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One of the trumpeted virtues of a competitive market is that price will be driven toward value. If one were trying to auction off a one hundred dollar bill to an informed group of bidders, the winning bid would be very close if not exactly equal to $100. Workers also have value, and try to sell their labor in competitive markets. If, hypothetically, race or sex could not be observed, a worker's "intrinsic" value would be his or her marginal product. Therefore, one might say that there is no *effective* discrimination in a labor market if workers are paid their marginal product (even if there are lots of discriminatory employers who would not hire members of a particular group). But in real labor markets, workers may not be paid their marginal product if employers, fellow employees, or customers do not like their race or sex, or associate these demographic conditions with some undesirable attribute.

Note then an important difference between a capital market, where price of a traded security will tend to closely approximate value, and a labor market, where wages may systematically depart from intrinsic value, as determined purely by marginal product. There has never been a call for law to equate price and value in capital markets, yet for the last half century, law has been asked to perform that function in labor markets increasingly more frequently. Indeed, it is quite likely that if labor markets in 1964 were as highly efficient as capital markets are today, the country would not have passed Title VII of the 1964 Civil Rights Act, which banned discrimination in employment on the basis of race, sex, religion, and national origin.

But labor markets cannot be as efficient as capital markets, where a limited number of fungible securities are traded at very low cost in a setting where accurate pricing will bring enormous rewards to the many trying to detect any possible divergence between price and value (Donohue 1994). In 1964, the huge discrepancy between what a Southern black could earn compared to an equally educated white prompted federal legislation designed to accomplish what the market had yet to achieve: the elimination of the divergence between black wages and the value of black labor. Of course, "value" in this statement means the intrinsic value of the worker's marginal product, not the contingent value that exists in the untrammeled discriminatory free labor market. In this sense, the initial goal of Title VII was to achieve what a perfect capital market would be expected to achieve without legal intervention: intrinsic equality (Donohue 1994). On this, and the themes mentioned throughout this article, see Donohue (1997).

Becker's Theory of Discrimination

With the Civil Rights movement in full swing, the modern economic writing on employment discrimination began in 1957, with the publication of the first edition of Gary Becker's seminal work *The Economics of Discrimination*. As a piece of deductive analysis, the book has many strengths as one would expect from such a commanding intellect. At the same time, the book has deep flaws, some emanating from its deficiencies in economic modeling, and some from the defects in its premises. But perhaps the worst defect, one that is not quite fairly attributed to Becker, is that this work was used by some to battle federal antidiscrimination law in the early 1960s, and it succeeded in inhabiting the minds of economists in a way that seemed to stifle further theoretical developments in much the way that weeds can often stifle the growth of more desirable vegetation.

Becker posited that racism is simply a taste to avoid contact with certain racial or ethnic groups, not unlike a taste for tart apples or red wine. From this simple premise and the assumption of perfectly competitive labor markets, Becker drew a number of very counterintuitive conclusions about the nature of discrimination during the era of Jim Crow in the American south.

The basic motivation of the Becker model of employer discrimination was to provide a theory that could explain why Southern blacks did so poorly relative to Northern blacks (and Southern whites) without positing that Southern blacks were being exploited and without assuming that hostility towards blacks was greater in the South than the North. Rather than white employers being enriched through the exploitation of cheap black labor, Becker posited that white employers were harmed by discrimination, and had to give up profits in order to indulge their preference not to associate with blacks. If, in a competitive labor market, one or even many employers refused to hire blacks or systematically underestimated their productive potential, then other employers would make handsome profits from stepping in and hiring the shunned or undervalued black workers. This was a powerful theoretical critique that was designed to blunt the force of seemingly plausible theories in which discrimination was a means by which a powerful group exploits a weaker group. The view that consciously exploitive intentions or unconscious psychological forces or cognitive biases prompt employers to discriminate against blacks runs into the theoretical buzz saw of the Becker model of employer discrimination -- as long as some employers can be found who prefer profits to prejudice. In a capitalist society such as the United States, one would imagine that many entrepreneurs would be driven by the bottom line -- to the benefit of all victims of non-productivity based discrimination by employers.

It is hard to imagine that anyone writing in the late 1950s could be so oblivious to the plight of Southern blacks to argue that employers who discriminate against a class of workers for a reason unrelated to productivity will be driven from the market, unless one has a decidedly Keynesian view of long-run tendencies. Remarkably, many economists accepted Becker's theory as dispositive proof that no legal prohibition on employment discrimination would be needed, since the market would fully protect blacks against discrimination. This naive assertion -- so obviously detached from the reality of the American South in the period prior to 1964 -- has provided fuel for the critics of economics, even though many talented economists were highly critical of the Becker model. Indeed, Kenneth Arrow chided Becker for developing a theory of employment discrimination that "predicts the absence of the phenomenon it was designed to explain." (Arrow 1972: 192.) Becker tried to salvage his model by arguing that the shortage of entrepreneurial skill prevented the competitive elimination of discriminatory cost differentials. He therefore acknowledged in 1968 that "discrimination exists, and at times even flourishes, in competitive economies, the position of Negroes in the United States being a clear example." (Becker 1968:

210.) But Becker's speculation about the shortage of entrepreneurs is highly unconvincing for the Southern labor market. No special skill was needed to know that hiring black workers in the textile industry would be profitable -- unless the scarce skill was knowing how to do this without having one's mill burned down by the Ku Klux Klan.

The widespread acceptance of the Becker model of employer discrimination is understandable given that the model only required two assumptions, both of which seemed reasonable and the second of which economists were well primed to believe: first, the source of discrimination is the purely individualistic racial animus of the employer, and second, the labor market is perfectly competitive. If both of these assumptions hold, then the Becker model will be true almost by definition, as long as profit-maximizing firms exist that can hire the under-valued black workers.

But although the *assumptions* of Becker's model might have seemed reasonable when he initially authored this work, the *predictions* of the Becker model diverged sharply from reality: the market was showing little sign of disciplining discriminators in the South, as evidenced by the enormous and enduring gap between black and white wages in that region, even after controlling for human capital attributes like education and experience. In fact, the large earnings gap was not being eroded by nondiscriminatory Southern employers snapping up black workers at bargain wages. To the extent there was any black progress in the South prior to the mid-1960s, it resulted from increasing black education and from black outmigration to higher-paying jobs in the North (Donohue and Heckman 1991).

The apparent reasonableness of the assumptions of Becker's employer discrimination model coupled with the strong and understandable theoretical predictions that emerged from the simple and elegant theory certainly contributed to its prominence. But of equal importance to its success was its value in promoting a congenial political position based on a philosophic antagonism to governmental intervention. Thus, Milton Friedman, writing in 1962, announced that:

> [Antidiscrimination] legislation involves the acceptance of a principle that proponents would find abhorrent in almost every other application. If it is appropriate for the state to say that individuals may not discriminate in employment because of color or race or religion, then it is equally appropriate for the state, provided a majority can be found to vote that way, to say that individuals must discriminate in employment on the basis of color, race or religion. The Hitler Nuremberg laws and the laws in the Southern states imposing special disabilities upon Negroes are both examples of laws similar in principle to [antidiscrimination legislation]. (Friedman 1962: 113.)

While Friedman's equation of Nazi laws and Jim Crow legislation with a law *banning* discrimination seems rather odd in today's world, this view follows from his monolithic libertarian sentiments. While many see a tradeoff between the two important values of liberty and equality, Friedman values only liberty, and therefore governmental restrictions that curtail liberty are equally pernicious whether they are designed to promote equality (Title VII) or to inflict greater inequality (the Nuremberg laws). With two giants of economics marshaled behind the theory of employer discrimination -- for Becker, out of love for elegant abstraction; for Friedman, out of love of libertarianism -- this theory flourished in the fertile soil prepared by academic economists. Interestingly, though, as Becker described, alternative assumptions that the racial discrimination in the South was fostered either by white employees or by customers would have led to very different conclusions than the model of employer discrimination, for in these alternative cases, competitive markets would encourage employers to discriminate. In some ways, the left discouraged the acceptance of these alternative models by blaming the existence of discrimination on malicious employers rather than on fellow workers or customers (Reich 1977).

In retrospect, it is now clear that the assumptions of the Becker model of employer discrimination, however plausible they may have seemed, were either incorrect or incomplete. First, the conception of discrimination as an individualized taste, like the taste for apples, missed the significance of Southern race discrimination as a social phenomenon. Whether a person likes or dislikes apples will have an impact only on a trivial dimension of that person's behavior. But during that era, a Southerner who chose not to discriminate against blacks was deciding to reject an entire social system built on the ideology of white supremacy. Second, Becker's associational preference model disregards one of the most salient facts of American racism in the South -- that whites were frequently and intentionally in close contact with blacks, but only in very specific settings. Blacks commonly were hired to raise white children, but they were prohibited from entering the front door of a white Southerner's house. White employers were happy to have black workers -- but only in jobs where their subordinate status was constantly reaffirmed.

Third, even if employment discrimination was in part motivated by employer animus, it was also caused by the animus of fellow workers and customers, and by the desire to use race as a proxy for productivity -- so-called statistical discrimination. Fourth, the Southern labor market was at best not as highly competitive as a modern efficient capital market, and was undoubtedly mired down by the cartel-like influence of racist governmental restrictions, and the enforcement mechanisms of racist norms and racially motivated violence. As Robert Higgs observed, Becker's conception of discrimination was more applicable "to a kind of tea party discrimination than to the blood and steel of the southern racial scene." (Higgs 1977: 9.)

The Status-Production Model of Discrimination

Motivated by the deficiencies of the Becker model, Richard McAdams (1995) has developed what he calls the status-production model of race discrimination. According to this model, racism emerges because it can serve the interests of those who practice it. McAdams argues that race discrimination is the avenue by which members of a group seek to raise their self-esteem by lowering the status of the group against whom they discriminate. McAdams uses the status-production model to explain that whites with the most limited abilities to produce status in other ways will be most likely to discriminate. Furthermore, the status-production model gives insights into the nature of racial stereotypes, and the persistence of race discrimination.

If discrimination were purely the product of malign intent or cognitive bias, the Becker is correct that the market would tend to eradicate it by rewarding employers who harbored no such intent or who were less hampered by distorted thinking. McAdams sees discrimination quite differently as a rational -- that is, effective -- means of elevating one's own status. McAdams' status production model of racial discrimination posits that whites can form socially connected groups that elevate their self-esteem by investing in the subordination of blacks. But while the notion of racism as subordination was hardly novel, McAdams was the first to address how racism can avoid the free-rider problem: whites have an incentive to enjoy the benefits of the higher esteem afforded to whites but not to bear the costs of subordinating blacks. To Becker, the presence of widespread discrimination would enable a white employer to make added profits by hiring the productive black workers that other employers have shunned. McAdams responds that the desire for esteem in a socially connected group both motivates individuals not to violate the primary norm of racial subordination of blacks and generates a secondary norm that requires sanctioning those who violate the primary norm. Consequently, the profit-seeking entrepreneur who attempts to hire the shunned black workers will face sanctions from other whites. In this way, the desire for intra-group status diminishes the free-rider problem. The enforcement of racist norms was undoubtedly an important force in the pre-1964 South, but there is some question whether it is a significant factor in America today. For an attack on McAdams' article that claims "The time has come to stop beating the dead horse of Jim Crow," see Epstein (1995: 1108).

Becker vs. McAdams

Given these real-world complexities, Becker’s model of employer discrimination was an inadequate theoretical guide to race discrimination in the early 1960s and before. Clearly, McAdams better depicted the cartel-like ability of social norms to impose restrictions on black labor during the era of Jim Crow. But ironically the world has changed substantially enough – in part because the libertarian advice of Friedman was ignored and federal efforts to break down the Southern system of apartheid succeeded – that the Becker model may now provide insight into racial discrimination despite its inauspicious advent. Moreover, the Becker model may still be useful in dealing with other types of discrimination where employer distaste -- perhaps against the disabled, the elderly, or other ethnic or religious groups -- is a more individualistic feeling rather than part of a complex social structure that is reinforced by strong community norms. Thus, there is evidence in the labor market that physically unattractive individuals earn less than more attractive individuals, and that this effect is stronger for men than for women. Daniel Hamermesh and Jeff Biddle (1994:18) find that "The 9 percent of working men who are viewed as being below average or homely are penalized about 10 percent in hourly earnings," while the earnings penalty for the least attractive women is only 5 percent. (see also Averett and Korenman 1994.)

Nonetheless, these disparities appear to be enduring, which may reflect an inconsistency with Becker's employer discrimination model. Perhaps, the key insight that Becker overlooked is the power of agency costs to influence hiring in private firms. The owners may want the best worker, but if the managers like to look at pretty faces – or don't want to hire blacks -- the interest of the owners will be sacrificed to some extent.

Is There a Basis for Anti-Discrimination Legislation?

While obvious equity arguments can be raised in support of anti-discrimination law, the question arises whether there are plausible *efficiency* grounds for such legislation. A necessary but not sufficient condition for government intervention in the labor market on efficiency grounds is the presence of some market failure. Richard Posner (1987) provides the standard economic argument on the basis of Becker's model that there is no market failure, and that therefore there is no need for antidiscrimination law. Consider the following four arguments that discrimination does constitute a market failure that justifies the existence of federal legislation.

First, under the McAdams' model, the attempt to transfer wealth and status from blacks to whites through racial subordination is costly for both groups, creating a mutual effort to manifest disrespect for each other that produces no positive social product. In general, economists disfavor the expenditure of real resources purely for the purposes of transferring, as opposed to creating, wealth. A prohibition of racial discrimination, like that of theft, will hopefully shift individuals from engaging in a socially wasteful competition towards conduct designed to advance their interests by creating wealth -- such as, securing more education and working harder.

Second, the empirical evidence that over a long period of time the Southern labor market failed to elevate the wages of blacks to their true productivity suggests that some market failure was operating (Donohue 1992). Epstein (1992) identifies the market failure to be the pernicious involvement of racist Southern governments, and others, such as McAdams, have noted the influence of strong racist customs. In either event, federal legislation appears to have substantially aided Southern blacks beginning in the mid-1960s. Of course, it now matters greatly whether the need for the Title VII intervention was generated by racist government or racist attitudes. In Epstein's view, Title VII, having tamed the racist state governments, has served its purpose, and can now be repealed. But interestingly, there was almost no explicit legislation banning blacks from working in manufacturing in the South, although the exclusion of blacks was often quite complete. For discussion of the historical issues, see Donohue (1992) and Heckman (1997).

Third, Donohue (1989) proposes that a form of market failure exists when the market is incapable of generating certain seemingly beneficial transactions. It is conceivable that an employer’s decision to terminate discrimination would enhance the productivity of the workforce to such a degree that, in theory, a Pareto-improving agreement to end the discrimination would be possible. Implementing such a contract, however, would in essence require the victims of discrimination to pay the discriminator not to discriminate. But the very act of making such a payment would establish the presence of what the contract was designed to eliminate.

Fourth, Donohue (1992) has argued that discrimination can be thought of as causing an external harm to those who view such conduct as a breach of one of the moral bases of our democracy. Given the widespread objection to private discrimination in the employment sphere, one could liken such discrimination to the external harm caused by pollution. Since the market will maximize welfare to market participants, this claim will only provide an efficiency justification for employment discrimination law if the value to the discriminator of discriminating is less than the burden on both victims *and moralists* (those who dislike invidious discrimination directed against others).

Interestingly, while many economists would oppose the consideration of the utility of moralists, the Coase Theorem provides an argument that this utility should be included in evaluating the efficiency of a ban on employment discrimination. The Theorem assumes that, in a world of zero transaction costs, parties will come together and agree contractually to arrange their affairs in an efficient -- or wealth-maximizing – manner (Coase 1960). As a result, lawmakers in the real world who are trying to promote efficiency should mimic the wealth-maximizing solution that would emerge in the zero transaction cost world. The Coase Theorem yields an obvious resolution to the problem of employment discrimination: such discrimination would be banned by the agreement of all parties if the benefits to discriminators were outweighed by the costs it imposed on victims *and moralists*, since this defines the wealth-maximizing outcome.

Accordingly, those who argue against considering the utility of moralists in evaluating a ban on discrimination may find themselves in the conceptually awkward position of opposing an employment discrimination law that would be adopted by the agreement of all parties in a zero-transaction cost world. Nonetheless, the unwillingness to consider the utility of moralists may be justified by pragmatic considerations: it may not be feasible to weigh the utility of moralists in light of the difficult problems of accurate preference revelation.

The primary problem is that there is no observable market that identifies the value of the public good of reduced discrimination that is provided by an antidiscrimination law. Therefore, we do not know how much the public would be willing to pay to secure this reduction in discrimination. While one can survey the population to determine what they say they are willing to pay for such a law -- this is called the contingent valuation method -- this approach raises intractable issues concerning the truthfulness and reliability of such responses. But not knowing the value of the external cost of discrimination is not a basis for concluding that the value is zero. For plausible, yet highly speculative, values of this external harm, an employment discrimination law could satisfy a cost-benefit analysis: "If the average adult American would [be willing to] forego $100 per year to maintain the basic Title VII regime, then the benefit of the statute would be $17.5 billion;" "If the annual costs of litigation and government expenditures are $1 billion, the compliance costs are $6.5 billion, and the productivity losses are $7.5 billion, the total cost of EEO law and regulation would be $15 billion." (Donohue 1992:

1602, 1605.) Under these circumstances, the law would be efficiency enhancing since the yearly benefits would exceed the yearly costs.

Prohibiting Discrimination Versus Taxing It

Cooter (1994) carries the efficiency question one step further by applying the economic critique of regulation to antidiscrimination law. If the goal of Title VII is to promote the employment of blacks or other groups, one can achieve these goals at lower cost by relying on market incentives rather than a universal prohibition of employment discrimination. Thus, Cooter argues that, if market-like instruments replace bureaucratic rules wherever possible, the cost and coercion of achieving policy goals will be reduced, while efficiency and liberty will be advanced.

The prospect that moving to a regime of market incentives to further equal employment opportunity goals could reduce the productivity losses imposed by a more rigid prohibition suggests that Title VII is inefficient compared to the more flexible market-based regulation. But a shift toward setting a price on discrimination rather than prohibiting it might substantially reduce the symbolic *benefits* of Title VII. If so, Cooter's proposed regulation might lower both the costs and benefits of EEO regulation, with uncertain consequences for the overall cost-benefit calculation.

Ideally, we would like individuals to be motivated to adhere to the norm of antidiscrimination by an appreciation of the unfairness of and social harm imposed by employment discrimination. To the extent that the blanket prohibition of such discrimination that is embodied in Title VII underscores and buttresses the acceptance of the moral principle of antidiscrimination, the law has an important symbolic effect. This instructional impact would be dampened if the blanket prohibition were replaced by a market-based regulatory scheme. Such a scheme would be particularly unattractive if the market-based approach would be less effective than a universal condemnation in inducing Americans to change their prejudiced attitudes, since such benign attitudinal shifts cause the great costs of discrimination to shrink (Donohue 1986, 1987).

Derrick Bell (1992) satirizes an imagined Racial Preferencing Licensing Act that would enable whites to purchase permits allowing them to discriminate against blacks in business. To Bell, relying on market incentives to reduce discrimination would be tantamount to "the legalized reincarnation of Jim Crow." (Bell 1992: 59.) Are the obvious benefits of the market-based approach to dealing with employment discrimination large relative to the sacrifice in the symbolic impact of Title VII that would be needed to achieve them? Is the symbolic value of a legal prohibition of discriminatory conduct in the workplace so great that we value it more highly than improving the employment prospects of black Americans? Note that any desired degree of stimulation to black employment is achievable at least cost through the market-based approach -- unless the law is an effective technology for diminishing prejudiced attitudes.

Citizens commonly seek to use governmental power to confer special benefits on themselves. This process of "rent-seeking," which is socially wasteful, can be restrained when there are clear theoretical limits on the appropriate extent of governmental largesse. A prohibition on intentional racial discrimination provides a relatively clear limit on governmental power. But Cooter's proposed scheme to use explicit market incentives to increase black employment has no obvious theoretical constraint, which implies that parties would rent-seek by vying to raise or lower the target employment of blacks. The rent-seeking problem is likely to be acute for any policy of affirmative action, and perhaps even in the case of a prohibition of disparate impact discrimination, if groups will try to argue, on the basis of ostensibly compelling moral justifications, that higher and higher quotas or targets are needed to achieve true equality.

Just as the suggestion of economists that the problem of pollution could be more cheaply addressed by using market incentives to reduce emissions was at first viewed as outlandish but is now part of the Clean Air Act, a similar transformation may occur in the arena of employment discrimination. In fact, Germany has already adopted such a tax-subsidy scheme designed to encourage the employment of disabled workers (Pfaff and Huber 1984). But implementing this approach would probably be easier in dealing with discrimination against the handicapped, women, or the elderly since one would expect them to be rather uniformly spread around the country. Blacks, however, are highly concentrated in certain geographic locations, which suggests that either different targets would have to be set throughout the country (which increases administrative burdens) or certain areas would find it quite difficult to meet quotas and therefore would pay taxes disproportionately (which is politically infeasible).

How Common is Race Discrimination In Employment Today?

Joleen Kirschenman and Kathryn Neckerman (1991) try to discern the extent of employment discrimination by surveying 185 Chicago employers concerning their views about black workers. In contrast, the Urban Institute tried to ascertain whether employers discriminate not by asking them, but by examining their conduct in field experiments in which black and white "audit pairs" were sent to apply for similar jobs in a number of cities, including Chicago. Both studies examined the process of selection in the same type of low-skilled jobs, although the Urban Institute testers were limited to pursuing job openings that were advertised in newspapers. James Heckman and Peter Siegelman (1993) evaluate the evidence from the Urban Institute studies and demonstrate that the difficulties in trying to test for discrimination are far greater than one might expect.

The Urban Institute study of Chicago employers, discussed by Heckman and Siegelman, found that 85.8 percent of the time, black and white job testers either both got the job or both were rejected for the job to which they were applying. In 9.6 percent of the audits, the white tester got a job and the black did not, and in the remaining 4.5 percent of the audits the black tester got the job and the white did not. This degree of discrimination in low-skilled jobs in Chicago might seem surprisingly low given the finding by Kirschenman and Neckerman that, when asked about the work ethics of whites, blacks, and Hispanics, 37.7 percent of the Chicago employers ranked blacks last, 51.4 percent thought they were the same, and no one ranked whites last. Given the current norms and legal pressures fostering equality, survey evidence is likely to *understate* true discriminatory attitudes, which lends added credence to Kirschenman and Neckerman finding of widespread discriminatory attitudes. But the Urban Institute study appears to find that the percentage of employers who will turn down apparently attractive minority workers is far smaller than the percentage of employers found by Kirschenman and Neckerman to hold these prejudiced beliefs. These two studies may suggest that employers discriminatory tendencies are being checked either by antidiscrimination law or by the market.

Since the audit pair study was designed to make the testers conform to mainstream expectations of appearance and conduct, the Urban Institute may have presented to employers exactly the type of "good" workers they are willing to hire. Therefore, a possible reconciling interpretation of the Kirschenman and Neckerman and Urban Institute studies is that they reveal the willingness of employers in the large majority of cases -- 90.3 percent -- to treat black applicants who conform to these mainstream expectations as well as, or occasionally better than, white applicants.

This small differential in the hiring rates of young applicants applying for low-skilled jobs must be interpreted in light of the governing legal context. The fact that discriminatory conduct, although present, was somewhat limited does not indicate that the law is unnecessary. The law may be effectively deterring discrimination. Epstein (1992), however, speculates that evidence of *reverse* discrimination would more likely have been found in the case of higher-skilled jobs or government employment. He also argues that the discrimination against blacks that was observed, rather than being the residual that was not deterred by Title

VII, may actually have been *caused by Title VII*. The rationale for this contention is that antidiscrimination laws potentially can increase the likelihood of discrimination if the risk of being sued for firing an employer is far greater, as it is, than the risk of litigation over the failure to hire a minority worker (Donohue and Siegelman 1991).

Have Anti-Discrimination Laws Been Effective?

The primary goal of employment discrimination laws is to eliminate or reduce discriminatory behavior. Achieving this goal should stimulate the demand for black workers and those in other protected categories, thereby expanding employment and elevating wages. Therefore, the first step in assessing the effectiveness of the law is to examine the historical trends in employment and wages to see if any positive gains have been made.

There is so much media focus on the high unemployment, poor education, and high crime in the black community that many Americans incorrectly believe that the economic condition of blacks has improved little, or has even gotten worse, over the last fifty years. Although there have been some adverse trends, it is important not to overlook the many dimensions in which considerable progress has been made. James Smith and Finis Welch (1989) have carefully documented the substantial improvements in income and education that American blacks have experienced in the post-war period. George Borjas (1994) has argued that blacks were finally able to get on the economic escalator, and start the ride up, sometime after 1940. While knowledgeable authorities agree that substantial economic progress has been made, this still leaves us with the difficult task of identifying the causal factors that explain this progress.

Smith and Welch (1989) attribute black economic progress to two main factors: improved skills resulting from increasing education, and migration out of the South in search of higher-paying jobs. Viewing these long-run historical forces to be of primary importance in explaining black economic gains, Smith and Welch doubt that federal civil rights initiatives played a significant role. John Donohue and James Heckman (1991), who focus more sharply on the precise periods during which blacks made greater economic gains than whites, find that long-run historical factors have not acted monolithically to advance relative black economic welfare throughout this century. Rather, Donohue and Heckman argue that the periods of black advance are episodic and seem to coincide with important antidiscrimination initiatives.

Evaluating the impact of a law such as Title VII is particularly difficult since its near universal coverage reduces the opportunity for making comparisons between similar firms that are and are not subject to the legal command. Moreover, while Donohue and Heckman document an apparent discontinuous jump in black wages beginning in the mid-1960s, it is difficult to separate out the gains resulting from Title VII, the government contractor compliance program, increased black political influence due to the Voting Rights Act, and the general diminution in discrimination that both prompted these legislative efforts and resulted from them, not to mention changes in the overall economy caused by the tight labor markets induced by the Vietnam War effort and the Great Society programs.

Nonetheless, an impressionistic story that black progress follows from strong governmental antidiscrimination and affirmative action measures can be teased from the data. James Heckman and Brook Payner (1989) examine black employment in the South Carolina textile industry throughout the 20th century and provide the most cogent illustration of Title VII dramatically impacting employment in an important manufacturing industry. There is now a body of evidence showing significant gains in black employment from the government contract compliance program, and we know that direct hiring of blacks by governmental entities has grown sharply over the last thirty years (and much of this growth in governmental employment of blacks has come outside of the South, and is therefore not the product of Voting Rights Act pressures).

A number of studies have shown that, relative to white wages, black wages jumped sharply over the decade beginning in 1965, but stagnated thereafter (Donohue and Heckman 1991; Bound and Freeman 1992). This may suggest that weakened affirmative action pressure and sundry legal retrenchments are responsible for the halt in progress. The argument that black welfare is strongly aided by governmental civil rights initiatives and impaired by governmental retrenchment is set forth in Carnoy (1994) and Orfield and Ashkinaze (1991).

Others believe that the post-1975 stagnation in relative black economic gains implies that the major benefits of antidiscrimination law have been achieved, and that further efforts to intensify enforcement would bring diminishing returns and increasing costs. For example, Dave and June O'Neill (1992) contend that current earnings differentials between blacks and whites reflect differences in labor market skills rather than discrimination. They write:

> Substantial differences between blacks and whites have been found in scores on tests measuring school achievement. For example, at the same age and schooling level, black men score well below white men on the Armed Forces Qualification Test (AFQT). It has been demonstrated that the earnings of both blacks and whites are positively associated with AFQT scores. It follows that, on average, blacks and whites with the same education level may not be viewed as equally productive by nondiscriminating firms.
>
> How much of the racial differential in earnings between blacks and whites with the same educational level can be explained by the AFQT differential? Results derived from analysis of data on individual black and white male earners in 1987 show that after controlling for AFQT differentials by race -- as well as years of schooling and region -- the earnings ratio increases from 83 percent to 90-96 percent. Among those with college training, the ratio rises above 100 percent. These results suggest that deprivation related to school, home, and neighborhood are more serious obstacles to the attainment of black-white equality in earnings than current labor market discrimination. (O'Neill and O'Neill 1992: 102.)

In other words, O'Neill and O'Neill contend that blacks still have an earnings disadvantage of roughly five to ten percent after one controls for AFQT scores and education, except for college educated blacks who now experience no earnings shortfall.

This evidence raises three possibilities. First, O'Neill and O'Neill believe that the unexplained gap in earnings between blacks and whites is now small, and the modest gap that remains is most likely the product of unobservable differences in productivity or motivation. Under this view, further efforts to improve blacks earnings should focus not on antidiscrimination policy but on improving the skills of black workers.

Second, the unexplained earnings gap between blacks and whites after controlling for education and AFQT score may in fact be the product of racial discrimination. For example, we know that increased education is associated with a greater willingness to pursue Title VII litigation (Donohue and Siegelman 1991). This might suggest that, when aggressively enforced, the law is effective in eliminating discrimination: college educated blacks are more likely to sue, and they now appear to suffer no discrimination, while less educated blacks are less likely to sue, and they may therefore suffer an earnings disadvantage of from five to ten percent. Indeed, when the legal pressure to hire black college men declined in the 1980s, the economic status of recent graduates began to decline significantly.

Third, John Ogbu (1991) has argued that the forces that lead to blacks scoring lower on AFQT tests, and other measures of intelligence or scholastic achievement may themselves be the product of a discriminatory culture. In this view, O'Neill and O'Neill have the direction of causation backwards: while they contend that the lower schooling achievement scores explain the lower earnings, Ogbu asserts that the discriminatory culture itself causes the poorer school performance. If one could remove the burden of discrimination from blacks, their schooling achievement and economic performance would rise. In support of this position, Ogbu notes that a disfavored minority in Japan, the Buraku, who have no physical or cultural differences from majority Japanese, are widely thought by majority Japanese to be wasteful, parasitic, and irresponsible. In the face of such prejudice and discrimination, the Buraku in Japan do indeed perform poorly in school and on IQ tests relative to majority Japanese. Ogbu notes, however, that when the Buraku are transplanted from this culture of discrimination to the United States, they perform at the same level as majority Japanese in the United States. Although Ogbu's findings are intriguing, one would want to be certain that they are not explained by differential migration to the United States by the most talented Buraku. (see also Claude Steele 1997.)

In evaluating the data on black and white relative wages, note the importance of the claim advanced by Posner (1987) that employment discrimination laws have elevated black wages but have lowered overall employment, and thus have operated much like an increase in a minimum wage law. As Donohue and Heckman (1991) document, over the last thirty years, employment rates and labor force participation rates have indeed dropped more for blacks than for whites. Would Title VII be an attractive policy if it improved the lot of 90 percent of blacks but harmed the remaining, and worst-off, 10 percent? But it is not clear that Title VII has contributed to the declining rates of employment and labor force participation, since there are many other possible explanations for this phenomenon -- higher social service spending on welfare and disability, increases in the minimum wage, the loss of manufacturing jobs, the beneficial increase in black post-secondary education, the growth of the illegal drug trade.

Over the past thirty years, another major federal program that has tried to stimulate black employment is the government contractor compliance program, which has required major government contractors and their sub-contractors to take affirmative action to ensure that they do not have gross underutilization of minority employees in any of their broad occupational categories. The program is designed to make the public pay for any lost productivity or training costs that are needed to implement affirmative action, since the contractors pass the costs on to the government purchasers. In other words, the costs of the contract compliance program are designed to be borne by government -- which makes sense given the nature of the moral debt owed to black Americans. This approach contrasts with one in which the government imposes burdens on private employers by requiring all firms to have affirmative actions plans.

A number of studies show that this pressure did benefit blacks, at least through 1980, when the Reagan Administration drastically reduced oversight of the program (Donohue and Heckman 1991). But, Smith and Welch suggest that black employment may have only shifted away from the non-contractor sector to the government contractor sector. In other words, the fluid nature of labor markets may have undermined the desired stimulative effect on overall black employment, if the law has only served to influence the location of black employment, without elevating overall black wages. This shuffling could occur if a modest increase in wages among the government contracting firms induces a large shift in employment to that sector -- that is, if the intersectoral elasticity of supply of black labor is high. Nonetheless, even if blacks simply shifted their location of employment, the presumption is that they were induced to do so by the lure of higher wages. Accordingly, when enforced, the program seems to have benefited blacks to at least some degree.

John Bound and Richard Freeman have noted that some recent adverse trends in the economic well-being of black males correspond with slackening antidiscrimination and affirmative action pressure:

> Evidence that Equal Employment Opportunity and Affirmative Action help explain the huge improvements in relative earnings of the late 1960s-early 1970s ... implies by symmetry that weakened pressure would have the converse effect. The large decline in the relative earnings and downgrading of the occupational position of young black college men found in our data is what one would expect from firms no longer facing an affirmative action gun, since young college men were the major beneficiaries of the previous decades' pressures. (Bound and Freeman 1992: 229.)

Bound and Freeman also note how young blacks were hit particularly hard over the last two decades by the decline in union manufacturing jobs -- the very jobs that so much time and litigation effort on the part of the EEOC and NAACP was devoted to opening up to blacks in the late 1960s and early 1970s.

Thus far we have only spoken of benefits; we must also inquire about costs of the contract compliance program. Here again, the opponents of affirmative action are prone to enormous exaggeration. Figures of $100 billion or more are trumpeted as the *annual* productivity loss associated imposed by the alleged departures from meritocratic hiring that are generated by government pressure to advance black workers (Hartigan and Wigdor 1989: 19; Epstein 1992: 237). But a cost of this magnitude would leap out in an empirical assessment, and Jonathan Leonard has concluded that "direct tests of the impact of affirmative action on productivity find no significant evidence of a productivity decline." (Leonard 1990: 61.) Admittedly, there are pecuniary costs, but they are likely to be in the neighborhood of $5 - $10 billion -- only a fraction of what the critics assert (Donohue 1992).

Yet, other more subtle costs may exist. For example, affirmative action programs could stigmatize blacks or undermine worker initiative and responsibility by encouraging blacks to coast and whites to complain about and justify their own failures. O'Neill and O'Neill speculate that "its main impact may have been to generate divisiveness and ill will." (O'Neill and O'Neill 1992: 103.) Although these are difficult questions that go to the issue of remedy, they are conceptually distinct from the claims that American society has done enough to redress the wrongs of the past, or that there was no justification for affirmative action in the first place.

Conclusion

With recent economic trends leading to a widening earnings gap between blacks and whites, particularly for younger and less-educated blacks, the mounting pressures *against* affirmative action for blacks may signal a reversal of the relative economic gains of blacks (Holzer 1994). Somewhat paradoxically, though, the retrenchment in policymaking designed to favor blacks has come at the same time that greater federal or state antidiscrimination or affirmative action protection is being adopted on behalf of other groups, such as gays, women, the disabled, and cigarette smokers (Donohue 1994). The reasons for and ultimate economic impact of these conflicting political pressures are still unclear.

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