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Jonathan S. Leonard
United States Glass Ceiling Commission

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Use of Enforcement Techniques in Eliminating Glass Ceiling Barriers

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Glass Ceiling Report

**Use of Enforcement Techniques in Eliminating
Glass Ceiling Barriers**

Jonathan S. Leonard

April 1994

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I. Executive Summary

Since World War II the Federal Government has in effect experimented with a variety of different enforcement techniques in its efforts to reduce employment barriers faced by women and minorities. Before 1965, the government primarily relied upon voluntary action by employers - without monitoring, sanctions or the threat of private litigation. It should not be surprising that no evidence exists indicating the success of this type of policy.

The Civil Rights Act of 1964 is the backbone of efforts to eliminate employment discrimination. By allowing private litigation, this act made every potential victim a monitor and put enforcement potential in the hands of those with intimate knowledge of the work place. The Supreme Court's 1971 decision in *Griggs v. Duke Power Co.* vastly expanded the reach of Title VII to include facially neutral practices that have an adverse impact on minorities or women. This landmark decision has led employers to reexamine every part of their employment policies and practices for evidence of potential liability for adverse impact claims, and has opened numerous doors for minorities and women. In recent years, private litigants have been able to achieve record settlements and judgements under Title VII by establishing an intent to discriminate under Title VII's pattern and practice provisions. Liability in these cases has exceeded \$100 million, sufficient to capture the attention of corporate leaders and to revitalize their efforts to remove discrimination barriers.

Affirmative Action under the Contract Compliance Program administered by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) represents the second major federal enforcement effort. The OFCCP regulates about one-third of private employment and can intervene pro-actively to reduce barriers to minority and women's employment. Before the addition of significant monitoring and sanctions with Executive Order 11246 in 1965, there is no evidence that employment patterns were changed by affirmative action. Between the late 1960s and 1980 the Contract Compliance Program reached peak effectiveness, but even this was modest. Women's employment share has not grown faster among contractors than non-contractors. Minority employment share has at best grown roughly one percent faster annually among contractors. After 1980, with monitoring still in place, but the threat of sanctions nearly eliminated, the contract compliance program ceased to have any general demonstrable positive effect on minority or female employment. The absence of political leadership in support of the program reduced the perceived need to take affirmation action. The simplest prescription for invigorating affirmative action is to undo what was done during the 1980s. Within the confines of current legislation some improvements are possible in the procedures employed by the OFCCP and the EEOC.

. The OFCCP

The OFCCP's targeting of compliance reviews could be improved in a number of ways. On paper at least, the OFCCP's Equal Employment Data Selection System (EEDS) seems to sensibly target first those establishments with both a relatively low participation rate of minorities or females, and high segregation of minorities or women into a few

occupations. However, practice in the field may well be at variance with these criteria, and concerns have been raised over persistent multiple reviews, out-of-date or incorrect data, insufficient targeting of smaller contractors, and inability to identify federal contractors, particularly in the construction sector (U.S. House of Representatives, 1987, pp. 102-105).

Currently the OFCCP lumps all minorities together in its targeting (U.S. OFCCP, 1992). It investigates further only if the combined ratio raises suspicions. This invites employers to substitute one minority group for another while enjoying practical immunity from OFCCP pressure. Asians could be substituted for blacks, or Hispanics for Native Americans. This aggregation also double-counts minority women. The OFCCP can and should use the more disaggregated demographic groupings of the EEO-1 reports in its targeting

Current OFCCP targeting should capture many of the worst cases, but it will miss others. Currently the OFCCP flags for further investigation establishments with both a relatively low proportion of minorities or females and a high concentration into a few occupations of whatever minorities or women it does employ. This targeting strategy will systematically miss 1) employers with a relatively low proportion of minorities or females, as long as these are evenly spread over occupations, and 2) employers with an occupationally segregated workforce, as long as overall utilization is near the average. Granted that the combination of underutilization and occupational segregation is particularly troubling, the OFCCP should be concerned with employers displaying either of these problems, not just with those who display both. The OFCCP could easily remedy this deficiency by using an appropriately weighted index combining the underutilization and segregation indexes it currently uses.

OFCCP targeting also ignores minorities located outside Metropolitan Statistical Areas (MSAs). This is an overreaction to the general problem of small numbers, and is inappropriate in such cases as Hispanics in the rural Southwest, Native Americans in Alaska, or Blacks in the rural South.

Glass ceiling concerns could be more directly addressed by comparing protected group employment share in higher to lower level occupations as reported on EEO-1 forms, and by using promotion flow data already reported in Affirmative Action Plans. While these occupational categories provide useful information, the categories each span a broad range of jobs. Some evidence suggests employers have systematically reclassified upwards entire detailed jobs with heavy minority or female representation (Smith and Welch, 1984). The use of wage and salary information would obviate many of these problems, and allow a sharper focus on glass ceilings.

One great advantage the OFCCP enjoys is its ability to intervene pro-actively. This is especially useful in the grey area where evidence of discrimination is not clear cut enough to be compelling under Title VII. This suggests that the OFCCP enjoys a comparative advantage investigating the small populations at the tops of corporate hierarchies as well as employers whose small size largely immunizes them from adverse impact claims under Title VII. Smaller establishments historically have not been heavily reviewed by the OFCCP. However, the majority of employees work in such establishments. In addition, while the larger companies typically have greater awareness of and a more systematic approach to EEO and affirmative action issues, they also typically have slower employment growth rates. All of these factors suggest that the OFCCP could usefully devote greater attention to smaller employers.

Inequality has increased within minority groups as well as between minorities and whites as the returns to education have increased. Observing this growing gap in 1986, the Study Group on Affirmative Action in its report to the U.S. House Committee on Education and Labor(1987, p. 13) recommended that:

"Employers should broaden the scope of their affirmative action policies to include efforts to help improve the quality of education in the schools to assure a steady flow of productive employees. This is especially important for employers in communities where minority group youth comprise a large part of the school population.

Further, because employment often is a major incentive for youth participation in academic studies, employers should consider expanding their hiring goals to include disadvantaged youth for part-time jobs during the school year, and full-time jobs during the summer. Broadening affirmative action plans to encompass efforts to improve the quality of the labor pool will help narrow the gap in economic opportunity, and increase the potential for later success in minority employment. Improved private sector linkages with the schools can be made by firms of all sizes and in most industries. Such public/private partnerships should be promoted as a central feature of affirmative action plans"

During the 1980s the OFCCP increased the number of compliance reviews by sacrificing their quality. This appears to have undercut the effectiveness of affirmative action (Leonard, 1987). Where possible, the desk audit procedures should be more automated. Parts of Affirmative Action Plans could be reported in a standardized format to facilitate this process. The resources released by automation could be redirected to field audits.

While compliance reviews taken as a whole have been effective in the past, the same cannot be said of the detailed steps of the compliance review process. The OFCCP ends up attacked for nit-picking over paperwork without much to show for it. This suggests that the OFCCP emphasize broader patterns of minority and female employment advance rather than the details of process and procedure within companies.

The historical record suggests that to be effective , Affirmative Action policy requires governmental monitoring and sanctions. Past efforts to improve employment opportunities for minorities or women through jaw-boning or voluntary action without government monitoring and enforcement have left no residue of success. Exhortation by itself accomplishes little, but when even exhortation is lacking, affirmative action accomplishes nothing. Public attacks on Affirmative Action during the early 1980s by Justice Department officials undercut whatever threat of enforcement the contract compliance program had achieved to 1980. Employees responded to this message. With the change in political leadership and public rhetoric, minorities and women ceased to progress under the Contract Compliance Program. The OFCCP would make considerable progress just by returning to its pre-1980 state. Employers do respond to the expected sanctions. Increasing the sanctions employers can expect if they are in violation would increase compliance with the government's anti-bias policies.

. The EEOC

Throughout its history, the EEOC has been drowning in complaints from workers who believe they have been discriminated against. It has never had sufficient manpower or budget to investigate these complaints thoroughly. The EEOC could usefully refocus its energies towards cases of systemic discrimination. In recent years, a number of record breaking (\$100 million or more) settlements have been reached in cases charging racial and sex discrimination. Most,

if not all, of these settlements were ultimately achieved by private attorneys.

The EEOC's internal incentive system should consider not just the number of cases disposed of, but the quality of these dispositions as well. EEOC investigators who are inexperienced, poorly trained, isolated from legal, economic and psychological experts, and judged solely on the number of cases they close cannot be expected to successfully winnow and develop the most important cases of discrimination.

The EEOC would have a greater impact if it emphasized pattern or practice cases, and class actions affecting large numbers of employees. Towards this end, the EEOC might make more aggressive use of Commissioner's charges. It might more systematically combine complaint information with EEO reports to allocate its resources. For example, what are the characteristics of employers (complaints, demographics, industry, regional size, growth etc.) involved in Title VII litigation over the past 25 years (whether or not the EEOC was involved)? The record of past successful litigation (by private and governmental attorneys) may prove useful in directing the EEOC's efforts. The EEOC could also use EEO-1 data to flag employees with unusually low protected group employment within industries and/or areas.

The EEOC might reasonably be concerned with the extent to which private arbitration agreements are limiting its oversight of employment discrimination. In addition, the use of subcontractors and of independent contractors has been growing, and deserves greater attention to its threat to sidestep government regulation.

The government could also use decennial Census data to identify industries with unusually high unexplained earnings differences across groups, or to identify industries with unusually low minority or female employment given their location and occupational composition.

The OFCCP (as well as the EEOC) could benefit from better internal policy evaluations and better public information efforts. Both suffer from public ignorance about what they really do. Systematic internal policy evaluations would help reveal more about the effectiveness of various enforcement tools and provide a sound basis for focusing the government's efforts. A public information campaign could focus on the benefits all employees receive from the government's efforts to ensure fair employment practices and eliminate the use of employment criteria that are not job or business related. Research investigating the effects of increasing diversity on productivity or profitability would be useful, as would be greater attention to companies that have succeeded in business while succeeding in reducing glass ceilings.

Both agencies could also make greater use of positive incentives and public recognition of outstanding employers and unions. The role of these agencies in improving working conditions for all Americans- by promoting more open employment practices, reducing the use of extraneous criteria, and encouraging the use of employment practices and criteria related to job performance and business success, and encouraging better training, selection, communication and grievance systems- are not widely known or appreciated.

. Policy Alternatives

A number of possible alternative policies, mechanisms and institutions for removing glass ceilings have been proposed that extend beyond current programs..

. Information Disclosure

The simplest and perhaps the most powerful method to improve compliance with anti-discrimination and affirmative action obligations is to make public basic information on the employer's workplace demographics. Current law treats a company's demographic profile as contained in its EEO-1 reports or Affirmative Action Plans as confidential, on the order of a trade secret. It is difficult to see what is saved by such a policy except embarrassment.

The threat of public embarrassment may be a very effective tool, particularly for companies retailing to the public. If EEO-1 reports were made public, then private citizens, employees and prospective employees would be much better positioned to compare employers and put each one's practices into perspective. The wider availability of information would improve everyone's decisions. Plaintiff's attorneys would be better placed to discard meritless complaints and focus on egregious cases. Aggrieved employees could more readily determine whether their perceptions were reinforced or unsupported by systematic patterns. Employers could judge their own position with greater clarity, and could more easily learn best-practice techniques.

. Consortia

In some industries and areas consortia have developed with corporate support to fund improvements in education, training, job information and work experience for minorities and women. These consortia also may help develop networks linking people to jobs. While those consortia often start with the most committed employers, they do commit more resources to improving the supply and qualifications of minorities and women.

. Employee Councils

To those who believe the work place suffers from a missing institution, employee councils offer the potential to resolve workplace disputes quickly and without recourse to Congress or the courts. The argument for Works Councils is more compelling in cases of work place public goods - such as health and safety issues - that are not efficiently allocated by the market, and in cases where individuals face greater information barriers. One might imagine empowering Works Councils to develop a consensus among workers and between workers and management on issues of fairness in employment (see Weiler).

.National Fair Employment Practices Board

A National Fair Employment Practices Board might obviate the need for some current litigation, replacing that process with a Board with the authority to make rules and arbitrate disputes, modelled along the lines of the National Labor Relations Board. Granting the EEOC authority to issue cease and desist orders would strengthen its hand.

. Play or Pay

Play or pay systems for reducing employment discrimination are already formally in place in other countries. Informally, the current U.S. system might also be described as play or pay: an employer who does not meet his obligations under the law faces the risk of litigated damages or administrative penalty. Play or pay formalizes this, reducing uncertainty and ambiguity. An example is provided by policy toward the disabled in Germany. Each employer faces a quota for the percentage of his employees who are disabled. Employers falling short of this quota pay into a fund

used to rehabilitate the disabled.

From an economic perspective, the advantages of such a system are similar to those embraced in the Federal government's establishment of a market for air pollution rights under the EPA. A price is explicitly rather than implicitly set on the right to use employment practices which have outcomes statistically indistinguishable from adverse impact discrimination. Employers can then make efficient decentralized decisions with much greater certainty and lower administrative and litigation costs. The price can be set not to ensure that every employer provides equal opportunities, but to ensure that all members of protected groups enjoy opportunities. Employers who find it less costly to improve protected group employment do so. Others pay a fine that could be used to support better training, or information networks.

. Employment Audits

Currently most of the information that drives the government's enforcement efforts comes from employee complaints or from employer data on earnings and employment. The former is often discounted as idiosyncratic sour-grapes. The latter may hide subtle patterns and mislead concerning the presence or absence of discrimination.

The private sector has taken the lead in using employment audits to uncover independent evidence of hiring discrimination (see the Urban Institute, and the D.C. Committee on FAIR Employment Practices). The EEOC has embraced the use of such testers, with unknown results so far. These audits present an employer with two job applicants, controlled in an attempt to reduce all differences except race or sex. The chief advantage of audits is their approach to a scientifically controlled experiment that isolates discrimination as a cause.

II. Available Enforcement Tools

The first step is to understand the policies that the government already has in place. The government's policy in this area is administered through a number of different programs. The most important programs are widely discussed, although rarely well understood. Most discussions about anti-discrimination law or affirmative action proceed with only weak grounding in the reality of government policy. One of the most useful contributions a project such as this can make then is simply to document what the government actually does, in contrast to what its supporters hope and its critics fear. Policy to reduce the employment barriers faced by women and minorities would be well served by a balanced empirical appraisal that would challenge the polarized caricatures of policy that are so prevalent.

Title VII of the Civil Rights Act of 1964 provides the backbone upon which much of the effort to end employment discrimination has been built. This law established both the Equal Employment Opportunity Commission, and the private right to challenge employment discrimination in the courts. Conceptually, the law has developed distinct lines of attack on cases of individual (disparate treatment) and systematic (adverse impact) discrimination. The adverse impact doctrine has probably provoked the greatest change in employer's behavior, and the greatest controversy. The

historical landmarks in the development of adverse impact doctrine are the case of *Griggs v. Duke Power Co.* (1971) in which the Supreme Court firmly embraced the principle, *Atonio v. Wards Cove Packing* (1989) in which the Supreme Court undercut plaintiff's ability to prevail in such cases, and the Civil Rights Act of 1991 which sought to restore the pre-1989 standards. The attention of the highest levels of corporate leadership has been captured by liability judgements in excess of \$100 million, as in the recent *State Farm Insurance Co.* case won by women employees.

The second major program concerned with employment advance is affirmative action under the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP). This is the program most directly under the control of the Department of Labor. It is also the program whose administration has been most quietly and subtly changed over the past twelve years. Given the practical difficulty, substantial cost and lengthy delays in winning Title VII cases at the tops of corporate ladders, the contract compliance program offers the prospect of immediate and effective government leverage. This paper will demonstrate how successive administrations have strengthened and weakened affirmative action, and show how the existing program can be made more effective.

Other Federal programs aimed at improving employment opportunities are less well known. For example, despite the controversy surrounding the issue, few people know that comparable worth has long been required, at least on paper, by the Department of Defense's contracting regulations. Similarly shrouded in mist have been any analyses of the impact of the Small Business Administration's loan program for minority or female-headed businesses, and the government's set-aside programs for minority or female-headed businesses in federal contracting.

Three agencies have primary responsibility for enforcing Federal statutes and regulations barring employment discrimination. The U.S. Equal Employment Opportunity Commission (EEOC), the Office of Contract Compliance Programs (OFCCP) of the U.S. Department of Labor, and the U.S. Department of Justice. In broad terms, the EEOC is responsible for the government's enforcement of laws barring discrimination in private employment, the OFCCP is responsible for enforcing Executive Orders mandating that Federal contractors take affirmative action, and the DOJ is responsible for enforcing laws barring employment discrimination in State and local public employment. The focus here is on enforcement in the private sector by the EEOC and the OFCCP.

The enforcement tools available to these agencies have been established under various statutes and executive orders, including the Civil Rights Act of 1964, the Civil Rights Act of 1991, the Pregnancy Disability Act, the Equal Pay Act and the Americans with Disabilities Act. The menu of available enforcement tools includes the following:

- 1) private jaw-boning
- 2) public exhortation
- 3) public education
- 4) conciliation
- 5) establishing goals and timetables
- 6) glass ceiling reviews
- 7) investigating complaints

- 8) setting aside contracts for minority or female headed business
- 9) "desk" compliance reviews
- 10) "field" compliance reviews
- 11) administrative proceedings to award back-pay
- 12) administrative proceedings to debar a contractor
- 13) publicity campaigns, positive and negative
- 14) employment tax-credits
- 15) equal pay policies
- 16) comparable worth policies
- 17) pregnancy and family leave policies
- 18) "treatment" litigation
- 19) "adverse impact" litigation
- 20) liability limited to make-whole remedies and
- 21) liability extended to include liquidated (punitive) damages.

The variety of techniques employed over time have left behind an historical record that may in principle be used to judge the relative success of different techniques. However, for most of the tools listed above, no evaluation of effectiveness is publicly available. In general, formal program or policy evaluation in this area is scarce to non-existent, leaving the field open to extravagant and unsupported claims by proponents or critics. The available evidence is examined in detail in Chapters III, IV and V. A brief summary follows. Note that ancillary policies in the areas of education, health, and housing that also improve employment outcomes are not discussed here.

The available evidence suggests that the government enforcement tools that have been most successful in improving minority and female pay and employment are characterized by clear legal standards, monitoring, and the threat and use of substantial monetary sanctions. Vague standards, purely voluntary efforts, weak reporting and monitoring, and weak or unused sanctions are all associated- not too surprisingly- with ineffective enforcement. While all government programs rely to some extent on public acceptance and voluntary compliance, the purely voluntary nature of the government's policies before 1965 accomplished little if anything. The good-faith efforts required under affirmative action have been most successful when backed up with the threat of enforcement and sanctions.

For a range of less invasive and controlling policies, only historical evidence is available. Before 1965, the government employed neither sanctions nor monitoring. Its efforts depended on private jaw-boning, public exhortation, and voluntary compliance. The available historical evidence suggests that these policies were generally ineffective. Prior to Executive Order 10925, issued March 6, 1961 by President Kennedy, the anti-discrimination program for federal contractors lacked any real teeth. In a detailed study of the presidential Fair Employment Practice Committees, Norgren and Hill (1964, p. 169, p. 171) state: "One can only conclude that the twenty years of intermittent activity by presidential committees has had little effect on traditional patterns of Negro employment", and that "It is evident that the non-

discrimination clause in government contracts was virtually unenforced by the contracting agencies during the years preceding 1961." Compliance programs, such as Plans for Progress and its predecessors, were voluntary. Their history strikes at least a cautionary note about the effectiveness of programs that have no legal sanctions behind them.

More formal mechanisms, such as conciliation agreements and goals and timetables have also been ineffective without the threat of followup and sanctions for non-compliance. The OFCCP's affirmative action program has been most effective when it has received support from political leaders, and when it has presented contractors with a clear prospect of monitoring that results in sanctions in the event of non-compliance. Under these conditions, the system of goals and timetables led to measurable although modest improvements. Compliance reviews contributed to this progress. Affirmative action had greater success in the 1970s with greater political support and greater use of sanctions including back-pay awards and debarment, than during the 1980s when it lacked both.

Title VII of the Civil Rights Act of 1964 established the employers' obligation to not discriminate and to report their demographics to the government. It also established the private right to litigate discrimination, and it established the EEOC to investigate discrimination complaints, and conciliate and litigate charges of discrimination. It is the single most important law on employment discrimination. Title VII has captured the attention of business leaders with its combination of potential legal liability running into the hundred million dollar range, along with the potential for private enforcement. Any employee can initiate litigation.

Enforcement techniques under Title VII can be divided into private and public, as well as into retail and wholesale. The bulk of litigation has been pursued by private parties. In consequence, the challenge faced by employers does not depend solely on changes in political or bureaucratic emphasis. Much of the EEOC's energies have been absorbed in "retail" enforcement: the investigation of individual claims of disparate treatment discrimination. Given the huge volume of complaints, this has required substantial resources, and has so far defied efforts to quickly winnow out the most promising cases from less important or winnable cases. "Wholesale" cases charging adverse impact or a pattern or practice of discrimination affecting a class or group of employees are more difficult to defend in court, threaten greater damages, and affect more employees. The Civil Rights Act of 1991 raises employers' potential liability by including punitive (consolidated) damages for women.

The government also enforces equal pay for equal work under the Equal Pay Act. This has had and can only have a minimal effect in closing the gender wage gap because of its narrow focus. Most of the gender wage gap occurs because women are in different jobs in different plants in different companies in different industries-not because they are paid differently for the same job in the same plant in the same company in the same industry.

The government also enforces the Pregnancy Disability Act and the Family Leave Act, although no evaluations are known. Less well known, part of the government promulgates a policy that sounds similar to comparable worth. The Department of Defense requires its contractors to evaluate jobs and consider internal measures of their worth in setting pay. Nothing further is known about either the enforcement or effects of this policy.

Recent trends in enforcement activity are shown in Table 1 for the OFCCP and Table 2 for the EEOC.

Compliance reviews are the primary OFCCP enforcement tool. In a pre-award compliance review, the contracting agency may delay award until an affirmative action plan is accepted. However, contractors have been able to easily overturn this in court, eviscerating whatever leverage the government may have had. The principal financial sanction used is the award of back pay for members of affected classes as part of a conciliation agreement or administrative order. By FY 1986, back-pay awards had shriveled to insignificance, amounting to \$1.9 million for 499 employees in 183 agreements (U.S. Congress, 1987, p. 60). These are the equivalent of parking tickets - each directly affecting 2 or 3 employees, and collectively demonstrating that the wind had gone out of the OFCCP's sanction threat.

If the OFCCP finds an affirmative action plan unacceptable, it issues a show-cause notice giving the contractor 30 days to resolve deficiencies or show cause why administration proceedings should not begin. This initial step in higher sanctions proceedings was taken in roughly 2 percent of all compliance reviews. Many of these involved basic paperwork, citing the contractor's failure to prepare or update an affirmative action plan. Administrative appeals of proposed sanctions have in some cases waited as long as 15 years pending a decision by the office of the Secretary of Labor.

Compliance reviews increased in number during the 1980s, but decreased in effectiveness. This was due in large part to the declining threat of sanctions. Affected class findings, administrative complaint filings, back-pay awards and debarments all fell into disuse during the Reagan administration. The ultimate sanction, debarments, while always rare, became rarer still. 13 debarments occurred before the Carter administration, 13 during Carter, 4 during Reagan, and 4 during the Bush administration. Enforcement recovered somewhat during the Bush administration from its early 1980s nadir. However, most debarred firms are quickly reinstated by the Courts, and the OFCCP had begun limiting the term of debarments to a few months.

The 1980s then present an experiment on the effectiveness of affirmative-action with minimal threat of sanctions. The results of this experiment were to eliminate employment advance for minorities and women as a result of the contract compliance program (Leonard 1987).

The use of conciliation agreements also rose during the 1980s, although we have no evaluation of their direct effect during this period. During the 1970s however, Leonard (1985) found that the only group whose employment share grew faster under conciliation agreement were white males.

For much of its history the EEOC has been criticized for losing the forest for the trees. Driven by an attempt to respond to a mountain of individual complaints of discrimination, the EEOC has historically not been a party to many of the largest liability awards and settlements decided under Title VII. Table 2 shows the absorption of EEOC energies into "retail" complaint investigation. At any time over the past few decades, the EEOC has had a back-log of at least 20,000 complaints to investigate, increasing to more than 73,000 cases in 1973- equivalent to about a years work. This reflects both the low cost to a complainant of filing a charge, and the low expected cost of an EEOC sanction to an employer. From one perspective, the persistent onslaught of complaints demonstrates the failure of this style of enforcement to forestall discrimination. During the 1980s the proportion of cases in which the EEOC found no cause

roughly doubled from about 30 to about 60 percent. At about the same time, private lawyers were bringing cases that would ultimately result in record-setting settlements and judgements under Title VII. The majority of charges to the EEOC involve allegations of discrimination against individuals. The EEOC has always been challenged to expeditiously sift through this mass of complaints, identify probable cases of discrimination, and distinguish those which it should quickly settle or dismiss from those in which it should invest greater resources in the prospect of establishing broad precedents and wide impact. Fewer than one in a thousand complaints result in EEOC litigation. In the early 1980s, the EEOC fell below its usual filing of 2 to 3 hundred cases annually. Direct beneficiaries of EEOC enforcement fell from 38,114 in FY 1981 to 29,429 in FY 1991 (EEOC, 1981 & 1991). The proportion of class actions has also fallen dramatically in recent years, from 45% in 1981 to 9% in 1991 (Lawyers Committee for Civil Rights, 1992). Table 2 also shows that Equal Pay Act litigation by the EEOC has virtually ceased.

III. The Major Effects of Anti-Bias Policies

A. The Challenge of Program Evaluation

This section will consider first the problems involved in evaluating economy wide policies, and then targeted policies. General policies, such as Title VII, apply to all or nearly all employers. This precludes a comparison across employers within the U.S. To see whether these policies make a difference, we can compare aggregate data across time or across countries. In either case, we will be left with the suspicion that some other concurrent force that we have not measured is really responsible for what we label as an effect of policy. For a careful and compelling example of this type of methodology, see Freeman 1973 & 1978. Freeman discovered a significant increase in the rate at which Blacks approached economic parity with whites after enactment of the Civil Rights Act of 1964. His results have withstood challenges presented by alternative explanations based on education, internal migrations, the business cycle, and labor force drop-outs (Heckman & Payner (1989); Donohue and Heckman (1991); Smith and Welch (1989).

Targeted policies, such as the Contract Compliance program only apply to a subset of the economy - in this case federal contractors and first-tier subcontractors. This opens the possibility of comparing the treatment group (contractors) to the non-treatment group (non-contractors) to determine the effects of treatment (affirmation action). If selection into treatment is random, the comparison is most useful. However, contractors are not randomly selected. For example, contractors are more likely to be in manufacturing, to be large, and to be slower growing than are non-contractors. The observable differences can be adjusted for statistically. More difficult problems are created by unobserved differences. For example, one might speculate that employees who discriminate the least, or who found it less costly to comply with Affirmative Action, or who could extract greater economic rents or offsetting payments from the government would be more likely to be contractors (see Heckman and Wolpin for examples of such speculation). But then inferences drawn from the behavior of this self-selected group might easily overstate the effect of a randomly applied Affirmative Action policy.

Market forces may also lead to results from targeted policies overstating the effect of a general policy (Leonard, 1985). For example, suppose targeted policies appear effective because minorities and women move from covered to non-covered firms, and the effect of policy is measured by comparing covered to non-covered firms. If this is the only avenue of effect, it will disappear if all firms are covered.

Conversely, we may underestimate the effects of targeted policies under at least two conditions: First, if there are strong threat or spillover effects beyond the targeted firms. For example, Title VII litigation or affirmative action compliance reviews or disbarment may easily affect firms other than those directly targeted. If the threat of litigation, review or disbarment causes other firms to improve, any comparison across directly targeted firms and others will systematically understate the effect of policy. Second, if the most recalcitrant firms are selected for pressure, then any comparison of targeted and other firms will understate the effects of generally applied pressure. For example, if only the most recalcitrant firms are threatened with debarment, comparing their behavior with that of other firms may systematically understate the effect of a random debarment.

The same problem of trying to infer general effects from a targeted policy arises in the case of the OFCCP's recent experiment with a system of less intensive monitoring. Employers selected for this program are subject to less stringent monitoring and reporting protocols. To date, no formal evaluation of this program has been undertaken. Given the procedure that selected firms into this program, and its public perception as a test case, any success it enjoys would likely overstate what could be expected from contractors in general. Rather than select contractors randomly to participate, contractors with the best reputations for compliance were selected. If they remain in compliance without intensive monitoring, that confirms their initial reputations, but does not yield insight into how their less compliant brethren might behave under similar lack of constraints. Moreover, because the program itself is widely viewed as a test case, the demonstration employers are likely to be on their best behavior.

B. Studies of Affirmative Action

Now we turn to the question of what the OFCCP has actually done. Past studies fall into two categories: process and result. The former, generated by the U.S. Commission on Civil Rights and other bureaucratic focuses, naturally enough, on the functioning of the bureaucratic process that is the OFCCP. The latter, written by economists, concentrate on the bottom-line impact on minority and female employment. Neither the OFCCP nor the EEOC has a well-developed system of program or policy evaluation. Typically these agencies describe their own progress in terms of activity reports- listings of enforcement actions believed to be significant. It is remarkable that evaluations of these agencies are generally not in terms of progress towards the ultimate goal of reducing employment discrimination.

1. Process Evaluation

Evaluations of the enforcement process over the past three decades have been almost uniformly negative. Before the Carter Administration took office, the U.S. Commission on Civil Rights, Senate and House Committees on

Labor and Public Welfare, and the US General Accounting Office all concurred in finding affirmative action ineffective, and generally blamed weak enforcement and a reluctance to apply sanctions (U.S. Commission on Civil Rights, 1977, p. 330; H. R. Rep. No. 92-238, 92nd Cong., 1st Sess. 15 (1971); S. Rep. No. 92-415, 1st Sess. 92nd Cong. 31 (1971); U.S. General Accounting Office, April 29, 1975, p. 30.)

The criticisms of the OFCCP have continued unabated in more recent years. In a letter to the Deputy Undersecretary of Labor in April 1983, (see U.S. Congress, 1987, pp. 323-325), Clarence Thomas, then Chairman of the EEOC complained of a number of other deficiencies in OFCCP policies and procedures (some proposed, some in place), including:

- severe restrictions on formula relief and back-pay
- restrictive definitions of under-utilization, and relevant labor markets,
- setting aggregate goals for all minority groups thereby masking discrimination against particular groups
- restrictive definitions of the availability of minorities and women
- restrictive standards for burden of proof and statistical imbalance
- weak setting of goals

The Office of Inspector General of the U.S. Department of Labor issued a report on September 30, 1985 entitled "OFCCP Can Do More Enforcement and Have Greater Impact Using Fewer Dollars." This report notes that the OFCCP suffers from:

- excess over-head
- large proportions of staff at high grades
- inefficient field structure
- duplication and overlap internally
- redundant review processes
- inadequate staff time reporting
- inadequate identification of contractors
- poor targeting of compliance reviews and poor justification of targeting
- inadequate tracking and untimely evaluation of contractor progress
- ineffective pre-award reviews
- no system for program evaluation
- improper use of staff productivity, statistics and
- lack of a tie to evidence of reduced discrimination.

Interest groups have also noted continuing deficiencies. According to the Women Employed Institute (1992a),

"There is no support for state-of-the-art equipment, compliance reviews are conducted only for those contractors in close proximity to area offices because travel funds are unavailable, the agency is unable to undertake high-impact litigation requiring expert witness fees, and the compliance staff is sorely in need of increased training ..." In addition, "expenditures on speaking engagement, liaison groups, and awards should be curtailed in favor of direct enforcement activity."

By 1987 the hobbling of the OFCCP was clear. The weaknesses of affirmative action enforcement were laid out carefully by the House Committee on Education and Labor in its 1987 Report on the Investigation of the Civil Rights Enforcement Activities of the Office of Federal Contract Compliance Programs, U.S. Department of Labor. The major findings of this report describe a compelling example of how to hobble an agency. They also provide useful guidance for those interested in invigorating affirmative action. These major findings include:

- "The Department of Labor statistics confirm that enforcement at the OFCCP has come to a virtual standstill since 1980."
- "The OFCCP ceased maintaining statistics on the number of affected class cases closed since Fiscal Year 1982."
- "Cases referred to the Solicitor of Labor for enforcement against noncomplying federal contractors have also declined from 269 cases in FY 1980 to 22 cases in FY 1986."
- "The number of administrative complaints brought by the Solicitor's Office against noncomplying contractors has plummeted from 43 in 1980 to 12 in 1986."
- "Actions to debar noncomplying contractors from receiving additional contracts have become virtually nonexistent."
- "Since 1971, the Director of OFCCP has had little control over the OFCCP's budget, staffing, policy development and enforcement activity in the national office and in the field."
- "Notwithstanding the clear language of the OFCCP regulations, the use of goals and timetables has been severely limited."
- "The OFCCP has orally revised its rules governing contractors' utilization analyses. These revisions are inconsistent with the regulations".
- "In the face of recent Supreme Court decisions on affirmative action and notwithstanding the weight of equal employment opportunity law, the OFCCP required the identification of "victims" of discrimination."
- "The highly-publicized conflict between the Attorney General of the United States and the Secretary of Labor regarding amendments to Executive Order 11,246 resulted in increased hostility by many federal contractors to the enforcement of the Executive Order."
- "Case processing delays at the National Office and the Office of the Solicitor of Labor have severely compromised the effectiveness of the agency's EEO enforcement activity."
- "The agency is driven by its program plan which creates undue pressure on the enforcement staff to 'meet the numbers' at the expense of quality investigations."

- "OFCCP's system for selecting supply and service contractors and construction contractors for review is highly incomplete and ineffective."
- "OFCCP has been severely understaffed since consolidation of the contract compliance program from several federal government agencies into the Department of Labor."

These deficiencies vitiated the contract compliance program without any change in regulations. Reverse them and you will have restored some semblance of the modestly effective contract compliance program that existed before 1980.

2. Studies of Impact

The process studies cited in the last section uniformly find weak and haphazard enforcement of Executive Order 11246, with a brief exception during the 1970s. It is all the more surprising then that the few studies of the pre-1980 impact of the Executive Order find some significant evidence that the program has been modestly effective.

There have been five major external studies of the impact of the OFCCP. They have all used data from EEO-1 forms to determine the impact of contractor status on the relative position of minorities for different periods between 1966 and 1984.

These few econometric studies of the impact of affirmative action in its first years (Burman 1973; Ashenfelter and Heckman 1976; Goldstein and Smith 1976; Heckman and Wolpin 1976), all based on a comparison of EEO-1 forms by contractor status, have generally found significant evidence that it has been effective for black males. The effects are not large, generally on the order of less than a 1 percent increase in the black male share of employment per year. These studies of the initial years of affirmative action (1966-73) are not directly comparable because of different specifications, samples, and periods. They do find, nevertheless, that despite weak enforcement in its early years, and despite the ineffectiveness of compliance reviews, affirmative action has been effective in increasing black male employment share in the contractor sector, but generally ineffective for other protected groups. (See Brown (1984) for a review.) There is no significant evidence of an increase in the relative occupational status of minorities or females, or of any positive impact of the contract compliance program on females. Aside from Goldstein-Smith, there is no significant evidence that compliance reviews were effective. These past studies are all based on data for a period that largely predates the beginning of substantial enforcement of regulations barring sex discrimination, the start of aggressive enforcement in the mid seventies, and the major reorganization of the contract compliance agencies into the OFCCP in 1978.

Affirmative action under the contract compliance program has been a growing institution. The process evaluations showed that while enforcement was weak and inconsistent in the early years of affirmative action, it became more aggressive by the mid-seventies, particularly in the use of debarment and back-pay awards. The econometric studies of the early years of affirmative action reviewed here in general found no significant evidence of occupational upgrading under affirmative action, mixed evidence on the impact of compliance reviews, and no significant evidence

that affirmative action has been effective for females. With the exception of the Goldstein-Smith study which finds only negligible effects, these studies generally conclude that affirmative action under the contract compliance program did lead to significant increases in black males' employment share in contractor firms despite weak enforcement in its early years. This econometric finding of a positive result is all the more notable in light of the consistently negative appraisal of the OFCCP's regulatory mechanism by Congress, the Courts, the General Accounting Office and the USCCR.

3. The Impact of Affirmative Action on Employment in the Late 1970s

The contract compliance program matured to peak in enforcement during the late 1970s. Affirmative action under the Executive Order applies only to federal contractors. One method of judging the effect of affirmative action is then to compare the growth of minority and female employment at federal contractor establishments with their employment growths at similar establishments that do not bear the affirmative action obligation. With the cooperation of the U.S. Department of Labor, I performed such a comparison using EEO-1 data on employment demographics reported by 68,690 establishments in 1974 and 1980. This sample includes more than 16 million employees. The results summarized here are reported at length in Leonard (1983) and (1984a).

Leonard (1984a) compares the mean employment share of demographic groups in 1974 and 1980 across contractor and non-contractor establishments. Between 1974 and 1980 black male and female, and white female employment shares increased significantly faster in contractor establishments than in non-contractor establishments. In Leonard (1984a), I have estimated the impact of affirmative action after controlling for establishment size, growth region, industry, occupational and corporate structure. Affirmative action has similar effects even with these additional controls. Even controlling for these other factors, the employment of members of protected groups grew significantly faster in contractor than in non-contractor establishments.

Expressed as an annual growth rate, black male employment is 0.62 percent greater in the contractor sector. For white males, the annual growth rate is 0.2 percent slower among contractors, so contractor status appears to shift the demand for black males relative to white males by 0.82 percent per year. The annual demand shifts relative to white males for other groups are: other minority males 1.48%, white females 0.66%, and black females 2.15%. These effects are significant at the 99 percent confidence level or better, and are robust across a number of specifications. The effects for black males are similar in magnitude to those previously estimated by Ashenfelter and Heckman (1976) and by Heckman and Wolpin (1976).

Compliance reviews have played a significant role over and above that of contractor status. Compliance reviews are the main enforcement mechanism: an audit of employer's demographics and personnel procedures, with negotiations over suggested changes. For black males, the impact of undergoing a compliance review is roughly twice that of being a contractor. Conversely, compliance reviews have retarded the employment growth of whites. Direct pressure does make a difference. Simultaneity is unlikely to bias these estimates because, as we shall see, the probability

of being reviewed hardly depends upon demographics.

The total impact of affirmative action on the growth rate of employment for black men among federal contractors is then the weighted average of the annual 0.62 percent shift among nonreviewed contractors and the 1.91 percent shift among reviewed contractors, or 0.84 percent per year. The corresponding demand shifts for other groups are black females 2.13 percent, minority males 1.69%, and white females 0.37%.

Compliance reviews have retarded the employment growth of whites. The effect is significantly negative in the case of white females but small and insignificant in the case of white males -- whom one would have expected to bear the brunt of the adjustment. The anomalous result for white females is sensitive to specification. It is also difficult to reconcile with the positive impact of contractor status on white females, but may be influenced by a review process that asked for more than last year, rather than more than average, in a time of sharply increasing female labor supply. While it is true that contractors are more likely to be found in industries that start out with a high proportion of male employees, this cannot account for the observed ineffectiveness of affirmative action for women because industry is controlled for in these estimates. For black and other minority males, the impact of undergoing a compliance review is roughly twice that of being a contractor. With the exception of white females, compliance reviews have an additional positive impact on protected group employment beyond the contractor effect. Direct pressure does make a difference.

Regression estimates also indicate that minorities and females experienced significantly greater increases in representation in establishments that were growing and so had many job openings, irrespective of affirmative action. The elasticity of white male employment growth with respect to total employment growth is .976, significantly less than one. This indicates that members of protected groups dominate the net incoming flows in both contractor and non-contractor establishments. The supply of blacks has not greatly increased, so this suggests the importance in expanding employment opportunities of broader forces, such as Title VII, which apply to all sample establishments. The respective elasticities for black males and black females, white females and other males (1.22, 1.19, 1.02 and 1.09) are significantly greater than one. The efficacy of affirmative action also depends heavily on employment growth. Affirmative action has been far more successful at establishments that are growing and have more job openings to accommodate federal pressure.

Establishments that are not part of multiplant corporations have significantly lower growth rates of employment of members of protected groups. Corporate size is probably of greater consequence than establishment size, with larger corporations showing greater increases in minority and female employment. Establishment size itself has insignificant effects on white and black males, but other males and black females grow significantly faster at larger establishments, while white females grow significantly slower. It is also important to note that the tests here also control for the skill requirements of each establishment. Establishments that are nonclerical white-collar intensive exhibit faster employment growth for both male and female blacks and significantly slower growth for white males.

For a program lacking public consensus and vigorous enforcement, this is a surprisingly strong showing. While the gains of white females are smaller than those of blacks, it is important to keep in mind that the employment of females

and minorities has been increasing in both sectors. Indeed, if the OFCCP pressured establishments to hire more females and minorities relative to their own past records rather than to industry and region averages, the observed pattern is just what we would expect to see during a period when female labor supply had been growing. Females' share would increase at all establishments because of the supply shift, and contractor establishments would be under little pressure to employ more females than noncontractors. The relatively short history of affirmative action for females may also help explain the differential impact of affirmative action across protected groups.

Although affirmative action has lacked public consensus and vigorous enforcement, and has frequently been criticized as an exercise in paper pushing, it has actually been of material importance in prompting companies to increase their employment of blacks.

4. Charades for the 1980s

The election of President Ronald Reagan in 1980 marked a conservative resurgence, and a sharp break with past civil rights policy in both theory and practice. The Assistant Attorney General for Civil Rights, William Bradford Reynolds clearly and publicly stated his Department's more restrictive view of how to pursue civil rights in employment:

"The approach, henceforth, of the Department of Justice in the employment area in suits brought to enforce title VII and similar statutes can be simply stated. We no longer will insist upon or in any respect support the use of quotas or any other numerical or statistical formula designed to provide to nonvictims of discrimination preferential treatment based on race, sex, national origin or religion. To pursue any other course is, in our view, unsound as a matter of law and unwise as a matter of policy" (Oversight Hearings on Equal Employment Opportunity and Affirmative Action Before the Subcomm. on Employment Opportunities of the House Comm. on Education and Labor, 97th Cong., 1st Sess. 134 (1981). (Statement of William Bradford Reynolds, Assistant Attorney General for Civil Rights, U.S. Department of Justice).

Anything beyond pure race or sex-blind policies were "divisive techniques which go well beyond the remedy that is necessary to redress, in full measure, those injured by a particular employer's discriminatory practices (*Id.* at 134-135). His clear rejection of group-rights is apparent in his view of class-oriented relief: "This kind of affirmative action needlessly creates a caste system in which an individual is unfairly disadvantaged for each person who is preferred" (*Id.* at 137).

Given the tenuous nature of affirmative action programs, and the vulnerability of the OFCCP as a creation of the Executive Branch, leadership such as this was sufficient to eviscerate meaningful affirmative action during the 1980s.. In 1980 dollars, the OFCCP's budget appropriation fell from \$53 million in FY 1980 to \$33 million in FY 1986, while its authorized FTE fell from 1,454 to 906 (U.S. Congress, 1987, p. 45). In apparant contradiction the number of compliance reviews increased dramatically from 2,628 in FY 1980 to 5,152 in FY 1986 (U.S. Congress, 1987, p. 57). The proportion of compliance reviews finding contractors in violation increased from 62.1 percent to 67.8 percent, with most of these cases closing with a letter of commitment.

Rigorous enforcement and use of sanctions both declined markedly despite the increasing number of reviews. OFCCP enforcement cases received by the Solicitor of Labor fell from 269 in FY 1980 to 35 in FY 1986 (U.S.

Congress, 1987, p. 66). OFCCP administrative complaints filed by the Solicitor of Labor fell from 43 in FY 1980 to 12 in FY 1986. The ultimate sanction, debarment, fell into disuse, with 5 debarments in FY 1980, 1 in FY 1981 and 1 in FY 1985 - compared with totals of 13 during the Carter administration and 13 between 1965 and 1976 (U.S. Congress, 1987, pp. 73 and 75). The Reagan administration's opposition to back pay awards resulted in a decline in such awards from \$9.3 million in FY 1980 to \$1.9 million in FY 1986.

Put bluntly, the threat of substantial legal sanctions or financial liability under the current compliance program evaporated, as did the program's effectiveness (Leonard, 1987).

Between 1980 and 1984, both male and female black employment grew much more slowly contractors than non-contractors (Leonard, 1987). Affirmative action, such as it was, no longer aided blacks. Consider the different response by contractor status of black male employment growth to total establishment employment growth when total employment grows by 10 percent. Before 1980, if an establishment grew by 10 percent, one could expect to see black male employment growth of 12 percent among non-contractors and of 17 percent among contractors. After 1980, the comparable rates are 11 percent among non-contractors and 10 percent among contractors. The reversal for black females is even more marked.

It was as though contractors were returning to a growth path they had been forced off by previous affirmative action efforts. This is discouraging news. Affirmative action seeks to give those discriminated against a chance to demonstrate their skills, and thus to break the preconceptions upon which prejudicial barriers are based. Under this model, affirmative action should serve as long-term inoculation against discrimination, and previous victims of discrimination should continue to progress even after active treatment has ceased.

The evidence supports far less optimistic views of what is at stake. The decline of black employment advances under the affirmative inaction program of the 1980s suggests either that affirmative action during the 1970s resulted in discrimination against whites, or that ongoing treatment is required to counteract the after-effects of generations of discrimination, or that there is a persistence and resiliency to the taste for discrimination against blacks.

The lesson to be drawn from this evidence is that affirmative action programs work best when they are vigorously enforced, when they work with other policies that augment the skills of members of protected groups, and when they work with growing employers.

C. The Impact of Title VII of the Civil Rights Act of 1964

While the central focus of this analysis has been on affirmative action under the Executive Order, it should be understood that the Executive Order has functioned within the backdrop of Title VII's Congressional mandate and substantial legal sanctions. The dominant policy has been established under Title VII. What impact then has Title VII had? For a more complete discussion, see Brown (1984), Freeman (1981), Donohue and Heckman(1991), and Smith (1979).

The broadest perspective may be gained by considering what changes have occurred in the earnings, income,

occupational positions, and employment of blacks relative to whites before and after passage of the Civil Rights Act of 1964. In reviewing this evidence, Richard B. Freeman (1982, p. 3) finds that "virtually every indicator of positions shows a marked improvement in the economic status of employed black workers with -- as has been widely noted by various analysts -- gains concentrated among women, highly educated or skilled men, and young men. Virtually every indicator of positions also shows a marked acceleration in the economic status of employed black workers after 1964, when the U.S. anti-bias effort intensified as a result of Title VII of the Civil Rights Act of that year." (emphasis added) While a substantial part of this improvement can be attributed to the improved education of blacks [see Smith (1979)], Title VII appears to have also contributed substantially and directly to improving the economic position of employed blacks at a given level of education.

While employed blacks appear to have approached parity with whites more rapidly since 1964, proportionately fewer blacks pass the initial hurdle of becoming employed. As Freeman (1982, p. 10) notes "At the same time that there has been a marked movement toward equality of earnings between employed blacks and whites, however, there has been a distressing deterioration in the likelihood of blacks holding jobs, particularly among the young. In 1964 the black male civilian employment/population ration stood at .73, in 1969 it was .73, and in 1979 it was .64. By contrast, for white males, the ratio went from .78 (1964) to .78 (1969) to .75 (1979). Equally striking, the youth joblessness problem of the decade was one of increasing relative worsening in the black youth positions, for reasons that no one has yet satisfactorily explained. The aggregate data thus tell two stories: improvement for the employed but a reduction in the overall employment rate, especially in the 1970s."

More recently, attempts have been made by Beller (1979) and Leonard (1984c) to measure the impact of Title VII more directly using cross-sectional data. Beller (1979) finds some evidence that EEOC efforts have reduced the gender wage gap.

Between 1964 and 1981 more than 5000 cases of litigation under Title VII, many of which were private suits, were decided in the federal district courts. More than 1700 of these were class action suits. These are the tip of an iceberg consisting of cases settling out of court or decided in state courts, but these class action decisions are likely to generate the most publicity, result in the largest awards, and affect the most people. What has been the impact of this Title VII litigation?

The enforcement of Title VII through the courts has contributed to a significant improvement of the employment and occupational status of blacks (Leonard, 1984). In regressions of the change in the percentage of workers in an occupation who are members of a protected group on number of Title VII class action suits per corporation, percentage of employment in an industry by state cell that is in federal contractor establishments under the affirmative action obligation, and a lagged dependent variable, Title VII leads to sometimes negative but generally insignificant changes for white females, but to a moderate and significant improvement in the employment of blacks. The demand shifts for females may simply be swamped by the ongoing massive increase in labor supply. In addition, many of the early Title VII cases focused on racial rather than gender discrimination. The apparent ineffectiveness of

antidiscrimination policy in promoting female employment remains an interesting question for research. Title VII litigation plays a significant role in increasing blacks' employment share.

In sum, these results suggest that Title VII litigation has played a significant role over and above that of affirmative action. This impact has been greater for blacks than for women, and greater for the skilled than for the unskilled.

D. The Role of the EEOC in Title VII Litigation

Title VII allows individuals to bring suit with only pro forma bureaucratic oversight. More importantly, Title VII litigation has resulted in multi-million dollar remedies. The threat of costly Title VII litigation, largely private, has been of great importance to employers. The major contribution of the Equal Employment Opportunity Commission, which oversees Title VII enforcement, has probably been in helping to establish far-reaching principles of Title VII law in the courts which can then be used by private litigants, rather than in directly providing relief from systematic discrimination through its own enforcement activity.

A 1976 General Accounting Office review of direct EEOC enforcement activity concluded that it was generally ineffective. Most individual charges were closed administratively before a formal investigation. Charges took about two years to be resolved, and only 11 percent resulted in successful negotiated settlements. There was little EEOC follow-up to ensure compliance with conciliation agreements, and entering into a conciliation agreement caused no significant change in a firm's employment of blacks or females. Between 1973 and 1975, among 12,800 charges for which the EEOC found evidence of discrimination and was able to negotiate settlements, fewer than 1 percent had been brought to litigation resulting in favorable court decisions (U.S. GAO, 1976). Between fiscal years 1972 and 1976 the EEOC brought 462 cases to court (U.S. GAO, 1981). The much publicized charges brought by the EEOC against AT & T, GM, Ford, Sears, GE, and the International Brotherhood of Electrical Workers in the early 1970s were largely anomalous. The EEOC also tends to avoid large companies, finding them too hard to digest, and there is little evidence to suggest that the EEOC has focused its attention on large firms that discriminate systematically. The Commission has normally been a reactive body slowly working its way through a mountain of individual complaints, many of which it discards as lacking substance (Hill, 1973).

The EEOC has always found itself buried under a mountain of complaints, increasing from 8,700 in 1966 to 90,709 in 1976 before declining as the Carter administration began more rapid and stringent screening to eliminate dubious complaints (Burstein and Monaghan (1986) . By 1993 the backlog of charges had risen to 73,173, equivalent to roughly a year's work. Less than one in one thousand complaints typically result in EEOC litigation. To fight against discrimination one individual complaint at a time is to ignore systematic evidence, forswear economies of scale, avoid class-action cases with broad impact, and invite irrelevance.

The EEOC has a tightly constrained budget. Through a series of both Democratic and Republican Administrations, the EEOC has also demonstrated the difficulty it faces in attempting to rapidly process 70,000

complaints a year without throwing the baby out with the bath water. Given these factors, the better part of valor might be to redirect energies from individual claims processing toward higher impact systemic cases.

In its 1988 report EEOC and State Agencies Did Not Fully Investigate Discrimination Charges, the General Accounting Office found that:

"In fiscal year 1987, EEOC ruled that there was cause to believe discrimination had occurred in fewer than 3 percent of the charges closed. In an additional 12.5 percent of closed charges, EEOC obtained a settlement from the employer in which some relief was provided for the charging party without determining whether there was cause to believe discrimination had occurred....[Of the charges closed with no-cause determinations] 41 to 82 percent of the charges closed by district offices were not fully investigated, and 40 to 87 percent of charges closed by the state agencies were not fully investigated.... [Of the charges closed with no-cause determinations] critical evidence was not verified in 40 to 87 percent of charge investigations, relevant witnesses were not interviewed in at least 20 percent of charge investigations in 7 of the 11 offices, and charging parties were not compared with similarly situated employees in at least 20 percent of charge investigations in 5 of the 11 offices."

"The various approaches EEOC has tried over the years have not been successful in balancing the timely resolution of a large volume of charges with the performance of high-quality investigations. According to several former EEOC officials, major changes should be considered in the methods used to investigate employment discrimination charges. The changes proposed included (1) reemphasizing the use of some form of negotiated settlement, (2) establishing an administrative adjudication system, and (3) reallocating the categories of investigative work between the EEOC and the state and local agencies."

More recently, interest groups have noted continuing or worsening deficiencies in EEOC procedures. According to Women Employed Institute (1992b):

"The rights of charging parties are not being protected, policy initiatives have gutted the agency's mission, enforcement levels are at an all-time low, attacks on systemic and class-wide discrimination have been abandoned, and the decision-making process inhibits both internal and external debate on policy issues and litigation...EEOC's performance in handling discrimination charges is dismal: settlements have dramatically declined, no-cause findings have drastically increased, investigations are incomplete, and staff incompetence and hostility to complainants are commonplace...EEOC has failed to exercise its power to attack discrimination on a systemic level, which is fundamental to eliminating employment bias..To achieve the greatest impact of eliminating and remedying discriminatory practices affecting large numbers of women and minorities, the practice of litigating individual charges at the expense of class complaints must be abandoned. The agency must implement a system for early identification of charges with class-wide impact."

The Lawyers Committee for Civil rights Under Law (1992) found that:

"The decline in EEOC enforcement is, in part, due to a lack of clear priorities with respect to both investigations and enforcement actions. Today, most charges receive the same attention by investigators, whether they involve unsubstantiated claims of discrimination where legitimate reasons for dismissal are apparent, or whether they involve potential systems or patterns of discrimination. As a result, some charges are not dismissed quickly enough and sufficient investigation is not put into other charges. Investigators try to frame charges narrowly to make it easy for themselves to dispose of charges both because of their inexperience and because of EEOC numerical goals. This happens at the expense of the most important charges which could potentially generate litigation affecting large classes of people."

The details of these flaws in EEOC enforcement are revealed in A Report on the Investigation of Civil Rights Enforcement by the Equal Employment Opportunity Commission, Staff of the House Committee on Education and

Labor, 99th Congress, 2nd Sess. IX (1986). This reports poorly trained EEOC investigators dismissing too many cases by applying too stringent standards under an internal EEOC system that provides incentives for closing cases quickly with little or no regard for the quality of the investigation. A similar incentive system creates similar problems at State Fair Employment Practice Commissions which share in investigating charges but which are paid per charge irrespective of outcome.

Although the EEOC has had limited impact through its administrative procedures, I believe that litigation under Title VII by private parties and by the EEOC constituted the cutting edge of government antidiscrimination policy. Before 1972, the Justice Department was empowered to bring suit through the courts for enforcement of Title VII's provisions. The EEOC's powers were limited to conciliation and persuasion. But since 1972, the power of litigation has been entrusted to the EEOC, which, in turn, can pass it on to individual plaintiffs. By such recourse to the courts, the EEOC can sometimes accomplish in years what takes the OFCCP weeks. What it gives up in speed, though, it sometimes wins back in power through the setting of sweeping legal precedents. For example, the celebrated case of *Griggs v. Duke Power Co.* (401 U.S. 424 [1971]) did not simply aid Griggs or affect only Duke Power. By establishing the principle of disparate impact (numerical imbalance) as prima facie evidence of discrimination, it placed a heavier burden on all employers to avoid the appearance of discrimination.

Over time, the size and scope of discrimination litigation has changed. The volume of employment discrimination litigation (suits filed with the Administrative Office of the U.S. Courts, and classified by this office as "Civil Rights, Employment" cases) increased dramatically from 350 cases in FY 1970 to a peak of about 9,000 cases in FY 1983 (Donohue and Siegelman, 1991, p. 985). As the case load increased the nature of these cases shifted from hiring issues in the early years to terminations. Almost all of the growth in discrimination charges has been due to increasing charges of discrimination in termination (Donohue and Siegelman, 1991, p. 1016). The third major change has been the decline in class actions, from a peak of 1106 in FY 1975 to 51 in FY 1989, as the Supreme Court imposed more stringent standards for class certification in the case of *East Texas Motor Freight Systems, Inc. v. Rodriguez*, 431 U.S. 395 (1977). (Donohue and Siegelman, 1991, p. 1019.)

Most Title VII litigation has proceeded without the involvement of the EEOC, although the EEOC has played a more substantial role in some landmark cases. Between 1972 and 1988, the EEOC brought 4356 cases, or less than 4 percent of all employment discrimination litigation between 1969 and 1989 (Donohue and Siegelman, 1991, p. 1000). Burstein and Monaghan (1986, p. 365) report that the federal government "has been a plaintiff in less than 5.5 percent of Title VII cases commenced at the district level every year since 1977... Federal agencies have been on the side claiming discrimination in 15 percent of cases decided in the Federal Courts of Appeals, however, and in 49.6 percent of the cases decided by the Supreme Court...[Federal Agencies] have been involved in 7 percent of the cases involving only one or a few individuals but in 26 percent of class actions. In addition, Federal agencies have been involved, as party or amicus, in many of the cases seen as 'leading cases' by legal scholars, such as *Albermarle Paper Co. v. Moody*, 422 U.S. 405 (1975); *Griggs v. Duke Power Co.*, 401 U.S. 424 (1971); *McDonnell Douglas Corp. v. Green*, 411 U.S.

792 (1973); and *Teamsters v. United States*, 431 U.S. 324 (1977)."

There is some evidence either that the Federal government chooses to involve itself in cases with a high probability of success, or that its involvement contributes to success. Plaintiffs win 73.3 percent of EEO cases to which a Federal agency is party, but only 55.1 percent of others (Burstein and Monaghan, 1986, p. 376). Of direct interest to those concerned with glass ceilings, 30 percent of court decisions in EEO cases involved upper-level jobs (managerial, technical or professional) and 15 percent involved supervisory jobs. Neither proportion shows a significant trend over time (Burstein and Monaghan, 1986, p. 369). Note, following Siegelman and Donohue (1990) and Priest and Klein (1984), that such statistics are based on published opinions, and so represent a selected subset of all litigation. In particular, Siegelman and Donohue (1990) present evidence that of cases that are tried and reach final adjudication, plaintiffs win more of the published than unpublished cases (p. 1155). They also show that cases are more likely to be published if the plaintiffs are in high wage occupations.

E. Antidiscrimination or Reverse Discrimination?

We have seen that despite poor targeting, affirmative action has helped promote the employment of minorities and women, and that Title VII has likely played an even greater role. This raises the most important and the most controversial question: has this reduced discrimination, or has it gone beyond and induced reverse discrimination against white males? This is also the question on which our evidence is least conclusive. The finding of decreased employment growth for white males is not sufficient to answer the question since it is consistent with both possibilities.

The integration of the American workforce, by race and gender, has been among the most far-reaching and controversial goals of domestic policy in the past two decades. Some have argued that integration can be achieved only at great cost in terms of reduced productivity and profits, that forced equity will entail reduced productivity. Opponents of affirmative action have argued that employers were discriminating on the basis of merit, not on the basis of race or gender. If their contention is correct, then government policies that favor the hiring and promotion of minorities and women should cause a decline in their relative productivity. Equal pay restrictions will compound the inefficiency. The hypothesis inherent in this argument is that the relative marginal productivities of minorities and females have declined as their employment has increased and have not moved toward equality with relative wages.

Using estimates of production functions relating output to inputs for the manufacturing sector, Leonard (1984c) finds that relative minority and female productivity increased between 1966 and 1977, a period coinciding with government antidiscrimination policy to increase employment opportunities for members of these groups. There is no significant evidence here to support the contention that this increase in employment equity has had marked efficiency costs. The relative marginal productivities of minorities and women have increased as they have progressed into the workforce, suggesting that discriminatory employment practices have been reduced.

If we had observed that relative minority or female productivity fell while relative minority or female wages increased, one might suspect that government pressure under Title VII and Executive Order 11246 (affirmative action)

had led to reverse discrimination. I find no significant evidence of reverse discrimination, nor of any significant decline in the relative productivity of minorities or females. Direct tests of the impact of governmental antidiscrimination and affirmative action regulation on productivity find no significant evidence of a productivity decline. These results suggest that anti-discrimination and affirmative action efforts have helped to reduce discrimination without yet inducing significant and substantial reverse discrimination. However, the available evidence is not yet strong enough to be compelling on either side of this issue. Since the productivity estimates are not measured with great precision, strong policy conclusions based on this particular result should be resisted.

F. Quotas: The Bogeyman

One criticism of Title VII (and of affirmative action) is that it has led to numerical balancing rather than to a reduction in discrimination, as firms sought safety behind the right numbers. Reviewing the development of affirmative action, Lawrence Silberman, former Undersecretary of Labor from 1970 to 1973, wrote:

"In practice, employers anxious to avoid inquiry from government officials concerned only with results (rather than merely with efforts) often earmarked jobs for minorities without regard to qualifications We wished to create a generalized, firm, but gentle pressure to balance the residue of discrimination. Unfortunately, the pressure numerical standards generate cannot be generalized or gentle; it inevitably causes injustice Our use of numerical standards in pursuit of equal opportunity has led ineluctably to the very quotas, guaranteeing equal results, that we initially wished to avoid Federal courts already had begun to fashion orders in employment discrimination cases which went beyond relief for those specifically discriminated against. The orders required employers found guilty of discrimination to hire in accordance with a set ratio of whites to blacks, whether or not new black applicants had suffered discrimination. Thus was introduced a group rights concept antithetical to traditional American notions of individual merit and responsibility. ..."

This raises at least two issues. The first is that an affirmative action program without measurable results invites sham efforts and may also fail to meet the requirement of federal procurement law that prospective bidders be informed of the minimum standards for a contract. On the other hand, numerical standards in the quest for equal opportunity open the door to an emphasis on equal results. The second issue raised is whether discrimination and its remedy should be addressed in terms of groups or individuals.

A facile employer response to Title VII is to ensure that all employment flow rates (hires, promotions, discharges, and so on) are the same (in proportion to the relevant labor pool) across demographic groups, irrespective of discrimination. In time, minority representation in the firm mirrors that in the relevant labor pool. However, cases such as *Connecticut v. Teal*, 457 U.S. 440 (1982), indicate that employers could not be assured immunity from challenge

under Title VII by having the "right" numbers of minority or female employees on the bottom line.

The assertion that Title VII of the Civil Rights Act of 1964 has induced quotas implies that employers hiring from the same labor pools should become more like each other in terms of the race and sex of their workforces, as they all seek safety behind the same numbers. The second moment (variance) of the distributions across establishments of demographic group employment share provides a test of a law with wide coverage throughout the economy. These tests reveal more complex patterns than the simple quota view allows for. Between 1978 and 1984, the employment distributions of whites have become slightly more concentrated. However, Leonard (1991) also observes patterns that are inconsistent with the quota view of Title VII:

- The distributions of black females and of non-black minority males and females have become more dispersed.
- Dispersion is greater in larger establishments, despite greater exposure to adverse impact claims by virtue of their size.
- White dispersion has not fallen significantly faster in larger establishments.
- Dispersion is greater in establishments with than without affirmative action.

The variances of demographic group employment share have not declined under either Title VII or the Executive Order as the quota theory would predict.

G. Conclusion

The policy of affirmative action has had a short and turbulent history in this country. Of all the social programs that grew during the sixties, it has perhaps enjoyed the least measure of consensus. Its bureaucratic organization and body of regulations have undergone change at frequent intervals since its inception. While the targeting of enforcement could be improved, and while the impact of affirmative action on other groups is still subject to question, the evidence reviewed here indicates that affirmative action and Title VII can be successful in promoting the integration of blacks into the American workplace.

IV: Analysis of Detailed Affirmative Action Enforcement Techniques

While the broad effects of major policies are visible in the historical shifts in the rates at which women and minorities move toward economic parity with white men, the role played by particular enforcement techniques is harder to discern. If such studies have been done internally at either the EEOC or the OFCCP they have not reached the public eye. The "Crump Report" pried loose from the OFCCP by the Congress in 1984 is an exception. Neither the EEOC nor the OFCCP has an active research or policy evaluation arm, and privacy considerations have usually limited outside access.

The lowest level of government intervention involves nothing more than moral suasion. Private jaw-boning,

public exhortation, public education and conciliation all involve good words. Unfortunately, there is no compelling evidence available that these result in good deeds as well, with the possible exception of education campaigns. The voluntary Plans for Progress Program and others like it that lacked monitoring, enforcement and sanctions have not been shown to have changed employment patterns.

A more effective set of policies have more formalized reporting, clearer standards, and at least the threat of enforcement and sanctions. The contract compliance program was effective in increasing minority employment share before 1980. It is notable that this success was achieved even in the majority of establishments that were not reviewed for compliance. It is worthwhile to ask why.

In May of 1968 the Department of Labor began requiring specific goals and timetables from bidding contractors. This was further formalized and extended to all federal contractors in the Department of Labor's Order Number 4 on November 20, 1969. This implemented measurable standards of progress, and was immediately attacked as imposing quotas. The DOL also began debarring a handful of contractors, and awarding back-pay to affected classes of employees.

The combination of measurable standards, federal monitoring and the threat of sanctions all contributed to the effectiveness of affirmative action - even where the government did not directly intervene.

Compliance reviews are the OFCCP's major enforcement tool. During the 1980s the number of compliance reviews increased while their depth decreased and sanctions disappeared. This broad but shallow enforcement reduced effectiveness. Before 1980 however, establishments that were reviewed for compliance increased minority employment share significantly faster than did non-reviewed contractors taken as a whole. Compliance reviews were effective.

Here we ask whether the detailed enforcement tools used during a compliance review and the promises extracted during these reviews contribute to the effectiveness of reviews, drawing from Leonard (1985).

It is not beyond reason to suppose that they do not. Neither the penalties for inflating promises to hasten the departure of federal inspectors nor the prospects of being apprehended seems great. The ultimate sanction available to the government in the case of affirmative action is debarment, in which a firm is barred from holding federal contracts. The first debarment of a non-construction contractor did not take place until 1974, and in total only 35 firms had ever been debarred through FY 1993. If the Office of Federal Contract Compliance (OFCCP) finds the establishment's affirmative action plan unacceptable, it may issue a show-cause notice as a preliminary step to high sanctions. This step has been taken in only 1 to 4 per percent of all reviews (USCCR, 1975, p. 297).

The other major sanction used by the OFCCP is back pay awarded as part of a conciliation agreement. In 1973 and 1974, \$54 million was awarded in 91 settlements, averaging \$63 per beneficiary (US GAO, 1975, p. 46). In 1980, in an even more skewed distribution, \$9.2 million was awarded to 4336 employees in 743 conciliation agreements (USCCR, 1982, p. 47). These beneficiaries represented less than two-thirds of 1 percent of all protected-group employees at just the reviewed establishments. While these affirmative action sanctions have not been heavily employed, in many cases regulatory sanctions, like weapons of war, are judged most successful just when they are used the least.

That does not seem to be the case here. The U.S. Civil Rights Commission, the General Accounting Office, committees of both Houses of Congress, and the courts have all concurred in the judgment that the contract compliance agencies have not made full and effective use of the sanctions at their disposal. The low penalties if caught are compounded by the low probability of apprehension. In this light, the expected penalties for making promises to the government with little regard for the likelihood of fulfilling those promises do not seem overwhelming. In such circumstances, affirmative action promises may contain little, if any, information about the establishment's future employment. On the other hand, the OFCCP may use more subtle and less easily observed pressures. Firms may care about their reputations, not only with the OFCCP but also with their own employees and the public, and so strive to set reasonable goals. More importantly, firms may react to the threat of Title VII litigation, with its substantial legal costs and penalties, hanging over their heads while under affirmative action review.

A. Data

In the next section I will present estimates of the rate of change in the employment share of minorities and females in a sample of establishments that were subjected to affirmative action compliance reviews in the late 1970s. For this study Leonard (1985) relied on information gathered by the OFCCP during the compliance reviews.¹ The workforce analysis in these reports includes past, current, and projected employment by occupation, race and gender at each establishment. The employment totals used here are the summations across occupations. The projections are typically one-year ahead forecasts, so by using data from reviews in consecutive years I can compare year-ahead projections with consequent realizations.²

The employment goals that firms agree to under affirmative action are not vacuous; nor are they adhered to as strictly as quotas. Leonard (1985) shows that while affirmative action promises are inflated, they are not hollow.

The mode year for which projections are made is 1976. Establishments on average overestimate the growth of total employment. They project 1 percent employment growth one year ahead, but employment subsequently falls by 3 percent. From a macroeconomic perspective, this is striking for two reasons. First, 1976, the year for which most projections are made, was a year in which real GNP grew by 5.4 percent coming out of a recession, and total employment grew by 3.4 percent. Peculiarly, not only were these reviewed contractor establishments left behind in the rising tide, but they continued to sink.

Second, this observed overestimation of employment growth conflicts with a previous finding that during the past two decades firms tended to underestimate wage increases in part because they underestimated growth in labor demand (Leonard, 1982). Part of the discrepancy may easily arise because in the context of a compliance review, firms inflate minority and female employment well beyond their true expectations. However, this cannot be the full explanation because even white male employment falls more than projected. If the projections were being manipulated to result in the greatest projected increase in minority and female share, then we would not expect to see, as we do, firms underestimating the decline in white male employment.

The second finding of interest is that neither absolute minority nor female employment increased, but that both minority and female employment shares did increase. This is because the contraction in employment that did occur was almost lily-white and predominantly male. Most of the average employment decline of 27 was accounted for by white males, whose employment fell by 21. Put another way, while white males averaged 63 percent of initial employment, they accounted for 78 percent of the employment decline. Since females and minorities typically have lower seniority, they are usually thought to suffer disproportionately more during a downturn. In this perspective, the finding here that white males accounted for most of the employment decline is itself striking evidence of the impact of affirmative action.

These establishments are projecting swift and substantial increases in black male employment. If these one-year projections are extrapolated for ten years, then fully 14 percent of the workforce at these plants would be black males.

These projections and actualizations can also be expressed as shares of total employment. Over time, minority and female employment shares are indeed growing, but not nearly as fast as projected. The firms project growth in minority and female employment share far in excess of their own past history, and far in excess of what they will actually fulfill. Is there then any information at all in their projections, or is the entire procedure an exercise in futility?³

B. Reduced-Form Estimates of the Impact of Policy

This section makes use of the richly detailed data available in OFCCP records to ask whether greater regulatory pressure results directly in better actual performance. I will then return to examine the role played by goals. The administrative records of completed compliance reviews include data on past and projected employment demographics, indications of deficiencies found in affirmative action plans, and an indicator for preaward compliance reviews in which case one might expect the government's leverage to be greater. These records also indicate successively higher levels of government pressure brought to bear: hours expended by review officers, progress reports required, conciliation process initiated, and, finally, show-cause notice issued. Each of these mileposts in the bargaining process reflects both the establishment's resistance to bureaucratic pressures and, at the same time, increasing levels of bureaucratic pressure itself. If establishment resistance can be controlled for by past growth rates of protected group employment share, and by initial notification of deficiencies, we can then ask what the marginal impact is of factors of regulatory production such as conciliation agreements and show-cause notices.⁴

The reduced-form equation for a model of the demand and supply of labor was derived in Leonard (1985). We turn now to estimates of the impact of regulatory pressure on employment in this reduced form. These are regressions, weighted by initial establishment size, of the realized growth rate of demographic group employment share on the actual growth rate of demographic group employment share lagged one year, and vectors of binary variables indicating year and SMSA.⁵ They also include a vector of enforcement variables including both indicators of initial position (for example, past growth rate by demographic group, and deficiencies noted in EEO policies, workforce composition, and goals and timetables) and those that indicate higher levels of regulatory pressure (for example, conciliation initiated, progress reports required, show-cause notice issued). For all detailed regulation variables, the results are mixed and often insignificant. One might expect greater growth in protected group employment in the case of preaward compliance

reviews--reviews mandated prior to the final award of large federal contracts--supposedly because the carrot is dangling so close to the nose. On the other hand, few contracts have ultimately been lost in this process, and the courts have been loath to uphold this type of leverage. Twenty-nine percent of all the reviews studied here are preaward reviews, but only in the case of black females did they make a significant positive addition to protected-group employment share beyond that expected from a regular review.

Among the indicators of initial deficiencies in affirmative action plans, eight establishments were found to be not in compliance. As expected, protected-group employment grows more slowly at these establishments, but this is significant only in the case of white females. These estimates also include three additional variables indicating more specific deficiencies found in EEO policies, in composition of the workforce, and in goals and timetables.⁶ Such deficiencies are commonly found. Fifty-six percent of all the AAPs studied here were classified by federal inspectors as having deficiencies in their goals and timetables. In only a few cases are these deficiencies completely resolved during a given compliance review. In general, establishments that are deficient do not differ significantly, at the 95 percent confidence level, from others in their subsequent demographics. The exceptions are that white male employment does grow significantly faster at establishments with deficient EEO policies, and black female employment grows at a significantly slower rate at those with deficient goals and timetables. But these are only two significant effects out of a set of 15, where one out of 20 could be expected randomly at the given significance level.

Having controlled for the initial level of deficiencies as well as for past growth rates, we now ask what impact higher levels of regulatory pressure beyond the initial review have on subsequent employment patterns. The first of these is a set of variables indicating the failure to resolve deficiencies in policies, composition, or goals and timetables. Such deficiencies were resolved during the given review in at most 18 establishments and had a mixed effect. Failure to resolve deficient EEO policies significantly increased white male and decreased white female employment growth, but had a positive effect on employment of black males. Failure to resolve deficient workforce composition had a significant negative impact on black males and white females and was insignificant in other cases. The employment of white males grew at a significantly slower rate, and that of white females significantly faster, where deficiencies in goals and timetables were not resolved. This variable was insignificant for other groups. Note also that the OFCCP spent an average of 58 manhours in conducting the reviews in this sample, with a range between 5 and 1006 hours. Controlling for size, additional hours had a generally positive but insignificant impact on protected-group employment.

One-third of the establishments were required to make interim progress reports. This marginally greater pressure had no significant impact on their subsequent demographics. One hundred twenty-two establishments, 3 percent of the total, signed conciliation agreements to remedy deficiencies in their AAPs. Perhaps their AAPs looked better, but their immediately subsequent demographics did not. Only the growth rate of white male employment was significantly different at establishments with conciliation agreements, and it was higher.

The ultimate enforcement tool at the Department of Labor's disposal is debarment, but none of the few actual uses of this deterrent shows up in our sample. The strongest pressure observed here is a show-cause notice; 24

establishments received such notices offering them the opportunity to show cause why they should not be debarred. On average, they had not significantly altered their demographics a year later.⁷ On the whole, there is no compelling evidence here that these detailed components of the enforcement process have a significant impact on the employment of members of protected groups. Caution must be exercised in interpreting this result, since it may reflect the theoretical possibility that more rigorous enforcement pressure may be brought to bear against the most recalcitrant cases, rather than the weakness of enforcement tools themselves.

C. Semireduced-Form Estimates

In the attempt to identify the impact of policy on employment, the reduced-form estimates discussed above throw out nearly all the information contained in the goals. Regressions not shown here indicate that enforcement variables, lagged growth rate, and year and SMSA dummies can explain only from 1 to 6 percent of the variation in goals, are always insignificant independently, and sometimes insignificant jointly. While this may simply mean that regulatory pressure, as well as the other independent variables, has little impact on goals, a more likely explanation, in my opinion, is that the components of regulatory pressure that we can observe have little explanatory power. Here we have a trade-off between identification and information. The previous estimates chose identification. Here we choose information. These should roughly bound the true impact. This replicates the reduced-form specification with the addition of goals as an independent variable, in an attempt to measure the impact of policy goals.⁸ The striking finding here is that the affirmative action goal is the single best predictor of subsequent employment demographics. It is far better than the establishment's own past history, even controlling for the direct impact of detailed regulatory pressure.

This indicates that while establishments promise more than they deliver, the ones that promise more do deliver more, even conditioning on the past growth rate of employment share. In these regressions, weighting by initial size, of subsequent realized growth rates of demographic group employment share on last year's realized share growth rate and on last year's projected share growth rate, the projection is significant in every case except nonblack minority males. The central finding of the research reported in this paper is that there is significant information in the projection over and above what could have been predicted on the basis of past history. On the other hand, the coefficient is far from one; the projection falls far short of perfect information. For example, on average a projected 11 percentage point increase in the growth rate of black male employment share results in an actual increase of one percentage point, *ceteris paribus*.⁹

Not only do establishments generally overpromise minority and female employment, they also overpromise white male employment. This reveals something of their strategy in formulating promises. They do not promise direct substitution of minority and female workers for white males; instead they promise more for all. More accurately, they promise the size of the total employment pie. The first step in bringing these projections down to earth may simply be to ask the establishment whether the projected growth in total employment is reasonable.¹⁰

While establishments do overpredict one year ahead, the coefficient on the projection is generally more significant than the coefficients on past actualizations. The surprising finding is that the projection is usually the single

best predictor of the future. This does not necessarily indicate anything about the establishment's demand for labor. It is possible that establishments foresee shifts in the supply of labor that we cannot observe and they incorporate these into their goals.¹¹

However, these equations control for both calendar year and SMSA. This explanation would require, then, that within a given SMSA, during the particular year, some establishments can accurately project particular supply shifts that will differentially affect them. Assuming identical demand elasticities, a general supply shift, such as an increase in the number of black males in a given SMSA, would be reflected in the SMSA variable. It seems doubtful, then, that the correlation of goals and market outcomes merely reflects the accuracy of establishments in projecting establishment-specific supply shocks that are unobservable to us. Moreover, other work has shown that protected-group employment share generally grows faster in reviewed establishments during this period (Leonard, 1984). There would be no reason to expect this evidence of effective compliance reviews if firms were merely projecting supply shifts, or demand shifts that would have occurred in the absence of compliance reviews.

D. The Impact of Goals and Timetables

Goals for the employment of minorities and females are an important product of affirmative action bargaining. The process costs at least \$51 million. Past studies, some politically motivated, have estimated direct costs of affirmative action on the order of \$50 to \$80 per employee. Cumulating very roughly results in more than a billion dollars in direct compliance costs for all nonconstruction contractors. Concerning just the direct costs of compliance reviews, a 1981 survey of 42 companies with an average workforce of 50,000 found that 80 percent of the reviewed were requested to submit data in addition to the AAP, at an average cost of \$3000.¹² A similar survey by Senator Hatch's Labor Committee of 245 contractors with an average workforce of 2584 in 1981 reported that 60 percent were asked to submit additional data beyond the AAP, at an average cost of \$24,000.

The major finding here is that goals set in these costly negotiations do have a measurable and significant correlation with improvements in the employment of minorities and females at reviewed establishments. At the same time, these goals are not being fulfilled with the rigidity one would expect of quotas. While the projections of future employment of members of projected groups are inflated, the establishments that promise to employ more do actually employ more.

On the basis of the evidence studied here, which is essentially the only direct evidence brought to light so far on the question, it is clear that affirmative goals are strongly correlated with subsequent achievements. What ultimately cannot be resolved with certainty here is the implication this has for policy beyond the important observation that goals appear to be neither so vacuous nor so rigid as their critics on either side have supposed.

We have a policy that appears to be effective in its whole and ineffective in its parts. The paperwork requirements of the AAP, the notification and resolution of AAP deficiencies, and even conciliation agreements and show-cause notices appear to have no general significant impact on subsequent employment demographics. On the other hand, protected-group employment share does generally grow more rapidly at reviewed firms, and goals are strongly

correlated with this growth. Do our results then indicate only that establishments' projections reflect variations in supply known to them rather than induced variations in demand? Alternatively, can we infer that extracting greater promises will result in greater achievement? The critical evidence is that there is an overall response to pressure. Within labor markets of the same industry and region, reviewed contractors do better than the nonreviewed, as other work shows. As we have seen here, within a given SMSA the establishments that set higher goals achieve greater growth rates of protected-group employment¹³. My reading of this evidence is that while much of the nit-picking over paperwork is ineffective, the system of affirmative action goals has played a significant role in improving employment opportunities for members of protected groups. One expects the lofty goals generated by political accommodation to be accompanied by loftier promises. The surprising finding here is that in the case of affirmative action, these promises are not entirely empty.

V: Upper Level Positions.

The genesis of the Glass Ceiling Commission was in the concern that women and minorities faced discriminatory barriers in reaching upper level positions. In two previous reports, the Glass Ceiling Commission has documented these barriers as well as some approaches to dismantling them in case studies of a number of Fortune 500 companies. Aside from these Commission reports, the federal enforcement agencies have not publicly released any systematic evaluations of their success in eliminating glass ceilings.

Under the 1964 Civil Rights Act, victims of discrimination were limited to make-whole remedies. In particular, plaintiffs are expected to mitigate damages. This has resulted in the higher rates of Title VII litigation for management and supervisory positions. In the case of lower level positions, prospective employees discriminatorily turned away from one job could often find a similar paying job. If so, the mitigated damages would usually not be sufficient to support litigation. Because of this, higher level positions produce more Title VII litigation. At the tops of corporate hierarchies however, two countervailing forces are found. First, the number of positions becomes too small to support any statistical (adverse impact) claims, and the positions themselves become less standardized. In addition, courts may be more wary of intruding on management prerogatives embodied in top positions. The 1991 Civil Rights Act made litigation over lower level positions more attractive by allowing consolidated (punitive) damages for women. While much litigation has taken place over access to upper level positions, no published reports are available that systematically appraise the impact of Title VII or the EEOC on the access of women and minorities to these positions.

Occupational Advance under Affirmative Action

One of the major affirmative action battlefields lies in the white-collar and craft occupations. In these skilled positions, employers are most sensitive to productivity differences and have complained the most about the burden of goals for minority and female employment. It is also in this region of relatively inelastic supply that the potential wage gains to members of protected groups are the greatest. One indicator of the relatively low emphasis given to this area

historically by the OFCCP is that it has started to develop procedures for glass ceiling reviews just since 1991.

The four econometric studies mentioned earlier, which found employment gains for blacks despite little enforcement of affirmative action in its early years, also found that while affirmative action increases total black male employment among federal contractors, it does not increase their employment share in the skilled occupations (Burman, 1973; Ashenfelter and Heckman, 1976; Goldstein and Smith, 1976; Heckman and Wolpin, 1976). These studies suggest that contractors had been able to fulfill their obligations by hiring into relatively unskilled positions. Before 1974, affirmative action appears to have been more effective in increasing employment than in promoting occupational advancement.

Some might argue that such a result is only to be expected given a short supply of skilled minorities or females. However, even in the case of a small fixed supply, affirmative action should induce a reshuffling of skilled blacks and women from non-contractor to contractor firms, without any increase in overall supply being necessary. The long-run presumption behind affirmative action, however, is that trainable members of protected groups will be considered for promotion to skilled employment. Indeed, by the later 1970s affirmative action was no longer as ineffective as it may have been in its early years at increasing minority employment in skilled occupations (Leonard, 1984b). This difference may reflect the increasing supply of highly educated blacks, as well as the more aggressive enforcement program that developed in the mid- to late 1970s.

Analyzing occupational advance within nine broad occupations between 1974 and 1980, Leonard (1984b) finds black males' share of employment increased faster in contractor than in non-contractor establishments in every occupation except laborers and white-collar trainees, and except for operatives and professionals these differences are significant. The impact is found in both the proportionate change in black males' share of total employment, and in the proportionate change in the ratio of black male to white male share.

The total impact of the contract compliance program, the weighted sum of contractor and review effects, shows some evidence of a twist in demand toward more highly skilled black males. The contract compliance program has not reduced the demand for black males in low-skilled occupations, except for laborers. It has raised the demand for black males more in the highly skilled white-collar and craft jobs than in the blue-collar operative, laborer, and service occupations. While this may help explain why highly skilled black males have been better off than their less skilled brethren, it does not help explain why black males should be having greater difficulty over the years in finding and holding jobs. Neither employment-population ratios nor unemployment rates of blacks relative to whites have shown a marked improvement over the past two decades.

Affirmative action has also helped non-black minority males, although to a lesser extent. There is evidence of a twist in demand toward Hispanic, Asian, and American Indian males in white-collar occupations, particular in sales and clerical positions, and away from this group in operative and laborer positions. Compliance reviews have had a strong and significant additional impact in the professional, managerial, and craft occupations. The total impact of the contract compliance program on non-black minority males is positive in the white-collar, craft, and service occupations,

and in training programs. Relative to white males, affirmative action has increased the occupational status of non-black minority males by 2%.

The evidence within occupations suggests that the contract compliance program has had a mixed, and often negative impact on white females. For technical, sales, clerical, craft, and trainee workers, contractor status is associated with a significant decline in white females' employment share. Compliance reviews have also often had a negative impact. While both contracts and reviews produce a significant 1% increase in the index of white females' occupational status, this positive impact disappears when changes in white females' occupational status are compared to the relatively greater gains of white males.

Black females in contractor establishments have increased their employment share in all occupations except technical, craft, and white-collar trainee. The positive impact of the contract program is even more marked when the position of black females is compared with that of white females.

It is possible that part of this occupational upgrading may be overstated because of biased reporting to the government, in particular the upward reclassification of minority or female intensive occupations, as argued in the useful paper by Smith and Welch (1984). To the extent that contractors may have selectively reclassified black- and female-intensive occupations at a faster rate than did non-contractors, most studies will overstate the actual occupational advance due to affirmative action. However, this effect is unlikely to overwhelm the general direction of the results; pure reclassification would cause black losses in the lower occupations, which is generally not observed.

Moreover, this finding of occupational advance for non-white males is reinforced by evidence from Current Population Survey wage equations that affirmative action has narrowed the difference in earnings between the races by raising the occupational level of non-white males. These wage equations are reported at greater length in Leonard (1984d). These estimates of the wage effects of affirmative action offer evidence suggesting that the underlying supply of labor is not perfectly elastic. Minority male wages are higher relative to those of white males in cities and industries with a high proportion of employment in federal contractor establishments subject to affirmative action, although the effect is not always significant.

Affirmative action does not appear to have contributed to the economic bifurcation of the black community. Given increased pressure to justify the non-promotion or discharge of blacks, fears have been raised that employers will screen blacks more intensely and be less willing to risk employing less skilled blacks. In practice, affirmative action appears to increase the demand for poorly educated minority males as well as for the highly educated. The available evidence, now somewhat dated, demonstrates that the contract compliance program did not materially contribute to the occupational advance of women.

VI: What Are the Constraints on Public Policy?

It is not within the realm of public policy to achieve clear and complete success -- even where the goals are clear and supported by a broad consensus. In judging the past record of civil rights in employment it is important to recognize the limits of public policy initiatives. These constraints help inform a more realistic baseline for initiatives in this area.

Most of the public debate over the government anti-bias policy has focused on issues of equity: is the policy fair? Because concepts of fairness differ so much, particularly as they are put into practice, any attempt to simply categorize the spectrum of views is bound to miss many of the subtleties. One way to categorize differing norms of equity is to distinguish between those that call for equality of opportunity and those that call for equality of result. Judging from the opinion polls, the former principle is more widely embraced. There is broad support for policies that ensure that individuals in the workplace are treated without regard to their sex, race, national origin, color, or religion. Equality of opportunity involves an approach toward meritocracy.

Policy may also be judged by how it affects economic efficiency, and this standard is often held to be in opposition to equity. However, in the case of equal opportunity policy, equity is efficient. In Becker's (1971) classic model, employer discrimination is inefficient. So efforts to reduce systematic discrimination can improve both equity and efficiency. Indeed, this is the model of discrimination embraced by the courts in Title VII adverse impact cases (Ashenfelter and Oaxaca, 1987).

Alternatively, if one starts from the assumptions that skills and preferences and random acts of nature are identically distributed across all demographic groups, equal opportunity implies equal outcomes. It is common in public discussions to infer discrimination after observing unequal outcomes without first considering abilities or preferences. In the courts however, these are fundamental issues. Workplace productivity is difficult to measure, so the debate over the equity and efficiency of job allocation and the government's anti-bias policy is destined to continue. By the same token, it is far easier to measure the earnings and employment of various demographic groups than to measure discrimination - the systematic divergence of pay and marginal revenue product - so progress tends to be measured in terms of the former rather than the latter.

A. Political Constraints

Governmental efforts to improve employment opportunities for women and minorities have consistently met with controversy. The chief obstacle to more effective policies is probably the lack of political consensus in support of more aggressive policies and enforcement of existing programs. A substantial portion of the electorate does not believe that discrimination is a widespread or important problem. Existing programs are often painted as far more powerful than they really are, undercutting the case for strengthening these programs. Neither the regulatory agencies, the business community nor in some cases the employee interest groups have an interest in publicizing the weaknesses of current programs.

The political constraints on policy are immediately apparent from survey data. Outside of a peculiar fringe, it is difficult today to find Americans who will publicly stand in favor of discrimination. The vast majority say they are

against discrimination, and most of these support government efforts to end discrimination. This strong consensus against discrimination is largely a product of the last generation and marks a substantial and crucial advance. Even if these survey results are inflated by a respondent's fear of giving a socially undesirable answer, they still demonstrate the growing strength of a norm against discrimination.

That consensus dissipates immediately when people are asked whether they support affirmative action. Asking people whether they support quotas simply drives the nail in the coffin. A compelling majority are opposed to quotas. Of course, the government's employment policies under Title VII and under the Executive Order do not mandate strict quotas, although they do call upon employers to explain the business purpose served by policies that result in statistically significant numerical imbalances. The system of goals and timetables are a legal enforcement tool under the contract compliance program. While the empirical evidence does not support the view of these programs as imposing rigid quotas, public perceptions are often at variance with this reality.

In their review of the opinion survey evidence, Schuman, Steel and Bobo (1985) report a steady improvement in attitudes toward the principle of equal treatment especially in employment (p. 194). However, less than 40 percent feel that the federal government should intervene to "see to it that black people get fair treatment in jobs", and this proportion has not increased since the 1960s (p. 91, p. 196). Acceptance of the principle of non-discrimination does not necessarily translate into support for federal intervention. As Lipset and Schneider (1978, p. 43) have argued, this reflects a basic conflict "between two values that are at the core of the American creed - individualism and egalitarianism." Lipset and Schneider (1978) also report a sharp drop in white support as one moves from anti-discrimination principles to preferential treatment or quotas.

In their depiction of the "American Creed", Sniderman and Piazza (1993) highlight this fundamental conflict of values raised by affirmative action:

"Just because so many Americans are committed - imperfectly to be sure, but genuinely all the same- to the values of liberty and equality, they have no principled basis to object to the original civil rights movement; on the contrary, so far as the Creed was relevant, it pushed them to support equal treatment. Though there are elements of the Creed that can be deployed in favor of affirmative action, the fundamental ideas of fairness and equal treatment, for ordinary citizens, thrust in exactly the opposite direction. What gives the race-conscious agenda its distinctive character, what makes the agenda open to challenge morally, is that the principle of preferential treatment runs against the Creed." (p. 177).

Surveys of business leaders reveal more equitable views of affirmative action than those common among the population. In this case, first-hand knowledge of the realities of the scope of affirmative action in practice may serve as an antidote to the fears provoked by its spectre. Although many organizations instituted affirmative action programs in response to the federal government's mandate, many U.S. corporations claim to have implemented such policies voluntarily. As a result, affirmative action has become an important component of the human resource policies of most large corporations in the United States. According to a survey conducted in 1984, 90 percent of CEO's of large corporations reported that their firms had adopted hiring objectives for women and minorities that were unrelated to

government regulation. Ninety-five percent of these CEO's said they would continue tracking the progress of women and minorities in their firm regardless of the status of government regulation (Fisher, 1985). Interviews with mid-level managers conducted in 1973 and again, in 1983, revealed that managers had greater knowledge and more positive attitudes toward affirmative action in 1983 than in 1973 (Huckle, 1983).

These expressions of management interest in and support for affirmative action programs should not be construed as unequivocal support for affirmative action policies nor as an indicator of the general acceptance of such measures by all employees in the workplace. Opinion polls yield different results depending upon question wording, but most reveal that Americans endorse equality of opportunity (Burstein, 1979) and racial integration (Smith, 1981a, 1981b) in principle while also expressing deep ambivalence about governmental intervention (Schuman et al., 1985).

In the case of affirmative action, the precise nature of the intervention, or at least its presentation in surveys, makes an enormous difference in respondents' degree of expressed support. For example, an analysis of survey data gathered for the National Conference of Jews and Christians (Harris & Associates, 1978) reveals that nearly 76% of white Americans surveyed agreed with the statement that "Minorities and women have to learn that they are entitled to no special consideration and must make it strictly on merit" and yet, nearly 71% agreed that "As long as there are no rigid quotas, it makes sense to give special training and advice to women and minorities so that they can perform better on the job" (Jacobson, 1985). This pattern of agreement appears contradictory if special training programs are viewed as "special consideration." In the same survey, more than 67% of white Americans favored "affirmative action programs in industry for blacks provided there are no rigid quotas," while only 51% favored "affirmative action programs for nonwhites if not having them meant that civil rights for blacks and other minorities would be set back" (Jacobson, 1985). In a Newsweek poll (1988), only 14% of whites supported preferential treatment of blacks over equally qualified whites. Sniderman and Piazza (1993, p. 130) report evidence of a clear dividing line between attitudes towards blacks, social welfare programs and anti-discrimination as distinct from preferential policies. They report that 55% of whites favored "affirmative action programs for blacks and other minorities, which do not have rigid quotas" in a 1988 national Harris poll. In contrast, a solid and overwhelming majority of whites are opposed to affirmative action involving preferential treatment. The 1986 National Election Study presented the following question to a national sample:

"Some people say that because of past discrimination, blacks should be given preference in hiring and promotion. Others say that such preference in hiring and promotion of blacks is wrong because it discriminates against whites. What about your opinion - are you for or against preferential hiring and promotion of blacks?"

Ninety percent of the surveyed whites were against preferential treatment of blacks. While whites were solidly against, black respondents were more supportive but nearly evenly split (Sniderman and Piazza, 1993, p. 130)..

Results of the 1980 General Social Survey (Kluegel & Smith, 1986) demonstrate that support for affirmative action is strong among both blacks (96%) and whites (76%) when those polled are asked about their agreement with the

statement: "Affirmative action programs that help blacks and other minorities to get ahead should be supported." Wording that specified "set asides for qualified minorities" resulted in lower agreement and when asked about the unfairness of such set asides, the majority of whites (65%) and blacks (58%) viewed this form of affirmative action as unfair. Curiously, Sniderman and Piazza (1993) find more favorable attitudes towards set-asides than towards affirmative-action.

Why would support for affirmative action policies vary so dramatically? One reason is a fundamental view that fairness requires equal treatment of individuals irrespective of race, color, national origin, or sex. A distinct reason may be the unrealistic views whites hold regarding black Americans' advancement. Three-fourths of white Americans report a level of equality of opportunity and progress for blacks which is not validated by economic indicators (Harrington & Miller) and one half believe that reverse discrimination exists (Kluegel & Smith, 1982). A recent survey (Time, 1991) similarly found that 60% of whites believe that "affirmative action programs sometimes discriminated against whites" and 17% of whites polled agreed that "affirmative action programs often discriminated against whites." Although black support of affirmative action is generally higher than that of whites, the gap between endorsing equality of opportunity in principle and endorsing affirmative action in practice exists for blacks as well as whites (Harrington & Miller). This, and the similarity in attitudes between racial groups on other social policies (Schuman et al, 1985), suggests that factors other than racial attitudes account for reactions to affirmative action among whites.

Taylor and Dube (1986) argue that North Americans may view judgments of individuals based upon social categories (e.g., race, gender, ethnicity) to be inherently wrong. Because affirmative action programs are based upon category membership, Taylor and Dube (1986) suggest that such programs will typically be viewed as unjust. William Bradford Reynolds, former Assistant Attorney General of the United States, made just this pronouncement: ". . . the use of racial preferences whether in the form of quotas, goals or any other numerical device [is] morally wrong" (New York Times, January 30, 1986, p. B9).

In their careful appraisal of the public opinions on race relations and government racial policies, Sniderman and Piazza (1993) argue that affirmative action is an exceptional policy. Part of the response it provokes derives from antagonism toward group as distinct from individual claims. "The evenhandedness characteristic of reactions to blacks as individuals is not characteristic of reactions to blacks as a group." (p. 169). In their analysis, attitudes toward affirmative action are better understood as reflecting opposition not toward racial minorities but rather toward a policy of group preferences. "Proposing to privilege some people rather than others, on the basis of a characteristic they were born with, violates a nearly universal norm of fairness. It is just in this sense that differences over affirmative action go beyond race" (p. 134).

These public opinions have dictated how politicians have framed the issues, perhaps no more clearly recently than in the debate preceding passage of the Civil Rights Act of 1991. To its opponents, this was a quota bill. To its proponents, it was a bill to promote equity in employment. Politicians have clearly taken the lessons of the opinion polls to heart. To elicit support for such an initiative, frame it in terms of anti-discrimination or even better, individual equity.

To arouse resistance, frame it in terms of group preferences, or even better, quotas.

These perspectives resonate from a strong belief in individual rights in the popular political ideology, and a correspondingly weak support for group rights. The paradox this creates for policy is that while history is replete with examples of discriminatory treatment of groups, and while the prevailing economic and legal paradigms define discrimination as differential treatment based on group membership, policies meet increasing resistance if they are framed in terms of group rather than individual rights. This paradox is compounded when one realizes that current policy does not require rigid quotas, and that the empirical evidence previously reviewed does not support the assertion that Title VII or the Executive Order impose rigid quotas.

B. Economic Constraints

To claim that all of the differences in employment between white males and others is the result of discrimination that can be corrected by the government is to oversell these programs and set them up for failure. While most recognize that discrimination plays a part few would claim that is the sole cause of differences in group outcomes. The baseline against which program success should be measured changes over time with changes elsewhere in the economy.

1. Demand

The U.S. labor market faces two troubling long term patterns. First, real wages have stagnated since the 1970s. The improvements in minority or female economic position relative to that of white males have occurred against a backdrop of stagnation. Few groups have improved their absolute position. Second, earnings are becoming more unequal across a number of dimensions including across age, education, experience and occupation groups. The combination of increasing inequity with a generation that may not exceed its parent's standard of living is not a recipe for social accord.

Both increasing international trade and rapid technological change have been blamed for increasing earnings inequity. While the causes are not yet entirely clear, some of the consequences for minorities and women are. As the disparity increases between the earnings of these with and without education, skills and experience widens, the relative economic position of groups with relatively less education or experience falls. For example, it is harder for anti-discrimination policy itself to raise blacks to parity with whites if the decreasing economic returns to poor education are pulling in the other direction. Juhn, Murphy and Pierce (1991) estimate that a substantial part of the slowing growth in Black earnings relative to that of whites can be accounted for by the overall increase in wage dispersion.

Shifts in labor demand across industry lines have had similar effects, particularly on young Blacks. In rough terms, employment has shifted out of sectors, particularly manufacturing, in which Blacks were well represented, and into sectors such as trade and services in which women are well represented. Holzer(1987) reports that these sectoral shifts have hurt young Blacks seeking employment. The demand shifts that have harmed the relative position of Blacks have helped that of women because of differences in their distributions across occupations and industries. As demand and employment fell in durable-goods manufacturing, in relatively low-skill jobs, and in unionized jobs, Black earnings

fell relative to white, and male earnings fell relative to female. The exception to this pattern occurs among college-graduates, where men's position improved relative to that of women (Sorenson, 1991; O'Neill and Polachek, 1991; Blau and Kahn, 1992; Katz and Murphy, 1992).

Within industries, the fastest growing establishments have more highly skilled workers. (Leonard, Berman, Bound and Griliches, 1992). Employment opportunities for less skilled workers are falling within as well as across industries.

The overall shifts in demand have benefitted women relative to men at low skill levels, but men relative to women at high skill levels (Katz and Murphy, 1992). Blau and Kahn (1993) also find this, and offer two possible explanations: 1) an unfavorable twist in labor demand against higher level jobs with high female representation, or 2) a glass ceiling limiting highly skilled women.

Some evidence also suggests that jobs have become less stable. Mitchell and Bassanese report falling job tenure, even corrected for shifts in the Age distribution. Leonard and Davis and Haltiwanger (1992) present evidence that hints that jobs themselves do not last as long as they use to. Groups with lower tenure, such as women, are more vulnerable to being misplaced by this churning. Once displaced, women and minorities tend to suffer longer spells of unemployment (Ruhm, 1987).

Employment has also shifted slightly toward smaller establishments. The average enterprise has fewer than 20 employees according to County Business Patterns data. Employers with fewer than 15 employees are generally not covered by Federal anti-discrimination laws, so the shift toward smaller employees has removed more workers from Federal protection. Women and hispanics tend to be better represented among small than large employers. Over time, female and minority employment shares have increased more in large enterprises than in small (The State of Small Business, 1986, p. 233-237). Smith and Welch (1984) interpret this as an effect of Title VII encouraging large covered firms to bid minority and female employees away from smaller uncovered firms.

There are also signs of increasing entrepreneurship among women. Women-owned, non-farm, sole proprietorships increased from 26.1 percent of the total in 1960 to 29.9 percent in 1986. (The State of Small Business, 1989, p. 115).

Overall, demand shifts have played a large role, even for patterns typically thought of as resulting from supply shifts. For example, Goldin (1990) reports that between 1960 and 1980 demand shifts were substantially more important than supply shifts in accounting for the increase in married women's employment.

Economic growth improves the position of minorities and women not only directly, but also indirectly by mediating the effect of regulatory policy. Anti-bias policies are more effective and meet less resistance when the pie is growing. Pure redistribution of a fixed number of jobs breeds backlash. In practice, affirmative action has been far more effective at growing companies than at stagnant companies with few opportunities and little room to maneuver (Leonard, 1984).

2. Supply

Changes in labor supply change what can be expected from employers. The biggest change has been the ongoing increase in female labor force participation rates. The ethnic and racial composition of the work force is also changing. Hispanics and Asians are among the fastest growing groups in the labor force, and promise to turn Blacks into a minority among minorities early in the next century.

The increase in the female labor force has some important overlooked implications for policy. First, even if employers make no particular effort to increase female employment share, this share will tend to increase supply in response to greater availability. If the OFCCP asks employers whether female employment share has increased, the answer will then tend to be yes, whether or not the employer has pursued affirmative action policies. If the baseline is not adjusted to keep pace with the growing proportion of women (Hispanics, Asians) in the labor force, affirmative action policy will be less effective.

Because women's labor force participation rates have been increasing, the years of experience of working women has been less than that of men, on average. Even if men and women with similar experience were paid the same, this would hold women's average earnings below that of men. Smith and Ward(1989) argue that the slow improvement in women's earnings relative to men's is in part due to women's lower levels of experience. We are now seeing an accelerated closing of the gap as experience levels equalize (Polachek, 1990; O'Neill and Polacheck, 1991).

This is related to the pipeline argument: we do not see many women at the tops of corporate ladders today because there were not many women starting to climb these ladders 20 or 30 years ago. Of course, over time this argument becomes less and less credible since each passing year has witnessed an increasing proportion of women among those beginning the climb.

Similarly, the last generation has witnessed an increasing shift of women into educational fields previously dominated by men. The proportions of legal, medical, and business degrees awarded to women has steadily increased (O'Neill,1990; Blau and Ferber, 1992). Again, this renders less and less viable the argument that women with the requisite training or experience simply are not available.

Immigration flows also have changed the complexion of labor supply over time. First generation immigrants tend not to be direct substitutes (competition) for natives (Card, Lalonde and Topel, 1991). Compared to earlier decades, recent immigrants are less likely to be of European origin. Immigration has increased the number of Hispanics and Asians in the labor force. Borjas(1989) argues that the quality of recent immigrant cohorts has fallen. In terms of earnings parity, the example of Hispanics suggests that assimilation and the development of English language proficiency in particular, reduces economic disparities [Bloom and Grenier (1991); McManus (1985), Rivera-Batiz (1990)].

C. Budgetary Constraints

In real terms, the budgets of the EEOC and the OFCCP have declined since the 1970s. Even before budget cutbacks, these agencies were reported as overburdened (U.S. Commission on Civil Rights, v.s. House of

Representatives). Given ongoing budgetary stringency, it is important to recognize that these agencies are limited in terms of money and personnel to fulfill their duties. In practice the government puts a price on civil rights when it determines the enforcement budget.

D. Psychological Constraints

A policy perceived as unfair will not generally gain broad support. A particularistic policy that seems to favor one group over another can easily be seen as unfair.

Within the fields of social psychology and sociology, research efforts have been focused upon attitudes towards the policy of affirmative action (i.e., endorsement versus resistance), as well as the effects of affirmative action procedures on aspects of self-esteem and attitudes toward one's job and employer¹⁴. Within these two broad categories: (1) affirmative action attitudes as an outcome variable; (2) affirmative action procedures as predictors of other attitudes and behavior relevant to occupational attainment; the literature can be classified by the population addressed: beneficiaries (i.e., women and minorities), non-beneficiaries (i.e., white males), or both groups; and the method used: experimental versus survey.

Most of the social psychological research conducted on affirmative action is experimental. The sociological research predominantly utilizes surveys conducted on random samples of the general population. While recent (Taylor, 1994) and ongoing research efforts (Belliveau, 1994) seek to redress this problem by gathering data within organizations and tying organizational affirmative action practices to individual-level attitudes, the extant literature provides information on the bases of attitudes toward affirmative action, effects of affirmative action on employee attitudes and performance, and preliminary indications as to the components of successful affirmative action procedures within organizations.

1. Procedural Fairness

Judgments of the procedural fairness of affirmative action programs have emerged as a powerful predictor of attitudes toward the policy (Barnes, Nacoste and Powell, 1991; Nacoste, 1985, 1987, 1990; Peterson, 1994; Tyler, 1993). Procedural fairness refers to the justice of the decision-making procedure (see Lind & Tyler, 1988 and Tyler & Lind, 1992 for an overview of procedural justice theory and research). The "fairness of the distribution of the conditions and goods that affect individual well-being," (that is, outcome fairness) (Deutsch, 1985) is referred to as distributive justice. Social psychological research on procedural and distributive justice research primarily addresses subjective impressions of fairness rather than attempting to determine what is objectively fair.

Intuition suggests that employee attitudes toward their job or employer are determined by the outcomes they receive (e.g., pay, promotions). In fact, experimental and field research confirms that job and organizational attitudes are significantly affected by distributive and procedural fairness judgments, and the latter often exert greater influence than the former. Just as outcomes and process can be conceptually distinguished, judgments of outcome and procedural

fairness have been shown to be conceptually and empirically distinct.

The psychology of procedural fairness judgments is particularly crucial to understanding how affirmative action can be effectively implemented. Like many other human resource policies, affirmative action programs provide opportunities to members of some identifiable groups, but not others. Organizations are faced with an important concern: how can women and minorities' occupational attainment be supported without creating conflict between beneficiaries and non-beneficiaries? In cases of diminishing mobility generally, how can affirmative action be implemented without engendering the resentment of white males? If acceptance of affirmative action as a policy depended upon the outcomes it generates, resistance and hostility toward the policy could be expected from all white males. The fact that people do accept unfavorable outcomes when they judge the personnel (or more broadly, decision-making) procedure to be fair (Folger & Greenberg, 1985; Greenberg, 1986; Tyler, 1991) suggests that affirmative action procedures judged to be fair may also be accepted (Tyler, 1993). In his analysis of survey data on affirmative action attitudes drawn from a random sample of California residents in the San Francisco Bay Area, Tyler (1993) explored the factors determining people's procedural fairness judgments. If procedural fairness judgments can generate support among employees for whom the policy generates less favorable outcomes, an important question is whether men and women and members of different racial and ethnic groups in organizations would use the same criteria to determine if a procedure is fair. Tyler (1993) finds that both groups do use the same criteria. However, less than 7 percent of the variance in perceived fairness could be explained.

Tyler (1993) also examined the basis of support for affirmative action policies. He found that judgments of policy fairness underlie people's policy support. In regression analyses, policy fairness judgments were significant even when controlling for other possible predictors of policy support such as demographic variables, ideology, attitudes toward the economic system, and the perceived effect of affirmative action on one's own and the other ethnicity. While Tyler (1993) was able to explain significantly more variance in white than black respondents' policy support, policy fairness was the strongest predictor of support in both groups. Experimental research (Nosworthy, Lea & Lindsey, 1992) provides additional evidence that perceived program fairness is central to affirmative action endorsement.

In an analysis of the relationship between procedural fairness and policy fairness, Tyler (1993) found that procedural justice proved to be a significant determinant of Blacks' policy fairness judgments, while Whites' evaluations were significantly related to outcome. These results correspond to previous findings (Rasinski, 1987) indicating that the relative importance of procedural and outcome fairness may vary among groups (e.g., conservatives and liberals). One of the key differences between affirmative action programs and other human resource policies is that the characteristic that is commonly perceived to determine outcomes received -- group membership -- is for all practical purposes inviolate. Whether in fact group membership plays a central role in the affirmative action implementation is less important than the fact that employees, especially those in non-targeted groups, typically perceive it to be the primary criterion (Northcraft & Martin, 1982). The role of procedural fairness will be greater the more employees believe that career outcomes are not completely determined by group membership; in the latter case, outcomes would explain all of the

variance in affirmative action endorsement among non-beneficiaries because few Americans could judge such a procedure to be fair.

2. Conditions Facilitating the Acceptance of Affirmative Action

Perceptions of discrimination underpin attitudes toward affirmative action. Smith and Kluegel (1984) found that sex-role beliefs among women predicted their beliefs that sex discrimination is a problem. Among men, those in higher prestige occupations were more likely than those in low-prestige occupations to perceive discrimination against women (Crosby & Herek, 1986). Neither maternal nor spousal employment predicted perceived employment discrimination against women for the men surveyed (Crosby & Herek, 1986).

When seeking support for a "remedy" such as affirmative action, a consensus must exist that there is a problem to be fixed (Kluegel, 1985). Awareness of gender and race-based discrimination in employment does vary; endorsement of the principle of non-discrimination among contemporary Americans typically does not.

This phenomenon (endorsement of equality in principle, yet resistance to policies aimed at eliminating inequalities) has been termed the "principle-policy puzzle" (Sniderman & Tetlock, 1986). Unraveling this puzzle has been a major focus of affirmative research in sociology, political science and social psychology. Much of the research on affirmative action and other social policies regarding race attempts to relate political values to endorsement or resistance to the policy (Sniderman & Hagen, 1985; Sniderman, Brody, & Kuklinski, 1984; Kluegel & Smith, 1986). According to the values approach, Americans express resistance to or, at a minimum, ambivalence about affirmative action because it brings two core American values into conflict: meritocracy and equality (Lipset & Schneider, 1978; Sniderman, Tetlock, Carmines, and Peterson, 1993; Sniderman, Tetlock, Piazza, and Kendrick, 1992). Meritocratic (or equity) values prescribe that outcomes be allocated according to contributions. In contrast, individuals holding egalitarian values would be expected to endorse affirmative action, busing and policies aiding the poor.

However, in addition to meritocratic/egalitarian values, perceptions of the fairness of affirmative action can incrementally affect support for such policies (Barnes Nacoste & Powell, 1991; Nacoste, 1985; 1987; 1990; 1992; Peterson, 1994; Tyler, 1993).

Several studies support the argument that political values affect what is considered fair, but demonstrate that values do not directly influence policy attitudes (Barnes, Nacoste & Powell, 1991; Peterson, 1994; Rasinski, 1987). For example, Rasinski (1987) found that those survey respondents who endorsed the value of proportionality viewed equity-based public policies as fairer and considered Ronald Reagan as a fairer president than Walter Mondale. For these respondents, procedural justice was emphasized over distributive justice. In contrast, respondents endorsing egalitarian values viewed equality-based public policies as fairer and judged Walter Mondale as a fairer president than Ronald Reagan. They emphasized distributive justice over procedural justice. The finding that political values are related to the relative importance of procedural and distributive fairness on evaluations of personal experience agrees with previous research results (Tyler and McGraw, 1986).

However, two of Rasinski's (1987) findings suggest a more complex relationship between values and fairness judgments. First, judgments of distributive fairness were affected more significantly by value orientation than were judgments of procedural fairness. In fact, only 12 percent of the variance in procedural fairness judgments was explained by values and background factors (age, race, income, and governmental benefits received). Secondly, both individuals valuing proportionality and those placing greater emphasis on egalitarianism as a value judged the equity-based policy to be fair while also rating it as of little benefit to their group.

Increasing endorsement and decreasing resistance to affirmative action as a policy is just one of the important outcome variables related to the full employment of women and minorities. Once women and minorities enter the workplace, they face the challenge of being accepted as a coworker and frequently, as a newcomer in their workplace.

3. Conditions Fostering Effective Integration

Much of what we know about effective integration derives from our experience with school integration. In the wake of *Brown v. Board of Education*, social scientists have explored the factors leading to effective racial integration in schools. Interracial contact leads to greater racial tolerance when:

- 1) Cooperative interracial contact is provided for, both in classrooms and in extracurricular activities.
- 2) Human relations programs are integrated with the rest of the curriculum and are continuous.
- 3) School and district officials make their support for positive race relations clear and known to teachers, students, and parents (Hawley & Smylie, 1988).

Extrapolating from these findings, the organizational counterparts to these conditions could be recommended as part of workplace efforts to increase tolerance and acceptance of women and minorities: cooperative contact in social and task settings; diversity programs; and top management support for positive relations between men and women, ethnic and racial minorities and whites. School desegregation has produced changes which should influence relations in the workplace. Black students who attend schools involved in desegregation efforts are more likely to feel confident in their dealings with whites than blacks who do not experience desegregation (Braddock et al, 1984; Braddock & McPartland, 1983; Crain, 1984; Green, 1981, 1982; see Hawley & Smylie, 1988). In assessing the overall effects of school desegregation, Hawley and Smylie (1988) conclude that these efforts usually enhance academic achievement among minority youth without adversely affecting the progress of white children (p. 293). Most encouraging is the data demonstrating that recent college entrants (early 1980's), a group who were subject to school desegregation throughout their educational career, evidence increasing support for school desegregation and majority support for mandatory busing as a means to achieve the integration of minority students (Meyer & Evans, 1986).

This lends further support to a phenomenon that may be seen in affirmative action attitudes over time. Attitudes toward racial policies implemented by the government tend to become more positive over time (Oskamp, 1991, p. 395) and when implementation is described as imminent rather in the distant future, attitudes tend to be more positive

(Nosworthy, Lea & Lindsey, 1992).

E. Legal Constraints

A 1991 Supreme Court decision raises the possibility of making Federal anti-discrimination law simply beside the point. Any employer who disagrees with the employment law as promulgated by the U.S. Congress and interpreted by the U.S. Judiciary may potentially opt out in favor of a system of private arbitration. That, in an exaggerated form, is the specter raised by the Supreme Court's decision in the case of *Gilmer v. Interstate/Johnson Lane Corp.* 111 S. Ct. 1647 (1991).

An earlier generation of labor law decisions supported the rights of parties in collective bargaining to choose an arbitrator's interpretation of a collective-bargaining contract. *Gilmer* crosses far beyond this in that the Supreme Court defers to a private arbitrator's interpretation of U.S. law, in this case the Age Discrimination in Employment Act. The threat raised by *Gilmer* may be limited by two factors. First, the arbitration clause in *Gilmer* was not directly in an employment contract. Second, employers have to balance the potential benefits of private justice against the potential costs of reducing the monetary and time barriers to complainants. No one knows how widespread *Gilmer* type private arbitration clauses have become.

When the Civil Rights Act of 1964 was enacted, some assumed that employers would easily sidestep its obligations by clothing discriminatory interest in facially neutral techniques. The adverse impact doctrine that developed from the Supreme Court's decision in *Griggs v. Duke Power* has held employers liable to prove the business necessity of facially neutral employment policies or procedures that screen out a higher proportion of members of protected groups than of others. The courts are, however, reluctant to interfere in what it views as capital decisions. For example, some employers are thought to have selected sites for new factories guided in part by a desire to avoid minorities (Cole). Such racially motivated siting is often difficult to distinguish from the ongoing suburbanization of employment. The victims usually do not know the employment opportunities they have lost, and the courts are loathe to interfere.

On a smaller scale, an employer who is willing to jettison entire work groups or business units will almost always be able to clothe this as a business decision even when it is a convenient way to sidestep the law. Subcontracting offers similar opportunities to offload potentially troublesome employment decisions and to keep minority or female intensive occupations at arms' length. The effective constraints of these methods are probably their direct costs to business rather than legal prohibitions.

The anti-discrimination law requires that the war against discrimination be fought one company at a time. This relinquishes all economies of scale and plays into the standard defense of divide and conquer. Consider for example an industry with no women. Statistically this would be highly unlikely in any sizeable industry. But the law operates at the level of the firm or smaller. If the industry is made of thousands of small employers, each might be effectively immune from challenge under adverse impact doctrine because considered individually the absence of women could easily happen randomly. In this light, one of the relative strengths of the contract compliance program is its ability to target industries

without direct evidence of discrimination at each employer. Indeed, Jones (1985a) has argued that affirmative action was originally viewed as a counterweight to pervasive rather than particularistic discrimination.

The make-whole remedies that female victims of discrimination were limited to before passage of the Civil Rights Act of 1991 also limited the law's effectiveness. The law requires victims to mitigate their damages. As the law is effective over time in improving employment opportunities for women, it becomes easier for victims of discrimination to mitigate their damages by finding another comparable job. But then the potential liability of the remaining discriminating employers is correspondingly reduced and the law loses effect because of its own past effectiveness.

The private bar has been a leading force in pursuing discrimination claims. Changes in the judiciary's treatment of attorney's fees have reduced the incentives for plaintiff's attorneys. This is a powerful mechanism both because the EEOC is over-burdened, and because no one is going to march on Washington to demand higher fees for attorneys.

Plaintiffs in discrimination cases can rarely afford the legal expenses typical in litigation. Private attorneys then usually work on a contingent fee basis. To the attorney, a discrimination case is a risky investment. Losing can mean losing all the time and effort invested in developing the case. Winning in court means a judge will review their fees for reasonableness. Some courts have held that the contingent nature of the attorney's reward should not be considered in determining reasonableness. Under this standard, the plaintiff's attorney is not compensated for bearing the risk of not being paid in case of loss. This reduces the incentives of the private bar to pursue discrimination claims.

Judicial protection of an employer's right to be self-critical appears to have eroded recently. In a recent sex-discrimination case against Lucky Stores, Inc., plaintiff presented evidence of managers' discriminatory attitudes that surfaced during diversity training workshops sponsored by the employer. The concern is that use of such material to establish liability will chill the employer's attempts to discover and ameliorate discrimination.

F. Institutional Constraints

During the development of the Civil Rights Act of 1964, the National Labor Relations Board was considered as an alternative model for the Equal Employment Opportunity Commission. The idea was to avoid a litigation model in favor of a board with its own investigative, rule-making and dispute resolution powers, including the authority to issue cease and desist orders. In practice, policy in this area has evolved around the litigation model instead.

In some sense, there is a missing institution. If the employees and management of a company wanted to agree among themselves on some "fair" allocation of promotions, hires, or layoffs there is no mechanism in place in non-union firms to accomplish this. Even if all protected groups under Title VII prefer the negotiated outcome, there is no legal mechanism to prevent individuals who believe their interests have been sacrificed for the greater good of the group from undercutting the agreement. Outside of unionized establishments, there is no institution to develop consensus among workers and represent their views to management. If management wanted to reach an understanding with employees about "fair" job allocation, there is no one at the other end of the telephone. This contributes to individual complaint processing, costly and damaging litigation, or no resolution.

G. Information Constraints

Apathy is one of the chief obstacles. While some companies talk about the benefits of diversity, the number who place a high priority on it because they see it as in their self-interest is probably quite limited. There are few examples publicized of the business advantage gained by companies that aggressively removed glass ceilings. To many people, affirmative action represents a threat. The OFCCP's valuable contributions to reducing discrimination and improving employment opportunities and fairness in the work place are for the most part invisible. They typically are dwarfed in public perceptions by the costs and burdens of regulation. The OFFCP has only in recent years begun to inform the public of its accomplishments. As the Office of the Inspector General of the Department of Labor stated in its 1985 report, the OFCCP, "does not attempt to regularly measure or report on the results of its activities to determine what impact, if any, they have" (p. 1). "The lack of data, methodology, and criteria for evaluating program results leaves the Congress, the Executive Branch and the public uninformed about the usefulness of past, present, and future expenditures for OFCCP" (p. 3). Most company specific accomplishments are protected by privacy restrictions, but these would not bar the OFCCP from publicizing industry or area wide initiatives. This probably reflects the lack of clarity and consensus in the goals of affirmative action, as well as a fear of provoking backlash. These affect even private employers who are afraid to publicize minority or female gains within their companies. If everyone believes that Affirmative Action is about redistribution rather than efficiency, then one group's bigger cut of a fixed employment pie can only come at the other groups' expense.

Ultimately, individual workers are best placed and motivated to detect acts of disparate treatment. However, they also face severe information constraints concerning systematic employer behavior. For example, a rejected job applicant typically does not know the complexion? or gender of those hired. Over the past quarter-century, litigation by those already hired over promotions, pay, job assignment or layoff has outpaced litigation over hiring. Incumbents not only feel greater entitlement to their jobs, they are much better informed about internal company perspectives and outcomes. Of course, some of the requisite data on establishment or company demographics is reported to the EEOC and the OFCCP on EEO-1 forms. Again however, privacy restrictions have precluded public release of this information. The EEO-1 data itself is of a limited nature. It pales next to what is available to the OFCCP in Affirmative Action Plans, or even what is available to the EEOC from public sector employers. For example, Smith and Welch (1984) present evidence of selective title inflation in EEO-1 reports. Minority or female intensive occupations are reported at a higher occupational level by employers than by employees. Some of the ambiguities in occupational classification that invite such abuse could be limited by reporting wage and salary group information as well, as is done by public employers.

VII. How to Fail

There are innumerable paths to failure. The history of anti-bias policies offers many examples, a few of which are reviewed here.

A. Lack of Political Will

The fundamental failure of anti-bias policy is a failure of political will. We have an ambiguous and conflicted policy because we have a conflicted electorate. Without a stronger consensus, it is costly to lead. This is particularly so in the case of affirmative action, resulting in a program lacking clear goals, strong enforcement, or great results. The lack of consensus is also apparent in the ever shifting search for a rhetoric that resonates. How else to make sense of the jumps - without noticeable change in action - from "affirmative action" to "glass ceiling" to "diversity?"

Sometimes the framing of an issue leads to surprising success. David Duke became in effect the lead lobbyist for the Civil Rights Act of 1991, almost single-handedly transforming it from a quota bill to a non-quota bill by demonstrating the dangers of race-baiting. At about the same time the government enacted its most explicit requirement for preferential treatment in employment. But this most explicit form of affirmative action is never labelled affirmative action and is never included among the complaints of critics of affirmative action. The Americans With Disabilities Act explicitly requires employers to make reasonable accommodations for the disabled. We can enact affirmative action legislation as long as we call it something else.

B. Budgetary Restrictions

The debate over legislating civil rights in employment has generated a great deal of attention. The practical budgetary and regulatory details of operationalizing these rights has proceeded with far less public notice. Each EEOC investigator faces thousands of complaints. Each OFCCP agent bears responsibility for hundreds of establishments. While the government has established the right not to be discriminated against in employment, it has also chosen funding and enforcement levels that leave private litigation as the most promising alternative for victims of discrimination.

C. Psychological Reactions

The subjectivity inherent in personnel decisions feeds into externalizing blame. Someone denied a promotion is rarely confronted by unambiguous objective evidence that could lead to only one decision. Given a choice between blaming oneself and blaming others the decision is usually straightforward. To make matters worse, anecdotal evidence suggests that organizations use affirmative action as an excuse when replacing poor performing white males with high performing minority employees (Graham, 1993, p. 432). The limited results of most affirmative action policies are not well known. The backlash against affirmative action is out of all proportion to its modest effects in practice.

1. Effects of Affirmative Action Policies on Beneficiaries

In a series of experimental studies, Madeline Heilman and her associates have demonstrated that women rate jobs less positively (Heilman & Herlihy, 1984), and evaluate their task performance, responsibility for positive outcomes, skills, and interest in remaining in a leadership position less positively when they associate their selection with preferential procedures (Heilman, Simon, & Repper, 1987). Interestingly, the effects found in Heilman et al (1987) did

not occur among men who were selected as leaders using the same "preferential" procedure. These experimental demonstrations of the negative effects of affirmative action confirm other findings on the devaluation of preferentially-selected women in leadership roles (Jacobson & Koch, 1977), male and female perceptions of female hires' lower competence in jobs associated with "affirmative action policies" (Heilman, Block & Lucas, 1992), and the association between perceived sex-based advantage and female managers' lower organizational commitment and job satisfaction (Chacko, 1982). Recent work (Turner, Pratkanis & Hardaway, 1991) suggests that even when women are assigned to sex-role consistent positions, preferential treatment adversely affects women's self-evaluations of ability and task performance.

In explaining the asymmetry between preferential treatment effects on women and men, Heilman, Lucas, and Kaplow (1990) explored the role of initial self-confidence in moderating derogatory effects of preferential selection. They found that when women received no task-related ability information and were selected preferentially, they were far more negative in their self-evaluations than were women selected on the basis of merit. This was not true for men: their self-views when provided with no information were not significantly different when selected preferentially rather than on merit criteria. However, when preferentially-selected women received positive ability information, their self-evaluations did not differ from those of women selected using merit-only procedures. Preferentially-selected men who received negative ability information did report more negative self-views than men selected using merit-only procedures.

These findings suggest two ways that the social context restricts women's job performance and, as a result, human resource policies which seek to improve women's attainment. As Heilman et al (1990) suggest, women have less performance self-confidence generally and sex differences in self-confidence are greater when the task is sex-typed as male. If women do not obtain performance-related feedback, selection methods may cause women to view their own performance unfavorably and experience role conflict (Chacko, 1982). This points to the importance of organizational efforts to retain, as well as recruit, female and minority candidates. After hiring and/or promotion, these candidates are likely to need frequent, clear job performance feedback. As Conrad Harper, President of the Association of the Bar of the City of New York, describes, "Employers can establish regular review periods and other objective checks on employee performance. We discovered that minority employees succeed more often in firms that have frequent reviews" (Graham, 1993, p. 432).

Women and minority employees' ability to succeed is also jeopardized by their solo status in the workplace. Much of the research on tokenism has focused on females within groups of mixed gender composition. Token status places women at a disadvantage because they receive greater attention and scrutiny, are viewed as more distinct from majority group members, and are perceived to behave in a manner consistent with group stereotypes (Kanter, 1977a). Individuals in solo status positions tend to be socially isolated and face greater difficulty in gaining recognition for their contributions. Evidence suggests that the greater performance pressure, social isolation and role entrapment that token women experience results in lower achievement (Spangler, Gordon & Pipkin, 1978). The achievement of women participating in more gender-balanced groups matched that of males. Experimental studies support these findings. When

women are solos in task-oriented groups, they are unlikely to be group leaders, overall group satisfaction is lower, and gender issues are more likely to be mentioned (Crocker & McGraw, 1984).

Affirmative action can highlight the distinctiveness of women and minorities and groups and therefore, exacerbate these effects (de Vries & Pettigrew, 1994). Thomas Pettigrew (de Vries & Pettigrew, 1994; Pettigrew & Martin, 1987) has proposed that beneficiaries of affirmative action face "triple jeopardy:" (1) they often endure solo status; (2) face prejudice; and (3) experience the stigmatization associated with affirmative action programs. This stigmatization arises from the widespread beliefs that coworkers hold regarding the meaning of affirmative action programs. Since these programs are frequently viewed as using race or gender as primary determinants in personnel decision-making, members of non-targeted groups assume that affirmative action "hires" would not have been hired under a "merit" procedure. They are stigmatized by the assumption that they are less able.

Heilman, Pettigrew and others' findings can be interpreted as evidence that affirmative action adversely affects both beneficiary's self-perceived competence and performance, as well as the attitudes of others' towards the "beneficiary" of preferential treatment. Affirmative action's effects of beneficiaries' self-views are important because such perceptions are tied to task choices and performance (see Heilman, 1994 for an explanation of how perceived self-efficacy affects performance). If women and minority employees feel less efficacious, they could "opt out" of difficult tasks which lead to greater career attainment (Heilman, 1994). Experimental findings also suggest that preferentially-selected women (versus women selected on the basis of merit) may react more negatively to other female job candidates in terms of both evaluations and hiring recommendations (Heilman, Kaplow, Amato, & Stathatos, 1994).

The danger is that backlash against affirmative action could sour intergroup relations. Stark evidence on this score comes from a cleverly designed public opinion survey analyzed by Sniderman and Piazza (1993). They find that what whites

"...think of policies devised to assist blacks influences what they think of blacks. Politics shapes as well as reflects public opinion, as the politics of affirmative action painfully demonstrates: whites have come to think less of blacks, to be more likely to perceive them as irresponsible and lazy merely in consequence of the issue of affirmative action being brought up. ...Affirmative action is so intensely disliked that it has led some whites to dislike blacks- an ironic example of a policy meant to put the divide of race behind us in fact further widening it." (p. 109)

These findings illustrate the difficulty of structuring affirmative action programs to support minorities and women's advancement without harming beneficiaries psychologically and creating resentment among non-beneficiaries. It might seem that affirmative action harms the very people it is aimed at helping.

2. Why and When is Preferential Treatment for Women and Minorities Harmful?

There are several views (see Heilman, 1994; Turner & Pratkanis, 1994) that seek to explain women and men's reactions to affirmative action and can be used to specify factors that should increase the acceptance of affirmative action

programs. While the role of individual attitudes, such as aversive racism (Dovidio, Mann & Gaertner, 1989), cannot be ignored, prescriptions for organizations can be derived from two views: institutional racism, and procedural justice.

Institutional racism focuses on the societal factors which shape attitudes towards racial minorities -- attitudes which can be held by the members of minority groups as well as majority groups. A major component of "triple jeopardy" is the assumption that affirmative action represents "help." (Turner, Pratkanis & Hardaway, 1993; see Turner & Pratkanis, 1994, for a review). Research on helping behavior (see Fisher, Nadler, & Whitcher-Alagna, 1982; and Nadler, Altman & Fisher, 1979 for reviews) suggests that people can respond negatively to what is intended as prosocial intervention because the intervention is viewed as feedback that one is failing. Both beneficiaries and observing coworkers can reason that if a female or minority candidate needs "help," their qualifications alone did not justify their being hired (Heilman, Block, & Lucas, 1992; see review Heilman, 1994; and Turner, 1994).

In most cases when people are helped, they have some other sources of information about their own performance and can determine if the help is an indication of failure. Research on preferential versus merit-based procedures indicates that it is only in cases of ambiguity (that is, the absence of performance feedback) that women view themselves as less competent and choose less demanding tasks when given preferential treatment (Heilman, Rivero & Brett, 1991). Women who received performance information responded no differently than women selected using a merit procedure.

One of the important findings in experimental research on affirmative action is that affirmative action procedures affect task choices and work-related attitudes via their effect on self-perceived competence (Heilman, Lucas & Kaplow, 1990; Heilman, Rivero & Brett, 1991; Heilman, Kaplow, Amato & Stathatos, 1993; see Heilman, 1994 for review). When preferentially-selected women received positive ability information, preferential selection had no deleterious consequences for its beneficiaries' self-perceptions or choices. Positive information indicates that the "help" embodied in preferential treatment is not needed.

Positive ability information is but one way to indicate to beneficiaries and non-beneficiaries that help is not needed and their attainment can be attributed to their merit. Helping research (Fisher, Nadler & Whitcher-Alagna, 1982; Nadler, Altman & Fisher, 1979) also indicates that environmental factors can alter perceptions of help and eliminate its negative consequences on recipient self-esteem. In the case of affirmative action programs, information indicating that women and minorities are subject to differential evaluation and discrimination in the workplace would facilitate both the acceptance of such programs and positive evaluations of beneficiaries. Sociological studies on Americans' general beliefs indicate that perceived discrimination against groups is a significant predictor of people's endorsement of affirmative action policies (see Kluegel & Smith, 1986). More research is needed to determine how organizational participants can be led to recognize whatever barriers exist in their own organizations so that they will understand and support efforts to equalize opportunities.

Evidence is accumulating that when affirmative action programs emphasize qualifications, but also consider, rather than place exclusive or predominant weight on, group membership, beneficiaries do not negatively evaluate their

competence and performance (Major, Feinstein & Crocker, 1994; Turner & Pratkanis, 1994). There is significant evidence that people can be self-protective and self-serving in their attributions (see reviews in Ross, 1977; Crocker & Major, 1989). In their model of attributional ambiguity, Crocker and Major (1989) propose that members of stigmatized groups can attribute negative feedback (e.g., rejection for a promotion) to prejudice against their group, thereby protecting their self-esteem. Major et al (1994) find that, in the case of sex versus merit procedures, men are more self-protective in their attributions for rejection than women. They were much more likely to cite their gender as the sole reason for their rejection. (Turner, Pratkanis & Hardaway, 1993; see Turner & Pratkanis, 1994, for a review). The tendency to be self-serving in one's attributions has been shown to vary based upon one's self-esteem (Epstein & Feist, 1988; McCarrey et al, 1982).

Research also suggests that organizations should emphasize the merit (i.e., qualifications) of all women and minorities who are hired if an affirmative action program exists (see also Pettigrew and Martin, 1987). Stereotypes regarding these individuals' performance are strong and if affirmative action is likely to be seen as "help," then information which can be used to counteract these stereotypes is crucial to their successful integration into the organization.

Experimental evidence (Rosen & Mericle, 1979) shows that while fair employment policies counteract sex bias in hiring recommendations, "strong" forms of the policy induced lower starting salary recommendations. Especially where organizations present managers with strong directives regarding the recruitment and retention of minorities and women, firms need to ensure that managers do not use lower salaries as a means to discriminate. Social psychological theories of reactance (Brehm, 1966) suggest that people will resent and resist policies which restrict their freedom. Affirmative action guidelines need to be clear about goals and equally clear in acknowledging managerial latitude (see Vrugt, 1992 for an example of decision-maker "reactance" in the case of preferential treatment).

What steps can be taken? As described earlier, implementation issues are critical to the acceptance of affirmative action measures in organizations. The fairness of procedures used helps determine both beneficiaries and non-beneficiaries' responses to affirmative action (Tyler, 1993; Peterson, 1994; Nacoste, 1985, 1987; Barnes Nacoste & Powell, 1991).

Openness about the procedures used in affirmative action programs seems central to employees' assessments of the fairness of such programs. When procedures are unclear, non-beneficiaries will view group membership as the dominant or sole reason for their poor outcomes and beneficiaries' successes (Major et. al. ,1994). In their review of organizational practices that support the inclusion of Black Americans, Pettigrew and Martin (1987) propose that organizations engage in more open communication about their affirmation action programs and distribute competency information about all new hires to emphasize the role of merit in personnel decisions.

Openness about procedures will only help if it reveals a decision-making process that can be evaluated as fair, given prevailing norms about fairness in American society. Quotas and preferential treatment raise strong feelings of unfairness. Fortunately in the case of procedural fairness judgments, some research demonstrates that universalistic

criteria (specific norms about treatment) rather than personal self-interest play the dominant role in shaping such evaluations (see Tyler & Lind, 1992 for a review). Perceptions of whether one gains or loses as a result of the procedure are not critical to seeing it as fair. This means that organizations which design and describe affirmative action procedures which embody norms of procedural fairness can obtain the support of both beneficiaries and non-beneficiaries for its programs. Furthermore, affirmative action programs which are clearly understood and viewed as procedurally fair should lead to more positive interactions in the workplace between members of benefitted and non-benefitted groups.

This literature suggests a number of guidelines for effective affirmative action or glass ceiling programs:

- Special training for white supervisors and interviewers so they can observe the greater detachment and negative interaction patterns that whites have with blacks (Pettigrew & Martin, 1987).
- Team and task design which creates goal and intergroup interdependence (Pettigrew & Martin, 1987).
- Reward structures which facilitate team cooperation and effective supervision (Pettigrew & Martin, 1987).
- Increasing numbers of women and minorities in clusters so as to eliminate the effects of solo status (Kanter, 1977a, 1977b; Crocker and McGraw, 1984; Pettigrew and Martin, 1987; Spangler, Gordon, & Pipkin, 1978).
- Evidence suggests that minorities are more likely to be in jobs filled by promotion within the firm and when vacancies are posted openly (Braddock & McPartland, 1987). This suggests that minorities may lag in some firms because they are seen as a greater risk. Firms which have strong internal labor markets may be more likely to promote minorities because of the additional information they glean about minority employees based upon their work experience in the firm. Firms which do not have strong internal labor markets and which do not have minorities in jobs at higher than entry-level should focus upon training and development programs which prepare minorities already in the firm for promotion, and conduct a careful analysis of their recruitment of minorities for non-entry level positions.
- Include line managers in advisory committees on diversity within organizations (Cox & Blake, 1991).
- Training should focus on both skill-building and awareness in interpersonal and inter-group relations (Taylor & Blake, 1991).
- Conduct research to assess the effectiveness of diversity programs and gather data to be used in on-going educational efforts (Taylor & Blake, 1991).
- Given the importance of navigating the informal culture to success in many organizations, firms can institute (or foster the less formal creation of) mentorship programs (Ford, 1988). Ibarra (1992, 1993) shows that men and women access differential resources through their networks within the firm, with women having to do more networking to access resources available to men with simpler networks. An organizationally-sponsored mentorship program can ensure that women and minorities are in touch with central figures in the organization who might otherwise not be in these employees' networks. Networks not only influence people's entry to

organizations, but are seen as critical to the retention of minority employees (Graham, 1993).

- Firms need to examine women and minorities' attainment in terms of both employment and salary patterns.
- Recruiting outreach programs which are targeted at women and minorities without presenting images that reinforce the sense that members of these groups are sought only because of their race or gender (Laabs, 1991).
- Successful recruiting can involve high school mentorship programs; curriculum enhancement programs relevant to the skills and knowledge areas that the firm ultimately seeks; and using database services which identify members of target groups within specified geographic areas.
- Top management commitment to affirmative action programs is one of the most frequently cited factors in ensuring program success (Hitt & Keats, 1984; Marino, 1980).
- Design of fair procedures in implementing affirmative action (Arvey, 1979; Cascio & Bernardin, 1981) and communicating with employees to ensure awareness of the procedures in use. Employee participation could be especially effective in increasing support among members of non-targeted groups.
- Affirmative action procedures are likely to receive greater support when they involve and are framed as gains for another group, rather than losses for one's own group because losses are so aversive to people (Kahneman & Tversky, 1984). Research shows that people are more motivated to avoid losses than to seek gains. Examples of procedures which can be framed as gains for another group are specialized training and mentorship programs which do not involve losses for non-targeted groups. Framing research suggests another way that programs can be implemented more effectively. The disadvantages which women and minorities face in gaining entrance and promotions in organizations can be highlighted, and members of non-targeted groups can be made aware of their "advantages" (e.g., social networks which include powerful decision-makers).
- Creation of grievance procedures so that employees who feel they have been treated unfairly can voice their complaint in a systematic way (Hitt & Keats, 1984).

There are some reasons to hope that the results of affirmative action programs will generate real change in the organizational dynamics which now stymie the policy and fuel the debate. First of all, affirmative action programs can eliminate the numerical distinctiveness that limits women and minorities' performance, self-confidence, comfort, recognition and social integration in the workplace. Kraiger and Ford (1985) found that black ratees were more likely to receive poor performance evaluations when in work settings where blacks constituted a small percentage of the workforce. Heilman and Martell (1986) found that when presented with scenarios which varied in their depictions of the percentage of women in a profession, evaluations of women's ability were greater when the percentage increased. When a few women populate an occupational population, negative stereotypes about women and assumptions that women may be beneficiaries of special help (e.g., affirmative action programs) can generate negative evaluations of those few women. However, when more women are present, observers seem more willing to believe that such representation

is related to capability.

The "numbers" are themselves a problem and one that can be changed. Attention to procedural fairness in the design of affirmative action programs can alleviate the concerns of members of non-targeted groups and enable the organization to meet its diversity goals. Procedural fairness matters to people in organizations because procedures convey a concern for an individual as a member of a group (Tyler & Belliveau, 1994; Tyler & Lind, 1992). Organizations seem to understand that for white males, affirmative action programs can stimulate anxieties about their status as members of the workgroup. This is reflected in organizations' diversity programs which increasingly try to address the needs of all employees. Some white males at DuPont, for example, expressed concerns about work and family balance and now, diversity programs attempt to target these issues and sub-groups of the employee population (Solomon, 1991). By affirming the organization's concern for all employees' needs, affirmative action programs targeted at women and minorities may be seen as special cases of an overall strategy to accommodate employees.

VIII: What We Do Not Know: Areas for Future Research

One simple question if given a clear answer would clear much of the overblown rhetoric concerning barriers to female and minority employment and the government's efforts to remove these barriers. In the standard model of employer discrimination embraced by the courts, a discriminating employer forgoes greater profits (Becker, 1971). Policies that reduce employer discrimination force the employer to employ minorities and women more profitably. If these policies push the employer beyond non-discrimination into reverse discrimination, profitability again falls.

This is a more formal way of saying that neither the claims that anti-bias programs have forced companies to hire the less qualified, nor the claims that diversity helps business have been verified. The tests that exist (Leonard, 1984; Newmark and Hellerstein, 1993; Cox, 1991) are not yet compelling. If the company specific EEO-1 data were combined with productivity data (as from the Annual Survey of Manufacturers) or with profitability data we could make substantial progress in laying many of these ghosts to rest. For a recent example of this type of study concerning EPA regulation, see Gray (1993).

Most evaluations of the government's anti-bias programs, including this one, have measured success in terms of increasing employment shares of earnings for minorities or women. But reducing inequality is not the same thing as reducing discrimination. Economists have typically measured discrimination in national samples such as the Current Population Survey as a wage residual correlated with race or sex after controlling for education, experience, age and a limited assortment of other factors (see Cain 1984 for a review). Heckman (1992) reports that racial discrimination so measured declined steadily until 1980, when it began showing some deterioration. Bound and Freeman (1992) speculate that weaker anti-bias enforcement contributed to widening racial earnings disparity after 1980. We would benefit from a detailed analysis of whether standard wage discrimination measures as well as earnings and employment disparities had narrowed significantly at firms as a result of Title VII or contract compliance pressure.

Surprisingly little is known about what techniques work at companies. The business press contains some success stories from human resource managers or EEO officers, but these are a selected group: the failures do not brag publicly. Moreover, their experience is unverified. Previous reports by the Department of Labor's Glass Ceiling Commission have publicized a number of useful initiatives. More systematic analysis of what techniques work for companies could be gleaned from an employer survey. Alternatively, and at less expense, the information already contained in affirmative action plans could be systematically analyzed.

Correspondingly little is known about the efficacy of regulatory techniques. Most of what has been reviewed here concerning the OFCCP dates from studies performed in the early 1980s using data for the 1970s and early 1980s. There have apparently been no publicly released systematic and detailed evaluations of the OFCCP in the interim.

EEOC actions that resulted in Court decisions are usually public knowledge, but the internal operations of the EEOC have not been studied as rigorously as those of the OFCCP - which is to say hardly at all, aside from a handful of U.S. General Accounting Office and U.S. Commission on Civil Rights reports. How the EEOC allocates its resources to particular cases and with what effect are generally not known.

IX: Horizons for Policy Alternatives

This section considers a range of possible alternatives, policies, mechanisms and institutions for removing glass ceilings.

A. Quotas

Quotas are likely to be highly effective in getting the numbers right. They are also a non-starter politically. Quotas have been administered with unknown results under the Federal government's procurement set-aside programs. The system of goals and timetables administered by the OFCCP have often been labelled as quotas, but in practice fall far short of this rigidity (Leonard, 1985).

B. Play or Pay

Play or pay systems for reducing employment discrimination are already formally in place in other countries. Informally, the current U.S. system might also be described as play or pay: an employer who does not meet his obligations under the law faces the risk of litigated damages or administrative penalty. Play or pay formalizes this, reducing uncertainty and ambiguity.

An example is provided by policy toward the disabled in Germany. Each employer faces a quota for the percentage of his employees who are disabled. Employers falling short of this quota pay into a fund used to rehabilitate the disabled.

From an economic perspective, the advantages of such a system are similar to those embraced in the Federal

government's establishment of a market for air pollution rights under the EPA. A price is explicitly rather than implicitly set on the right to use employment practices which have outcomes statistically indistinguishable from adverse impact discrimination. Employers can then make efficient decentralized decisions with much greater certainty and lower administrative and litigation costs. The price can be set not to ensure that every employer provides equal opportunities, but to ensure that all members of protected groups enjoy opportunities. Employers who find it less costly to improve protected group employment do so. Others pay a fine that could be used to support better training, or information networks, or enforcement.

The most problematic part of this proposal is that it requires publicly demolishing the myth that there is no price on rights. The public reception of a Congressional debate over the fines to be levied on those below quota is likely to be chilly, as the policy may offend both those opposed to quotas and those opposed to selling the right to discriminate. The current implicit system of setting this price buried in enforcement budgets and legal minutiae limits provocation.

C. Private Arbitration

The Supreme Court's 1991 decision in *Gilmer v. Interstate Johnson/Lane* has opened up the possibility of greater use of private arbitration of employment disputes. This has the advantages of speed, lower cost, greater tailoring to local circumstances, and decentralization. It may be attractive to employers who prefer private to public justice. It seems doubtful that Congress intended private arbitrators rather than U.S. judges to interpret U.S. law, or to let bloom a thousand private systems of employment jurisprudence. Unilaterally imposed systems may also reflect a power and information imbalance between employers and employees.

D. Employee Councils

Government regulation of labor markets has followed two distinct models. Most legislation has followed a highly concentrated model in which disputes are adjudicated in Congress, the Courts, or the Administrative Agencies. This is costly, time-consuming, and not well-structured to respond flexibly to changing circumstances. While there is a spectrum of increasing flexibility that runs from Congress, to the Courts, to the Agencies; all of these represent a slow, cumbersome, centralized decision-making process that is difficult to change but cuts a broad swath.

The National Labor Relations Act represents a distinctive approach, with an intent to decentralize dispute resolutions. The NLRA attempts to level the playing field. The government is chiefly involved in questions of process, leaving the parties to hammer out their own agreements specifying outcomes. This brings the process much closer to workers and employers, generating greater acceptance of its results. Research indicates that participation in dispute resolution leads to judgments that the procedure is fair (Earley & Lind, 1987; Lind, Kanfer & Earley, 1990; Thibaut & Walker, 1975; Tyler, 1987; Tyler, Rasinski & Spodick, 1985) and procedural fairness judgments affect disputants' acceptance of arbitration awards (Lind, Kulik, Ambrose, & de Vera Park, 1993). Outcomes can also be more closely tailored to the idiosyncrasies of the parties' own interests. The cost is the lack of standardization across work sites.

To those who believe the work place suffers from a missing institution, employee councils offer some attractions. The background includes an ongoing decline in the proportion of workers represented by unions and an ongoing increase in many work place disputes. The argument for Works Councils is more compelling in cases of work place public goods - such as health and safety issues - that are not efficiently allocated by the market, and in cases where individuals face greater information barriers. One might imagine empowering Works Councils to develop a consensus among workers and between workers and management on issues of fairness in employment (see Weiler, p. 286).

Both unions and management tend to see Works Councils as a Trojan horse. To management, they hide incipient unionism. To unions, they deflect unionism. Such balanced views suggests both the need and the potential of Works Councils.

E. National Fair Employment Practices Board

A National Fair Employment Practices Board might obviate the need for some current litigation, replacing that process with a Board with the authority to make rules and arbitrate disputes, modelled along the lines of the National Labor Relations Board. Granting the EEOC authority to issue cease and desist orders would strengthen its hand.

F. Pay Equity

Suppose the government required firms to develop measures of what jobs are worth and required that pay was in proportion to worth. Such policies have stalled in the Courts and in Congress. It surprises most people to learn that the U.S. government has long invited such policies from many of its contractors. The Department of Defense has quietly taken a leading position. Chapter 5-1000 Section 10 of the Defense Contract Audit Agency's Contract Audit Manual (1992, p. 552-557) requires that:

"When reviewing a contractor's compensation system, consideration should be given to the presence of characteristics which are generally indicative of a sound system. A sound compensation system:...provides for internal equity by establishing relationships among jobs or skill levels within the organization through job analysis, job descriptions, and job evaluation..."

5-1011 Review of Internal Equity or Consistency

a. Internal equity refers to the pay relationships among jobs or skill levels within an organization. It is one of the basic compensation policies all employers must confront when managing employee compensation. It involves establishing and maintaining equal pay for jobs of equal work and acceptable pay differentials for jobs of unequal worth. This is accomplished primarily through job analysis, job descriptions, job evaluations, and job structure. Every effective compensation system has a well defined system of internal consistency, managers may give special and exceptional wage increases that result in inequitable pay for jobs of equal worth...

b. When establishing pay structures, organizations may place primary emphasis on internal or external consideration or a blend of the two, depending on the needs of the organization. Refer to 5-1012 for a discussion of external considerations...

5-1011.3 Job Evaluation

Job evaluation is a formal process by which management determines the relative value to be placed on jobs within the organization. It involves the systematic evaluation of the job descriptions that result from job analysis. The job evaluation process compares jobs within an organization, and assembles these jobs in a hierarchy based on their worth which is a job structure. A formalized job evaluation system would be expected for most contractors with over 100 employees.

a. There is an almost limitless variety of evaluation methods emphasizing job content, but virtually all of them are modifications or derivations of the five major job evaluation methods listed below...

(4) Factor Comparison

In factor comparison, key (benchmarked) jobs are identified. A series of distinct factors such as skill, effort, responsibility, working conditions, or subfactors thereof are selected and set forth in an evaluation manual. Each key job is ranked within each factor listed in the manual. A monetary or point value scale then is assigned to each factor and apportioned to every job ranked within a factor. Nonbenchmark jobs, or new jobs, are added to the system by finding the most appropriate monetary or point value within each factor. Totaling the points from each of the factors produces the final job rate. Job description specifications are derived from the job factors which are contained in the evaluation manuals."(emphasis added)

While clause 5-1011b above provides a significant "out", the policy of setting pay according to internal rankings of "skill, effort, responsibility and working conditions" certainly walks and talks like comparable worth. The effects of this policy are unknown, as for the most part is the policy itself.

G. Information Disclosure

Current law treats a company's demographic profile as contained in its EEO-1 reports or Affirmative Action Plans as confidential, on the order of a trade secret. It is difficult to see what is saved by such a policy except embarrassment.

The threat of public embarrassment may be a very effective tool, particularly for companies retailing to the public. If EEO-1 reports were made public private citizens, employees and prospective employees would be much better positioned to compare employers and put each one's practices into perspective. The private bar would no longer have to rely solely on complaints that walked in the door. The wider availability of information would improve everyone's decisions. Plaintiff's attorneys would be better placed to discard meritless complaints and focus on egregious cases.

Aggrieved employees could more readily determine whether their perceptions were reinforced or unsupported by systematic patterns. And employers would know their employment practices would face the light of day.

An example has recently been provided by an enterprising team of reporters at the Wall Street Journal, which publicized EEO-1 type data for a number of large employers. (Wall Street Journal, "In the Recession, Only Blacks Had a Net Job Loss," September 14, 1993".) The exercise lead many employers to offer explanations for unusual declines in black employment and provoked others to reexamine their EEO policies.

H. Consortia

In some industries and areas consortia have developed with corporate support to fund improvements in

education, training, job information and work experience for minorities and women. These consortia also may help develop networks linking people to jobs. While those consortia often start with the most committed employers, they do commit more resources to improving the supply and qualifications of minorities and women.

I. Employment Audits

Currently most of the information that drives the government's enforcement efforts comes from employee complaints or from employer data on earnings and employment. The former is often discounted as idiosyncratic sour-grapes. The latter may hide subtle patterns and mislead concerning the presence or absence of discrimination.

The private sector has taken the lead in using employment audits to uncover independent evidence of hiring discrimination (see the Urban Institute, and the D.C. Committee on Civil Rights). These audits present an employer with two job applicants, controlled in an attempt to reduce all differences except race or sex.

Presumably, an OFCCP compliance review would be much more interesting the day after a series of such audits revealed that women or minorities were being systematically turned away from certain jobs. The draw-backs to employment audits include their cost, their vulnerability to charges of entrapment, the unclear standing of auditors as interested parties in court, and the limitation of the technique to hiring. The chief advantage of audits is their approach to a scientifically controlled experiment that isolates discrimination as a cause.

X: Administrative Improvements

Within the confines of current legislation some improvements are possible in the procedures employed by the OFCCP and the EEOC. This list is by necessity far from exhaustive because the internal procedures of these agencies are often publicly known in only general outline.

A: The OFCCP

The OFCCP's targeting of compliance reviews could be improved in a number of ways. It should be noted that the OFCCP may already have begun implementing some of these improvements. Unfortunately, with few exceptions, the actual targeting practices are not generally known outside the OFCCP. On paper at least, the OFCCP's Equal Employment Data Selection System (EEDS) seemed to sensibly target establishments with a relatively low or deteriorating participation rate of minorities or females, few past reviews, and poor past compliance. Size, growth, and community concerns are also claimed to factor in. However, practice in the field may well be at variance with these criteria, and concerns have been raised over persistent multiple reviews, out-of-date or incorrect data, insufficient targeting of smaller contractors, and inability to identify federal contractors, particularly in the construction sector (U.S. House of Representatives, 1987, pp. 102-105).

The only two published studies of the OFCCP's targeting of compliance reviews (Heckman and Wolpin 1976; and Leonard, 1985) both show that targeting is a random treatment with respect to sex or race. During the 1970s, establishments with smaller proportions of women or minority employees were less likely to be reviewed for compliance (Leonard, 1985). This is the opposite of the strategy one would expect if the OFCCP were focusing on the most blatant potential forms of discrimination. . Reviewing the same establishments over and over is a sure way to hit decreasing returns, but part of these multiple reviews were required before the award of large contracts.

Currently the OFCCP lumps all minorities together in its targeting (U.S. OFCCP, 1992). It investigates further only if the combined ratio raises suspicions. This invites employers to substitute one minority group for another while enjoying practical immunity from OFCCP pressure. Asians could be substituted for blacks, or Hispanics for Native Americans. This aggregation also double-counts minority women. The OFCCP can and should use the more disaggregated demographic groupings of the EEO-1 reports in its targeting

Current OFCCP targeting should capture many of the worst cases, but it will miss others. Currently the OFCCP flags for further investigation establishments with both a relatively low proportion of minorities or females and a high concentration into a few occupations of whatever minorities or women it does employ. This targeting strategy will systematically miss 1) employers with a relatively low proportion of minorities or females, as long as these are evenly spread over occupations, and 2) employers with an occupationally segregated workforce, as long as overall utilization is near the average. Granted that the combination of underutilization and occupational segregation is particularly troubling, the OFCCP should be concerned with employers displaying either of these problems, not just with those who display both. The OFCCP could easily remedy this deficiency by using an appropriately weighted index combining the underutilization and segregation indexes it currently uses.

OFCCP targeting also ignores minorities located outside Metropolitan Statistical Areas (MSAs). This is an overreaction to the general problem of small numbers, and is inappropriate in such cases as Hispanics in the rural Southwest, Native Americans in Alaska, or Blacks in the rural South.

Glass ceiling concerns could be more directly addressed by comparing protected group employment share in higher to lower level occupations as reported on EEO-1 forms, and by using promotion flow data already reported in Affirmative Action Plans. While these occupational categories provide useful information, the categories each span a broad range of jobs. Some evidence suggests employers have systematically reclassified upwards entire detailed jobs with heavy minority or female representation (Smith and Welch, 1984). The use of wage and salary information would obviate many of these problems, and allow a sharper focus on glass ceilings.

One great advantage the OFCCP enjoys is its ability to intervene pro-actively. This is especially useful in the grey area where evidence of discrimination is not clear cut enough to be compelling under Title VII. This suggests that the OFCCP enjoys a comparative advantage investigating the small populations at the tops of corporate hierarchies as well as employers whose small size largely immunizes them from adverse impact claims under Title VII. Smaller establishments historically have not been heavily reviewed by the OFCCP. However, the majority of employees work

in such establishments. In addition, while the larger companies typically have greater awareness of and a more systematic approach to EEO and affirmative action issues, they also typically have slower employment growth rates. All of these factors suggest that the OFCCP could usefully devote greater attention to smaller employers.

Inequality has increased within minority groups as well as between minorities and whites as the returns to education have increased. Observing this growing gap in 1986, the Study Group on Affirmative Action in its report to the U.S. House Committee on Education and Labor(1987, p. 13) recommended that:

"Employers should broaden the scope of their affirmative action policies to include efforts to help improve the quality of education in the schools to assure a steady flow of productive employees. This is especially important for employers in communities where minority group youth comprise a large part of the school population.

Further, because employment often is a major incentive for youth participation in academic studies, employers should consider expanding their hiring goals to include disadvantaged youth for part-time jobs during the school year, and full-time jobs during the summer. Broadening affirmative action plans to encompass efforts to improve the quality of the labor pool will help narrow the gap in economic opportunity, and increase the potential for later success in minority employment. Improved private sector linkages with the schools can be made by firms of all sizes and in most industries. Such public/private partnerships should be promoted as a central feature of affirmative action plans"

The OFCCP (as well as the EEOC) could also make greater use of positive incentives and public recognition of outstanding employers and unions. The role of these agencies in improving working conditions for all Americans- by promoting more open employment practices, reducing the use of extraneous criteria, and encouraging the use of employment practices and criteria related to job performance and business success, and encouraging better training, selection, communication and grievance systems- are not widely known or appreciated.

During the 1980s the OFCCP increased the number of compliance reviews by sacrificing their quality. This appears to have undercut the effectiveness of affirmative action (Leonard, 1987). Where possible, the desk audit procedures should be more automated. Parts of Affirmative Action Plans could be reported in a standardized format to facilitate this process. (The IRS comes to mind as an example of standardization in a more complex case). The resources released by automation could be redirected to field audits.

While compliance reviews taken as a whole have been effective in the past, there is no evidence that the detailed steps of the compliance review process are effective (Leonard, 1985). The OFCCP ends up attacked for nit-picking over paperwork without much to show for it. This suggests that the OFCCP emphasize broader patterns of minority and female employment advance rather than the details of process and procedure within companies.

The OFCCP would benefit from improved information management systems. Basic information concerning which employers are subject to the Executive Order is often out of date by the time it reaches the OFCCP, incorrect,

incomplete, or in forms that are difficult to manage. The Federal Procurement Data System (FPDS) provides the basic data on the contractor universe. Recent contracts, multi-year contracts, and sub-contracts are generally not included. The bridge between FPDS and EEO-1 data systems appears weak in form and substance, as the OFCCP devotes a substantial portion of its EEDS User's Manual to the problem of matching names by hand from micro-fiche. A computerized system could obviate the need for much of this hand-work. Accuracy, speed, and cost-effectiveness could be improved by using machine-readable files (diskettes) matched using Employer Identification Numbers (EINS) to locate contractors.

Subcontractors tend to be stumbled across accidentally during contractor reviews. First-tier subcontractors could be systematically audited if they systematically identified on either the FPDS or the EEO-1 data systems. In addition, employers who cease filing EEO-1 reports should be randomly surveyed to ensure they are in compliance with reporting requirements.

Employment goals reported to the OFCCP in AAPS are routinely inflated. A first step toward bringing these down to Earth would be to ask firms whether the implied growth in total employment is warranted in light of the firm's historical growth record. Inflated goals also suggest that too much weight has been given to firm's promises rather than to their accomplishments.

Employers appear to systematically and selectively reclassify upwards occupations with large minority or female representation (Smith and Welch, 1983). The OFCCP could vitiate this strategy of title inflation by extending the pay range data now routinely collected from State and Local governments to the private sector. Alternatively, the OFCCP could screen currently available data for unusual changes in the occupational distribution.

The historical record suggests that to be effective Affirmative Action policy requires governmental monitoring and sanctions. Past efforts to improve employment opportunities for minorities or worsen through jaw-boning or voluntary action without government monitoring and enforcement have left no residue of success. Exhortation by itself accomplishes little, but when even exhortation is lacking, affirmative action accomplishes nothing. Public attacks on Affirmative Action during the early 1980s by Attorney General Meese and his Assistant for Civil Rights, Bradford Reynolds, effectively undercut whatever threat of enforcement the contract compliance program had achieved to 1980. Employees responded to this message. With the change in political leadership and public rhetoric, minorities and women ceased to progress under the Contract Compliance Program. The OFCCP would make considerable progress just by returning to its pre-1980 state.

B. The EEOC

Throughout its history, the EEOC has been drowning in complaints from workers who believe they have been discriminated against. It has never had sufficient manpower or budget to investigate these complaints thoroughly. Nor has the EEOC pursued cases of systemic discrimination. Commissioner's charges have been exceedingly rare.

In recent years, a number of record breaking (\$100 million or more) settlements have been reached in cases

charging racial and sex discrimination. In many, if not all, of these cases, the EEOC had received complaints and performed preliminary investigations. In none of these cases did the EEOC attain the settlements ultimately achieved by private attorneys.

The EEOC's internal incentive system should consider not just the number of cases disposed of, but the quality of these dispositions as well. EEOC investigators who are inexperienced, poorly trained, isolated from legal, economic and psychological experts, and judged solely on the number of cases they close cannot be expected to successfully winnow and develop the most important cases of discrimination.

The EEOC would have a greater impact if it emphasized pattern or practice cases, and class actions affecting large numbers of employees. Towards this end, the EEOC might make more aggressive use of Commissioner's charges. It might more systematically combine complaint information with EEO reports to allocate its resources. For example, what are the characteristics of employers (complaints, demographics, industry, regional size, growth etc.) involved in Title VII litigation over the past 25 years (whether or not the EEOC was involved)? The record of past successful litigation (by private and governmental attorneys) may prove useful in directing the EEOC's efforts. The EEOC could also use EEO-1 data to flag employers with unusually low protected group employment within industries and/or areas.

The EEOC might reasonably be concerned with the extent to which private arbitration agreements are limiting its oversight of employment discrimination. In addition, the use of subcontractors and of independent contractors has been growing, and deserves greater attention to its threat to sidestep government regulation.

Finally, the government could use decennial Census data to identify industries with unusually high unexplained earnings differences across groups, or to identify industries with unusually low minority or female employment given their location and occupational composition.

XI. Conclusion

The Federal Government has now been engaged in an effort to improve employment opportunities for minorities and women and to reduce discrimination for more than three decades. This review of the effectiveness of the various federal laws and regulations in terms of their impact on the success of women and minorities in the labor market points out weaknesses in existing legislation, and provides a basis for evaluating proposals to strengthen existing programs. The key issues addressed in this review are how Federal policies and practices have affected the advance of minorities and women in the labor market, and how these policies and practices could most usefully be strengthened and improved.

Since World War II the Federal Government has in effect experimented with a variety of different enforcement techniques in its efforts to reduce employment barriers faced by women and minorities. Before 1965, the government primarily relied upon voluntary action by employers - without monitoring, sanctions or the threat of private litigation. It should not be surprising that no evidence exists indicating the success of this type of policy.

The Civil Rights Act of 1964 is the backbone of efforts to eliminate employment discrimination. By allowing private litigation, this act made every potential victim a monitor and put enforcement potential in the hands of those with intimate knowledge of the work place. The Supreme Court's 1971 decision in *Griggs v. Duke Power Co.* vastly expanded the reach of Title VII to include facially neutral practices that have an adverse impact on minorities or women. This landmark decision has led employers to reexamine every part of their employment policies and practices for evidence of potential liability for adverse impact claims, and has opened numerous doors for minorities and women. The Supreme Court's 1989 decision in *Antonio v. Ward's Cove Packing* temporarily undercut *Griggs*, until Congress reasserted previous standards with the Civil Rights Act of 1991. The 1991 Act allowed punitive damages for female victims of discrimination and restored much of the previous balance of burdens of proof in Title VII cases. In recent years, private litigants have been able to achieve record settlements and judgements under Title VII by establishing an intent to discriminate under Title VII's pattern and practice provisions. Liability in these cases has exceeded \$100 million, sufficient to capture the attention of corporate leaders and to revitalize their efforts to remove discrimination barriers.

Affirmative Action under the Contract Compliance Program administered by the Department of Labor's Office of Federal Contract Compliance Programs (OFCCP) represents the second major federal enforcement effort. The OFCCP regulates about one-third of private employment and can intervene pro-actively to reduce barriers to minority and women's employment. Before the addition of significant monitoring and sanctions with Executive Order 11246 in 1965, there is no evidence that employment patterns were changed by affirmative action. Sex discrimination was not prohibited by executive order until Executive Order 11375 in 1967. Between the late 1960s and 1980 the Contract Compliance Program reached peak effectiveness, but even this was modest. Women's employment share has not grown faster among contractors than non-contractors. Minority employment share has at best grown roughly one percent faster annually among contractors. After 1980, with monitoring still in place, but the threat of sanctions nearly eliminated, the contract compliance program ceased to have any general demonstrable positive effect on minority or female employment.

This review finds some consistent characteristics of successful enforcement, and suggests a number of possible improvements:

1. Only programs backed by strong political leadership, and implemented with monitoring and the threat of sanctions for non-compliance hold the promise of substantial progress.
2. The OFCCP could strengthen its enforcement by:
 - . greater use of sanctions for non-compliance, including back-pay awards, and possibly damage rewards currently available under the Civil Rights Acts of 1964 and 1991.
 - . targetting employers with either low representation of minorities or women, or highly occupationally segregated minority and female workforces, rather than requiring both as a prerequisite to enforcement.
 - . setting goals more realistically but holding employers more accountable for reaching them.

- . using employment audits, or testers.
- . using disaggregated demographic data in its targeting.
- . The desk audit procedures should be more automated. Parts of Affirmative Action Plans could be reported in a standardized format to facilitate this process. (The IRS comes to mind as an example of standardization in a more complex case). The resources released by automation could be redirected to field audits.
- . Glass ceiling concerns could be more directly addressed by comparing protected group employment share in higher to lower level occupations as reported on EEO-1 forms, and by using promotion flow data already reported in Affirmative Action Plans. The use of wage and salary information would obviate problems of title inflation, and allow a sharper focus on glass ceilings.

3. Throughout its history, the EEOC has been drowning in complaints from workers who believe they have been discriminated against. It has never had sufficient manpower or budget to investigate these complaints thoroughly. Nor has the EEOC focussed on cases of systemic discrimination.

The EEOC's internal incentive system should consider not just the number of cases disposed of, but the quality of these dispositions as well. EEOC investigators who are inexperienced, poorly trained, isolated from legal, economic and psychological experts, and judged solely on the number of cases they close cannot be expected to successfully winnow and develop the most important cases of discrimination.

The EEOC would have a greater impact if it emphasized pattern or practice cases, and class actions affecting large numbers of employees. Towards this end, the EEOC might make more aggressive use of Commissioner's charges. It might more systematically combine complaint information with EEO reports to allocate its resources. For example, what are the characteristics of employers (complaints, demographics, industry, regional size, growth etc.) involved in Title VII litigation over the past 25 years (whether or not the EEOC was involved)? The record of past successful litigation (by private and governmental attorneys) may prove useful in directing the EEOC's efforts. The EEOC could also use EEO-1 data to flag employees with unusually low protected group employment within industries and/or areas.

4. Public education helps establish the basis for effective policy. All Americans benefit from the government's efforts to ensure fair employment practices and eliminate the use of employment criteria that are not job or business related. The role of Federal agencies in improving working conditions for all Americans- by promoting more open employment practices, reducing the use of extraneous criteria, and encouraging the use of employment practices and criteria related to job performance and business success, and encouraging better training, selection, communication and grievance systems- are not widely known or appreciated. All employees benefit from fairness in employment. Employment policies that are procedurally fair, or that are a response to demonstrated employment discrimination, are more widely accepted.

5. The simplest and perhaps the most powerful method to improve compliance with anti-discrimination and affirmative action obligations is to make public basic information on the employer's workplace demographics. The threat of public embarrassment may be a very effective tool, particularly for companies retailing to the public. If EEO-1 reports were made public, then private citizens, employees and prospective employees would be much better positioned to compare employers and put each one's practices into perspective. The wider availability of information would improve everyone's decisions. Plaintiff's attorneys would be better placed to discard meritless complaints and focus on egregious cases.

Aggrieved employees could more readily determine whether their perceptions were reinforced or unsupported by systematic patterns. Employers could judge their own position with greater clarity, and could more easily learn best-practice techniques.

6. The OFCCP and the EEOC could benefit from better internal policy evaluations and better public information efforts. Both suffer from public ignorance about what they really do. Systematic internal policy evaluations would help reveal more about the effectiveness of various enforcement tools and provide a sound basis for focusing the government's efforts. Research investigating the effects of increasing diversity and reducing glass ceiling barriers on productivity or profitability would be useful.

Endnotes

1. These data are available only for establishments that have undergone a compliance review and were made available by the OFCCPs Division of Program Analysis. Of the roughly 27,000 centrally documented reviews, 19351 are identifiable. For the period before consolidation of employment activities into the OFCCP in 1978, records are available of reviews conducted primarily by the DOD. Fortunately, the DOD accounted for roughly half of all preconsolidation reviews. For example, in 1976, 10,647 reviews were conducted, of which 5050 were performed by DOD [13, p. 113], and of which about 4300 were centrally reported in detail. Among the numerous contract compliance agencies prior to 1978, DOD enjoyed one of the better reputations for strict enforcement, so by examining a sample of primarily DOD reviews we start with one of the more rigorous enforcement efforts. To the extent that defense contractors are heavily dependent on the federal government, and more so than the reverse, we may be looking at a situation in which the government stands in a relatively strong bargaining position.
2. Multiple reviews at the same establishment are not rare. Of the 19351 reviews at identifiable establishments, 13125 represented multiple reviews. Of these 10768 were conducted in consecutive years, at 79 establishments. These pairs of reviews were analyzed in Leonard (1985). Some establishments experienced more than one set of consecutive reviews. While this research design allows the use of one consistent data set, it depends on repeatedly reviewed establishments, which may differ from the average contractor establishment, or even from the average reviewed contractor. In particular, the large defense contractors who have been reviewed a number of times may expect to be reviewed frequently, and so conform more carefully to regulations and adhere more closely to promises. If so, this study may overstate the average impact of affirmative action promises. This question could be answered empirically in future work by matching the compliance review records with data on consequent realizations from EEO-I reports. While the use of a sample multiple-reviewed defense contractors may overstate the impact of affirmative action, I believe this is unlikely to significantly bias the results reported here. Reviews are primarily a function of size. The multiple-reviewed establishments studied here are significantly larger than other contractor establishments. They are also more black, but otherwise do not differ greatly in their initial demographics.
3. Other estimates referred to in Leonard (1985) test for the information content of affirmative action goals by regressing the actual growth rate of employment share on the goals that had been set a year earlier. The results are very strong. The establishments are clearly not reporting as goals their national expectations of employment share growth. A 10 percentage point increase in the projected growth rate of employment share would imply actual increases in subsequent growth rates of 1.0, 0.5, 1.9, 16.5, and 1.9 percentage points for black males, other minority males, white males, black females and white females, respectively. These inflated goals far overstate subsequent achievements. On the other hand, except for nonblack minority males, these regressions show a significant relationship between the goal and the realization. Knowledge of the goal is useful in determining future demographics. This point is examined in further detail in the discussion below.
4. In addition, as a companion paper (Leonard, 1985) and an analysis of an earlier period show (Heckman and Wolpin), it is by no means clear that as a matter of practice the OFCCP brings greater pressure to bear on "intransigent" establishments in targeting compliance reviews. In other words, conditional on size, reviews are practically a random treatment.
5. Since there are six demographic groups, there are only five independent share equations to be estimated. The reported employment patterns are thought of as a sample statistic for the establishment's true employment propensities, so the regressions are weighted by initial year establishment size to correct for heteroskedasticity. The SMSA variables are included to control for local market conditions and the year variables are to control for the macroeconomic fluctuations.
6. These three were selected from a list of 14 reported deficiencies because they were expected to be most closely related to observed employment demographics.

7. Healthy macroeconomic growth plays an important role in accommodating minority and female employment. While results for other groups are mixed, white males' employment share growth is relatively slower outside the recession years of 1975 and 1990.

8. The detailed regulation variables are included to form a stricter test of the information content of the projections. The essential point is that the projections are not collinear with past growth and the regulation variables. The projections contain information useful in predicting the subsequent growth rate beyond that contained in the past history of growth and enforcement. At the same, projections do not contain (efficiently use) all past information, since past growth and some of the enforcement variables have significant nonzero coefficients. Some of the enforcement variables may be significantly nonzero because they occurred after the projections were formed, others because the projections inefficiently use past information-as is the case with past growth rates.

9. When results are compared across demographic groups, the value of the projections is weaker and less significant for minority males. One might expect promises for females to be less costly to fulfill because of the concurrent increase in female labor supply, but it is not clear why employers should appear less prescient in forecasting the share of minority males than that of other groups.

10. We know that minority and female employment shares increase in growing establishments, so errors in projecting total growth will reduce the accuracy of share projections. To insulate from this effect, the regressions referred to above were repeated for the subsample of establishments that grew by at least 10 percent during the projection year. To the extent that this truncates the bottom of the sample on the basis of a variable that is correlated with the dependent, it may possibly bias coefficients toward zero, although Goldberger shows bias toward zero is not guaranteed when the dependent variable is incidentally selected in a multiple regression. The power and significance of the projections are much greater once the possibly confounding errors in projected growth are reduced in this fashion. There are two factors at work here. First, it is far easier to increase minority and female employment in establishments that grew. Second, we expect establishments that are surprised by a recession to overstate the workforce openings they will have for minorities and females. Establishments that grow stick far more closely to their projections than do stagnant or shrinking establishments.

11. A variant of this argument is that firms may be conservative in their projections and set minimum goals that they have a high probability of achieving. Since projections outrun subsequent realizations by roughly ten to one on average, such conservative firms appear to be rare.

12. Letter from Brenda McChristian-Brooks, National Association of Manufacturers, December 2, 1981.

13. The study of the inner workings of the affirmative action negotiation process would amount to futility compounded if that process were shown to be without substance and of theatrical value only. The next step is to explore in more detail the nature of the affirmative action bargaining process, particularly as part of the federal contracting process.

14. This section and section VII(D) draw upon Belliveau (1994) which contains a more detailed analysis of the social-psychological determinants of the success of affirmative action.

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