became aware of Narveson (1987). Although the two articles were written independently, there is a great deal of overlap between them — as is only to be expected when two reasonably competent analysts start out with virtually the same premises (classical liberal, in this case), and apply them to the same set of issues.

² A very eloquent statement in behalf of this view was made by Booker T. Washington, on May 31, 1897 during the unveiling of sculptor Augustus Saint-Gaudens’ monument to the 54th Regiment of Massachusetts Volunteer Infantry, the first black fighting unit to take part in the Civil War. It was made to commemorate its participation in the battle to capture Fort Wagner, during which campaign the regiment sustained heavy losses: “The black man who cannot let love and sympathy go out to the white man is but half free. The white man who would close the shop or factory against a black man seeking an opportunity to earn an honest living is but half free. The white man who retards his own development by opposing a black man is but half free. The full measure of the fruit of Fort Wagner and all that this monument stands for will not be realized until every man covered by a black skin shall, by patience and natural effort, grow to the height in industry, property, intelligence and moral responsibility, where no man in our land will be tempted to degrade himself by withholding from his black brother any opportunity he himself would possess.” (*Toronto Globe and Mail*, Dec. 15, 1899, p. A 16.)

³ If one considers the word “prejudice” etymologically, it means to pre-judge. That is, to make up one’s mind about an issue before all the facts are in. But suppose you open up a door, go into a room, and close the door behind you, and then lo and behold, you are confronted by a tiger sitting on a couch. Do you act empirically, in a non-prejudicial manner, and go up to the tiger to engage in a close examination, to see if this particular member of the species will act like most of its fellows, and begin to maul you? Or do you take one look, and then head quickly for the nearest exit, based on

your general experience and knowledge of the breed, before you know the facts about this particular animal? Most people would act in a pre-judiced manner in this regard, and would not apologize for it. (I owe this example to Walter Williams.)

⁴ There is a tradition amongst some civil libertarians (the British Columbia Civil Liberties Association is a strong case in point) that commercial liberties are very much inferior to personal ones. This sentiment finds expression, for example, in the denigration of commercial free speech rights (e.g., tobacco advertising) in contrast to the right to engage in free speech in the political or scientific arenas. One implication of this perspective, however, would be that the legal protections afforded the public policy statements "A subsidy for the XYZ cigarette company is in the public interest" or "Cigarette smoking is good for you" would be far stronger than those granted in behalf of the advertising statement "Buy XYZ cigarettes." In the classical liberal philosophy, in sharp contrast, no such distinction is maintained. On the contrary, liberty is conceived of as a "seamless garment," and no aspect of it is denigrated in behalf of any other.

⁵ In his most anti-white racist days Malcolm X was once asked if any white man — living or dead — would have been allowed to join the Black Muslims. He replied that John Brown would have been acceptable. (See Breitman, 1965, pp. 224–225.)

⁶ If we were to carry through fully and consistently on the logic of this premise, then blacks would have the right to rape and kill whites; Indians could legally steal from non Indians; Jews could have "open season" on Germans.

⁷ This accounts for the fact that the South African economy is doing quite well, despite a deep seated, well entrenched, long standing boycott against it. When most civilized nations refuse to buy South African products, their prices fall, which makes it almost impossible for those interested in wealth maximization to continue to resist making purchases from that country. Similarly, when most civilized nations refuse to sell to South Africa, the prices obtainable rise, making it more and more costly to continue the boycott. The better organized the boycott, and the more people who take part in it, the more quickly its internal contradictions become apparent.

A similar economic analysis may be applied to the problems facing the authorities now engaged in the "war against drugs." The more opium producers killed, the more heroin captured, the more marijuana burned, the more poppy fields sprayed with poison, the higher will be the prices of these illegal drugs, due to falling supply. But the higher the prices, the more the incentive which remains to create still other sources of supply.

⁸ We focus on productivity — or more strictly marginal revenue product — because that is why employers pay wages — to obtain productivity from their employees. It is a well-

known axiom in economics that wages tend to reflect the level of productivity of the workers. Samuelson (1976, ch. 20).

⁹ There is all the world of difference between the invasive use of force, on the one hand, and the peaceful but assertive refusal to interact, on the other. Indeed, in the entire realm of political philosophy, there is scarcely a distinction more important to make, nor one easier to make. Nevertheless, for many people, the distinction between these two concepts is hard to discern. This is all the more reason to make it clearly and repetitively.

¹⁰ An economically similar system of law is the case of apartheid in South Africa (Williams, 1989; Louw and Kendall, 1986; Hutt, 1964).

¹¹ If the majority refuses to sell food to the minority, other people will leap into the void, in order to "exploit" the relatively hungry minority. They will be lured by the prospect of being able to earn greater profits, but in so doing, they will drive down the food prices the minority will have to pay. It is only if the majority utilizes force or violence to keep such profit maximizing good samaritans away from the minority that this process will not work.

¹² To be sure, scientific evidence indicates that AIDS cannot be disseminated by casual contact of the sort likely to be engaged in by school children in the classroom. But this is hardly relevant to the point at issue, namely the right of free association. People may wish to avoid contact with others for the most frivolous or scientifically erroneous of reasons. The question is, do they have a right to do so? And the answer is clear, at least for those who take individual liberty seriously.

¹³ Suppose a white (black) female prostitute refuses to conduct her business with a black (white) male would-be customer. It might be argued, at least in jurisdictions where prostitution is not prohibited, that since she is engaged in a clearly commercial venture, and thus can be construed as being "open to the public," that she be legally forced to entertain all customers who can meet her price (and also that she not price discriminate on the basis of race). But if she is forced to do so, this is a violation of women's rights; if not, it constitutes racial discrimination, and thus a violation of the rights of minority group members.

This contradiction, of course, does not arise under classical liberalism, which countenances only negative rights; e.g., the right not to be murdered, raped, stolen from (Block 1986). Here, there can be no conflict in rights, for the woman is seen as the sole owner of her own body, with the right to dispose of it exactly as she wishes. And this includes the rights to engage in sexual relations with anyone she chooses, for any reason acceptable to her.

¹⁴ A similar analysis arises with regard to exceptions that are commonly made to the anti-discriminatory laws. For example, it is seen as illicit to discriminate between males and females, but there are separate (but equal?) washroom facilities

ties assigned to men and to women. If this really were a matter of rights, such exceptions would not, could not, be tolerated. Similarly, discrimination between the sexes blatantly occurs in the field of sports, and is accepted by otherwise consistent adherents of the "human rights" philosophy: namely, there are separate divisions for males and females in university, olympic and professional sports. For example, male and female basketball, tennis and volleyball players do not compete against each other; nor do track and field athletes. (Such an occurrence would hardly be allowed, in the case of race; could we countenance separate sports leagues for whites and blacks? for Jews and Gentiles? The very idea would be preposterous in the "human rights" world view, and yet the very same principles apply to gender distinctions.) There is little doubt that were there only one athletic event, open to members of both sexes, that there would be virtually no female representatives who could successfully compete. Florence Griffith-Joiner, for instance, might hold the female world record for the 100 meter dash, but if she had to compete directly with males, she would not have even qualified to enter the olympics.

¹⁵ In classical liberalism, free speech rights are interpreted as but an aspect of the more basic rights to private property. For example, if someone breaks into my house at 3:00 a.m., and starts reading in a loud voice the sonnets of Shakespeare, he may not properly object if I toss him bodily out onto the street that I have violated his rights of free speech. He has no rights of free speech — on my property. He has such rights only on his own property, or on that (a hall, auditorium, newspaper advertisement, etc.) which he has rented from someone else.

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