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AFFIRMATIVE ACTION AS A WOMAN'S ISSUE

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Debate about Affirmative Action is often heated and emotionally charged. It generates discussions about "merit";¹ it buries academics in Department of Labor statistics;² it absorbs lawyers and historians in interpretation of congressional intent;³ and it bogs down the public policy experts with narrow implementation matters.⁴ All this often misses the essential point about Affirmative Action which is that its goal is redistribution.⁵

In what ways does a policy of Affirmative Action assist women to become fully integrated into schools, training programs, and jobs? I will 1) define Affirmative Action 2) detail the development of federal Affirmative Action Guidelines 3) describe Supreme Court decisions relating to Affirmative Action; and 4) consider in what ways Affirmative Action is a woman's issue.

Affirmative Action Defined

Affirmative Action, is a generic term for programs which take some kind of initiative, either voluntarily or under the compulsion of law to increase, maintain or rearrange the number or status of certain group members usually defined by race or gender, within a larger group. When these programs are characterized by race or gender preference, "especially when coupled with rigorously pursued 'goals', [they] are highly controversial because race and gender are generally thought to be 'irrelevant' to employment and admissions decisions" and are "immutable characteristics over which individuals lack control."⁶

Affirmative Action and Federal Guidelines

Significant moves to prohibit discrimination in the public sector began in the late 1930's and early 1940's, according to David Rosenbloom, who describes a series of Executive Orders, starting with the Roosevelt administration, which called for a policy of non-discrimination in employment.⁷ However, it is President John F. Kennedy's Executive Order issued March 16, 1961 which is usually seen as representing the real roots of present day Affirmative Action policy.⁸ Executive Order 10,925 required government contractors to take Affirmative Action, establishing specific sanctions for noncompliance.⁹ Nevertheless, even the Order's principal draftsman admitted that the enforcement process led to a great deal of complainant frustra-

tion.¹⁰

Before another Executive Order would be issued, civil rights exploded onto the public agenda. A March on Washington held on August 28, 1963 brought 200,000 black and white supporters of civil rights to the Capitol. In response to this and other demonstrations, and as a result of shifting public sentiment, President Kennedy sent a Civil rights bill to Congress and it was passed in 1964, after his assassination. The Civil Rights Act of 1964 included in its provisions Title VI, which prohibited discrimination on the basis of race, color, or national origin by all recipients of federal funds, including schools, and Title VII, which made it unlawful for any employer or labor union to discriminate in employment on the basis of race, color, religion, sex, or national origin. Title VII also created The Equal Employment Opportunity Commission (EEOC) for enforcement in the private sector.

The following year, 1965, President Lyndon B. Johnson issued Executive Order 11,246 barring discrimination on the basis of race, color, religion, or national origin by federal contractors and subcontractors¹¹ and on October 13, 1967, it was amended by Executive Order 11,375 to expand its coverage to women. One major innovation of the Order was to shift enforcement to the Secretary of Labor creating an Office of Federal Contract Compliance (OFCC). Starting in 1968, the government established the enforceability of the Executive Order with legal action¹² and for the first time, issued notices of proposed debarment (contract cancellation) using their administrative process.¹³

Prodded to be more specific about its standards, OFCC began to spell out exactly what Affirmative Action meant in the context of the construction industry and that became a model for all Affirmative Action programs.¹⁴ During this period, President Richard Nixon played the role of champion of Affirmative Action, saving LBJ's Executive Order.

In 1968, OFCC focused on blacks in the construction industry. The result was the Philadelphia Plan which was developed in three stages. First, OFCC required pre-award Affirmative Action plans from low bidders in some labor market areas, like Philadelphia. But because there were no guidelines for acceptability, the industry pressured Congress which stimulated an opinion from the Comptroller General who recommended that OFCC provide minimum requirements and standards by which programs would be judged. The second or Revised Philadelphia Plan was then developed. It required that contractors submit a statement of "goals" of minority employ-

ment together with their bids which took into account the minority participation and availability in the trade, as well as the need for training programs. On September 23, 1969 Labor issued its third and final Guidelines for the Philadelphia Plan after having determined the degree to which there was discrimination in construction crafts. This final Plan established ranges within which the contractor's goals had to fall and they recommended filling vacancies and new jobs approximately on the basis of one minority craftsman for each non-minority craftsman.

Now the Comptroller General found the Revised Plan illegal on the ground that it set up quotas. But the Attorney General issued an opinion declaring the Plan to be legal and advised the Secretary of Labor to ignore the Comptroller General's opinion. The Comptroller General then urged the Senate Subcommittee on Deficiencies and Supplementals to attach a rider onto their appropriations bill prohibiting the use of funds to pay for efforts to achieve specific minority employment goals. The Nixon Administration lobbied hard in the House and eliminated the rider and on reconsideration, the Senate also defeated the rider and the Philadelphia Plan was saved.

In 1971, the Department of Labor issued general Guidelines which had the same features as the Philadelphia Plan making it "clear that 'goals and timetables' were meant to 'increase materially the utilization of minorities and women', with 'under-utilization' being spelled out as 'having fewer minorities or women in a particular job classification than would reasonably be expected by their availability . . .'"¹⁵ The 1971 Department of Labor Guidelines were called Revised Order #4 and they were to govern employment practices by government contractors and subcontractors in industry and higher education.

Hole and Levine, in *Rebirth of Feminism*, document the initial exclusion of women from the Guidelines. In 1970, Secretary of Labor Hodgson even publicly remarked that he had "no intention of applying literally exactly the same approach for women" as was applied to eliminate discrimination against minorities.¹⁶ However, because of publicity and pressure by women's groups, by April 1973 women were finally included as full beneficiaries in the Revised Order #4.

What is important about the Philadelphia Plan and the Department of Labor Guidelines is that it established not only the principle but the guidelines for the practice of Affirmative Action which other civil rights enforcement agencies and even the courts would follow.

During the 1970's, administrative changes strengthened

Affirmative Action. The Office of Management and Budget enlarged and refined the definition of minority group and under President Carter, Affirmative Action efforts were consolidated. By Executive Order on October 5, 1978, OFCC went from overview responsibility where each department had responsibility for the compliance of their own contractors (with uneven results), to consolidated contract compliance where OFCC was given enforcement responsibility over all contractors;¹⁷ overnight, 1600 people who had been working for other departments were now working for Labor. The expanded program now was called the Office of Federal Contract Compliance Programs (OFCCP).

During the 1980's, there were attempts to weaken Affirmative Action. The Reagan Administration publicly and continually criticized goals and timetables, calling them quotas¹⁸, and by 1982, the OFCCP budget and number of workers were significantly reduced. By 1983, while President Reagan used attitudes towards Affirmative Action as a litmus test to successfully reorganize the US Commission on Civil Rights, his attempt to rescind or revise Executive Order 11,246 by specifically prohibiting numerical hiring goals was successfully stopped by opposition from within his own Administration.¹⁹ Nevertheless, during these years, the Administration whittled away at the policy. In 1983, they instituted changes within OFCCP that affected the agency's case determinations and remedies, although by January, 1987, some of these changes were rescinded. On January 21, 1987 Joseph N. Cooper, Director of OFCCP, quit his job in protest. In an interview, he spoke candidly about the "number of officials in the Labor Department and elsewhere in the Administration who were intent on destroying the contract compliance program."²⁰

The Bakke and Other Court Decisions

It is important to point out, that Affirmative Action policy for student admissions has a very different history. Its source is Title VI of the Civil Rights Act of 1964, and Title IX of the Educational Amendments of 1972, not Executive Order 11,246. Title VI requires Affirmative Action steps to be taken in admissions only as a remedy for past discrimination. However, most minority Affirmative Action admission programs were self-imposed.²¹ Title IX (Subpart B, section 106.17) of the Educational Amendments of 1972, which prohibits sex discrimination, also calls for affirmative steps to be taken to remedy "past exclusion." A case having to do with minority Affirmative Action in admissions became the most well-known and celebrated test of the principle of Affirmative Action.

Justice Lewis Powell announced the *Bakke v. University of California Supreme Court* decision to a hushed Courtroom on the morning of June 28, 1978. He said, "We speak today with notable lack of unanimity" and in fact, the 154 pages of judicial text presented six separate opinions and two separate majorities.²²

Allan Bakke wanted to be a medical doctor and so, while employed as a full time engineer, in 1973, at age 33, he applied to a dozen medical schools, one of which was University of California, Davis, and was turned down by all of them. The next year after a second rejection from the twelve medical schools, Bakke sued the University of California in California Court claiming that Davis' use of racial quotas was what excluded him from medical school.

The *Bakke* case was not a strong one for those who supported Affirmative Action. On trial was an admissions program which reserved 16 of its 100 places for minority students (blacks, Hispanics, and Asians), which looked like an admissions "quota" system. Furthermore, the Davis Medical School was founded in 1968, so the school could not claim that Affirmative Action was a remedy for past years of discrimination.

In this case, fifty-eight amicus curiae briefs were filed and "The Court seemed less a judicial sanctum than a tug of war among contesting lobbyists."²³ When the dust cleared, the Court found a way both to admit Allan Bakke, now age 38, to the Davis Medical School and to defend the practice of Affirmative Action. By a 5-4 margin, the Court rejected the Davis program with a fixed number of seats for minorities but also by a different 5-4 margin, the Court accepted race conscious admissions as being consistent with the Constitution and Title VI.²⁴

Two cases which followed *Bakke*, *Weber* in 1979 and *Fullilove* in 1980, helped clarify the legal picture on Affirmative Action. In a 5-2 decision in *Weber*, (two Supreme Court members did not participate) it was permissible under Title VII, for the private sector voluntarily to apply a compensatory racial preference for employment.

Brian Weber was an unskilled laboratory employee at the Gramercy, Louisiana plant of the Kaiser Aluminum and Chemical Corporation. In 1974, while blacks made up 39% of Gramercy's general labor force, at the Kaiser plant, only 2% of the 273 skilled craft workers were black. Kaiser instituted a training program for their unskilled workers earmarking half the trainee openings for blacks til the percentage of black craftspeople corresponded to their proportion in the labor force. Weber had more seniority than some of the blacks chosen for the program. The

court, however, argued that Kaiser's Affirmative Action program was a reasonable response to the need to break down old patterns of segregation.

The following year, in *Fullilove*, the Supreme Court decided, 6-3, that a congressional Affirmative Action program, a 10% set aside of federal funds for minority business people, provided in the Public Works Employment Act of 1977, was also permissible under the Constitution.

Fullilove v. Klutznick was decided during the summer of 1980.²⁵ Chief Justice Burger wrote the majority opinion which found the "limited use of racial and ethnic criteria" constitutionally permissible when its purpose was to remedy the present effects of past racial discrimination. With this case, Fr. Mooney suggests that, with certain qualifications, the Supreme Court legitimized Affirmative Action as a policy for American society.²⁶ Not so, when it came to layoffs.

In 1984, when layoffs were concerned, the Court shifted from its permissive view on class-wide "race conscious remedies." On June 12, 1984, the Supreme Court issued its decision in *Firefighters Local Union No. 1784 v. Stotts* which focused on the extent to which seniority systems may be overridden as part of court-ordered relief to remedy discrimination in employment. It was a 6-3 decision.

Carl Stotts was a black firefighter in the Memphis, Tennessee Fire Department. He brought a class action law suit into Federal district court in 1977 alleging department discriminatory hiring and promotion practices. This resulted in a consent decree in 1980 which required that the percentage of black employees in each job classification be increased to the proportion of blacks in the local labor force.

The next year, because of budget problems, the city began to make plans to lay off firefighters on a seniority basis (last hired, first fired). "Black firefighters asked the court to prohibit the layoff of black employees. The court ordered the city not to apply its seniority policy in a manner that would reduce the percentage of blacks in the department. The case was appealed to the Supreme Court."²⁷

The Supreme Court said that the seniority system could not be disregarded in laying people off and that while there was protection for actual victims of discrimination, "mere membership in the disadvantaged class was an insufficient basis for judicial relief."²⁸ In other words, a seniority system could be used to lay people off even though many blacks would be the first to go. The same was true in *Wygant v. Jackson Board of Education* which was decided May 19, 1986.

In *Wygant*, non-minority teachers in Jackson, Michigan challenged their terminations under a collective bargaining agreement requiring layoffs in reverse order of seniority unless it resulted in more minority layoffs than the current percentage employed. This layoff provision was adopted by the Jackson Board of Education, in 1972, because of racial tension in the community that extended to its schools. In a 5-4 decision, the court said this system of layoffs violated the rights of the non-minority teachers even though (unlike *Stotts*) it was a part of their collective bargaining agreement. Powell, writing for the Court, argued that he could not find enough to justify the use of racial classifications.²⁹ Affirmative Action was not as important as seniority when it came to layoffs.

Nevertheless, the "principle" of Affirmative Action actually survived in the majority's opinion in *Wygant*. The Court again affirmed that under certain circumstances policies using race-based classifications were justified. It was just that for the majority, these were not the right circumstances. Marshall's words written in his dissenting opinion, ring true, "Despite the Court's inability to agree on a route, we have reached a common destination in sustaining Affirmative Action against constitutional attack."³⁰ His assessment was to be proven correct in the February 25, 1987 case, *US v. Paradise* and in the March 25, 1987 case, *Johnson v. Transportation Agency, Santa Clara County*.

In a 5-4 decision, in the *Paradise* case, the Court upheld a Federal district court judge's order requiring Alabama to promote one black state police trooper for each white trooper from a pool of qualified candidates. Justice Brennan wrote the plurality opinion justifying the Affirmative Action program because of the "egregious" nature of previous bias against blacks. Justice Powell in a concurring opinion emphasized that the "quota" did not disrupt seriously the lives of innocent individuals; Justice Stevens' concurring opinion emphasized that the Court-imposed plans fell within the bounds of reasonableness, while the dissenters emphasized the undue burden the plan placed on the white troopers.

In the *Johnson* case, six of the nine Supreme Court Justices approved of Santa Clara county's Affirmative Action program. In 1978, Santa Clara's transit district's Board of Supervisors adopted a goal of a workforce whose proportion of women, minorities, and the disabled equalled the county's labor force at all job levels. Women constituted 36.4% of the relevant labor market and while women comprised 22.4% of the district workers, they were mostly in clerical positions with none in the 238 skilled jobs. In 1979, Diane Joyce and Paul Johnson

competed, along with five others who were all deemed "well-qualified", for the job of dispatcher, a skilled position. They had all scored over 70, the passing grade in an oral examination conducted by a two-person panel. Johnson tied for second with a score of 75 and Joyce ranked third with 73. After a second interview, first Johnson was chosen, but then, because of Affirmative Action considerations, Joyce got the job and Johnson sued contending that he was better qualified. In 1982, a judge ruled that Johnson had been a "victim of discrimination". The Reagan Administration joined attorneys for Johnson and appealed to the Supreme Court.³¹

Justice William Brennan, in writing for the Court, put its stamp of approval on voluntary employer action designed to break down old patterns of race and sex segregation. "Given the obvious imbalance in the skilled craft category' in favor of men against women, Brennan said, "It was plainly not unreasonable . . . to consider the sex of Ms. Joyce in making the promotion decision." Brennan called the Affirmative Action plan " a moderate, flexible case by case approach to effecting a gradual improvement in the representation of minorities and women in the agency's work force."³² Justice Antonin Scalia responded with a scathing dissent emphasizing the burden which falls on the "Johnsons of the Country" whom he called "the only losers in the process."³³ Thus it appears that the Supreme Court remains divided on Affirmative Action. By a bare majority, the Court supports Affirmative Action for purposes of hiring and promotion but not to determine layoff lists.

Table 1
Affirmative Action Ruling

| | Approved | Disapproved | No Opinion |
|--------------|----------|-------------|------------|
| National | 29% | 63% | 8% |
| Democrats | 37 | 54 | 9 |
| Republicans | 22 | 74 | 4 |
| Independents | 27 | 64 | 9 |
| Men | 26 | 66 | 8 |
| Women | 32 | 59 | 9 |
| Whites | 25 | 67 | 8 |
| Blacks | 56 | 34 | 10 |
| Hispanics | 46 | 47 | 7 |

Source: George Gallup, Jr., "Little Support for High Court Ruling on Hiring," *San Francisco Chronicle*, June 15, 1987.

A Gallup Poll conducted in June 1987 following the Johnson decision shows that the public also continues to be divided on the issue of Affirmative Action and that the majority of those polled continues to be opposed.

Affirmative Action: A Woman's Issue

The aim of Affirmative Action is the redistribution of benefits and opportunities. Has the program benefitted women?

According to the Department of Labor Guidelines, starting in April, 1982, women were to be included in the special class or "protected class" benefitting from compensatory policies. Note however, that in all the Supreme Court landmark cases but the *Johnson* case, women were not the protected class directly benefitting from the Affirmative Action programs in question. Thus, even with the Department of Labor Guidelines, there is no guarantee that women, as a protected class, will be included in Affirmative Action pools, which are up to each employer to define.

Industry-wide figures consistently have painted a "mixed" picture for employed women under Affirmative Action. For example, Goldstein and Smith analyzed minority and women employment changes in over 74,000 separate companies between 1970 and 1972. They compared contractor and noncontractor companies with a presumption that federal contractors are more likely to conform to Affirmative Action goals. What they found surprised them.

Although, as expected, black males did economically better in employment in contractor companies between 1970 and 1972, so did white males. The big losers during these years were white women. Between 1970 and 1972, before the OFCC Revised Guidelines included women, white women not only showed no employment gains, they showed significant employment losses. In fact white women's losses were equal in magnitude to the significant gains made by white males.³⁴

Under the Revised Guidelines, it appears that the effect of including women in the federal Affirmative Action program, as a protected class, is mixed. From 1967 to 1980, for white women, "[r]ough stability prevailed over this period in their wages relative to white men," according to Smith and Welch. Sociologist, Paul Burstein suggests an interesting explanation, rarely considered by economists, to account for why white women have not experienced a large wage advance under the 1972 Guidelines. As a group, their "seeming decline" in income is probably due to the steady influx of relatively inexperienced female workers into the labor force. Women as a group are better off but their average income drops.³⁵ The story on wages for black women is different.

Between 1967 and 1980, the largest wage advances were achieved by black women who went from earning 74% of the wage of similarly employed white women in 1967 to almost complete racial parity in 1980.³⁶ It has been suggested that "part of the reason for nonwhite women's gains . . . may be their having been so badly off initially that their jobs and incomes could improve considerably without posing any real threat to the normal workings of the economy."³⁷

In a National Bureau of Economic Research paper, Jonathan Leonard studied the effectiveness of Affirmative Action for the employment of minorities and women.³⁸ Focusing on the period between 1974 and 1980, he also compared contractor and non-contractor establishments. Leonard compared the mean employment share of targeted groups and controlled for establishment size, growth region, industry, occupation and corporate structure. He found that members of protected groups grew faster in contractor than in non-contractor establishments, 3.8% faster for black males, 7.9% faster for other minority males, 2.8% for white females, and 12.3% for black females.³⁹ This suggests that Affirmative Action programs benefit black women and tend to help white women although not as much as they benefit minorities.

When Leonard focused on the effect of compliance reviews, that is, the role it played over and above that of contractor status, he found that they advanced black males by 7.9%, other minority males by 15.2%, black females by 6.1% and it retarded the employment growth of whites (including white women). Thus, he concluded, "with the exception of white females, compliance reviews have had an additional positive impact on protected group employment beyond the contractor effect."⁴⁰ His data also show that white women were not benefitting from Affirmative Action when it comes to promotions.⁴¹

Leonard suggests an explanation for why white women's position in contractor companies has not improved significantly compared to non-contractor companies. It is that these women have so flooded the employment market that they have been hired in both contractor and non-contractor companies. As he says, "female [employment] share" has "increase[d] at all establishments because of the supply shift. . ." Thus, his comparison of contractor and non-contractor hiring does not show the general large increase in white women hired. His explanation seems plausible considering the clear increase in the number of women employed which is reflected by Bureau of the Census data for the period between 1970 and 1980.⁴²

Although it appears that not all women have benefitted

directly from Affirmative Action, there are many specific cases where women (including white women) have directly benefitted from an Affirmative Action "approach". Affirmative Action, with its emphasis on numbers and "parity" can indirectly benefit women (including white women) because it inevitably shifts our focus from rhetoric to results. Thus, in some areas, such as academic admissions, (which falls under Title IX protection) public scrutiny was all that was necessary to make possible a large redistribution of places to all women. Quoting McGeorge Bundy, Wilkinson wrote, "Since 1968 the number of women entering medical schools has risen from 8 percent to 25 percent of the total. A parallel increase has occurred in law schools. No constitutional issue is raised by this dramatic change, . . . the women admitted have had generally competitive records on the conventional measures."⁴³

Even though they score competitively, I am arguing that Affirmative Action has helped these women get admitted to professional schools by focusing public attention on admissions criteria and admission results. In this context I am reminded of a Charlotte Perkins Gilman line in a poem which focuses on Socialist change. "A lifted world lifts women up," she wrote.

Thus, there is a mixed answer to the question, "Does Affirmative Action benefit women?" Non-white women seem to have most clearly benefitted directly from the program but all women may be benefitting indirectly. Might Affirmative Action be a woman's issue for reasons other than women's benefits?

Perhaps Affirmative Action could be seen as a woman's issue, in the tradition of Social feminism, because it calls for a fairer distribution of social benefits. Of course, I am not suggesting that women be insensitive to the catalogue of arguments, some of them practical, which have been made against Affirmative Action.⁴⁴ What I would suggest is that women (and men) be wary of falling into the trap of characterizing Affirmative Action as the "opposite" of a merit system. It is not. After all proportionality is even used to select justices on the Supreme Court where there may be a Jewish seat, a Southern seat, a Black seat and now a woman's seat.⁴⁵

The major issue raised by Affirmative Action is not merit but redistribution. Allan Bakke's arguments were made against a special program benefitting minorities. Over and over he raised the flag of "fair competition" but Davis Medical School had another "special program", which Bakke did not complain about, the Dean's special admissions program "under which white children of politically well-connected university supporters or substantial financial contributors have been admitted in spite of

being less qualified than other applicants, including Bakke."⁴⁶ Thus, the Bakke issue is not, and never was, special programs. The issue is who will be benefitting from these special programs and that is not a matter of merit but of politics.

FOOTNOTES

¹See Allan P. Sindler, *Equal Opportunity: On the Policy and Politics of Compensatory Minority Preferences*, American Enterprise Institute for Public Policy Research, Washington, 1983.

²See Jonathan S. Leonard, "The Effectiveness of Equal Employment Law and the Affirmative Action Regulation," Working Paper No. 1745, NBER Working Paper Series, National Bureau of Economic Research, November, 1985. (unpublished)

³See Thomas Sowell, *Civil Rights: Rhetoric or Reality?* William Morrow and Company, Inc. New York, 1984, and James E. Jones, Jr., "The Bugaboo of Employment Quotas," *Wisconsin Law Review*, V. 1970.

⁴Daniel C. Maguire provides the most complete compendium of practical "problems" in *A New American Justice*, Doubleday and Company, New York, 1980.

⁵This, to the credit of its author, is the focus of Daniel C. Maguire's book cited above.

⁶Arval A. Morris, "Affirmative Action and 'Quota' Systems," "Commentary," 26 Ed. *Law Report*, 1985.

⁷David H. Rosenbloom, *Federal Equal Employment Opportunity Politics and Public Personnel Administration*, Praeger Publishers, New York, 1977, p.60; see also James E. Jones, "Twenty-One Years of Affirmative Action: The Maturation of the Administrative Enforcement Process Under the Executive Order 11,246 as Amended," *Chicago Kent Law Review*, Vol. 59, Winter, 1982; Paul Burstein, *Discrimination, Jobs, and Politics*, The University of Chicago Press, Chicago, 1985, pp.8, 13.

⁸U. S., Federal Register, March 6, 1961, 26, pt. 2:1977

⁹Rosenbloom, op. cit., pp. 67-69.

¹⁰Jones, op. cit., p.f. 72

¹¹U. S., Federal Register, 30, pt. 10:12319

¹²In *U. S. v. Local 189, United Papermakers and Paperworkers*, 290F2d 368 and *Crown Zellerbach Corp.*, 282F Supp. 39 (E. D. La. 1968) "the government sought an injunction against the union's interference with the company's contractual obligations under Executive Order 11,246 . . ." *ibid*, p. 83.

¹³There are many who criticize the way Affirmative Action has been implemented. For an overview, see Leonard op. cit., and Leonard, "Affirmative Action as Earnings Redistribution: The Targeting of Compliance Reviews," *Journal of Labor Economics*, Vol. 3, No. 3, July, 1985, pp. 380-384; also, see James P. Smith and Finis Welch, "Affirmative Action and Labor Markets," *Journal of Labor Economics*, Vol. 2, April, 1984, pp. 285-286, and p. 298.

¹⁴Leonard, Working Paper No. 1745, op. cit., p. 4.

¹⁵Sowell, op. cit., p. 41.

¹⁶Judith Hole, Ellen Levine, *Rebirth of Feminism*, Quadrangle/The New York Times Book Co., 1971, p. 46; see also, Morris Goldstein and Robert Smith, "The Estimated Impact of the Antidiscrimination Program Aimed at Federal Contractors," *Industrial and Labor Relations Review*, Vol. 29, No. 4, July, 1976.

¹⁷Interview with Joseph Hodges, Assistant Regional Director, Office of Federal Contract Compliance, U. S. Department of Labor, Region IX, February 6, 1987.

¹⁸See for example Joann S. Lublin, Andy Pasztor, "Tentative Affirmative Action Accord is Reached by Top Reagan Officials," *The Wall Street Journal*, December 11, 1985, p. 4; and Robert Pear, "Rights Chief Assails Hiring Goals as

Failure," *New York Times*, November 1, 1985, p. 19.

¹⁹Lublin, Pasztor, *Ibid*.

²⁰Kenneth B. Noble, "Labor Dept. Aide Quits in Protest Over 'Lip Service' to Jobs Rights," *New York Times*, January 21, 1987; see also "Job-Bias Official Quits Labor Post," *Washington Post*, January 21, 1987.

²¹Interview with Paul Grossman, head of the Attorney's Division, Office for Civil Rights, U. S. Department of Education, Region IX, February 6, 1987.

²²Christopher F. Mooney, S. J., *Inequality and the American Conscience*, Paulist Press, New York, 1982, p. 5.

²³J. Harvey Wilkinson, III, *From Brown to Bakke: The Supreme Court and School Integration*, Oxford University Press, New York, 1979, p. 255.

²⁴*Ibid*, p. 301. Since Justice Powell was the "swing" vote, "An irony of Bakke, wrote Washington attorney and Civil Rights activist Joseph Rauh, was that 'Affirmative Action was saved by a conservative Southern justice.'"

²⁵Mooney, *op. cit.*, p. 101.

²⁶*Ibid*, p. 103.

²⁷United States Commission on Civil Rights, *Toward and Understanding of Stotts* Clearinghouse Publication 85, January, 1985 p. 2.

²⁸*Ibid*.

²⁹Wygant v. Jackson Board of Education in *United States Law Week*, Vol. 54, Number 45, May 20, 1986, pp. 4480f.

³⁰*Ibid*, p. 4489.

³¹David G. Savage, "Landmark Ruling Upholds Job Preferences for Women," *Los Angeles Times*, March 2, 1987, pp. 10, 22.

³²*Ibid*, p. 22. See also, "Caveats Reversed in Workplace Equality," *Insight*, *The Washington Times*, April 27, 1987, pp. 8-12.

³³*Ibid*, "Caveats Reversed"

³⁴Goldstein and Smith, *op. cit.*

³⁵Burstein, *op. cit.*, p. 148.

³⁶James P. Smith and Finis Welch, "Affirmative Action and Labor Markets," *Journal of Labor Economics*, Vol. 2, Number 2, April, 1984.

³⁷Burstein, *op. cit.*, p. 150.

³⁸Leonard, Working Paper No. 1745, *op. cit.*

³⁹*Ibid*, p. 10.

⁴⁰*Ibid*, p. 11.

⁴¹*Ibid*, p. 17.

⁴²See for example a study by Cynthia M. Tacuber and Victor Valdisera, *Women in the American Economy*, Current Population Reports Special Studies Series p-23, No. 146, U. S. Department of Commerce, Bureau of the Census, p. 23, which focuses on occupations with major employment gains for women, shows that in many of the male-dominated fields, the percentage of women employed rose sharply.

⁴³Wilkinson, *op. cit.*, pp. 262-263.

⁴⁴The best list of arguments against Affirmative Action is in Maguire, *op. cit.*, pp. 31-39.

⁴⁵Wilkinson, *op. cit.*, p. 269.

⁴⁶Charles Lawrence, III, "The Bakke Case: Are Racial Quotas Defensible?" *Saturday Review*, October 15, 1977, p. 14.