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EMPLOYMENT: A PROPOSAL

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ABSTRACT

This paper discusses some of the reasons why present policies to combat racial discrimination in employment have had only limited success. The present approach is based on the principle of "color-blindness" in most cases. In the author's view, more emphasis should be given to the use of quotas. A specific proposal to this effect is presented. While the proposal has some disadvantages, the author argues that it is superior both to the present Philadelphia Plan and also to Galbraith's "Plan to Promote the Minorities."

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In recent years, this country has become increasingly concerned with the issue of racial inequality. While this problem has many dimensions, economic inequality has received increasing attention during the past five or ten years. Statistically, relative income differentials are probably the most important measure of economic inequality. For example, the median income of black males was 60.5 percent of white males in 1970, compared with 52.5 percent in 1960.¹ Although this represents some improvement, we are still far from achieving complete racial equality.

Differences in educational attainment account for part of the racial income differential, but the largest component appears to be discrimination in the labor market.² In this paper we discuss efforts to combat labor-market discrimination under Title VII of the Civil Rights Act of 1964 and federal executive orders. We conclude with a suggestion for modifying the present approach.

In discussing the effect of the Civil Rights Act, we shall look briefly at the issue of enforcement procedures and then turn to substantive issues regarding the legislation. With regard to procedures, the first question is the scale of federal enforcement effort. As of fiscal year 1971, total appropriations for "private sector equal employment opportunities" were only thirty-four million dollars,³ with administration requests up to sixty-six million for 1973. Although the projected increase is encouraging,⁴ this figure is very small in relation to many other government activities. For

example, government expenditures on manpower programs totaled over three billion in fiscal 1971.⁵

Limited financial resources are not the only area in which current enforcement procedures are weak, however. The Equal Employment Opportunity Commission (EEOC) set up under the Civil Rights Act of 1964 has virtually no legal power with regard to employers, but is limited to the role of conciliation and negotiation. Until very recently suits could be brought only by private individuals or by the Justice Department. Such suits are very expensive for private parties, while the activities of the Justice Department in this area have been limited by a very small staff and lack of coordination with the EEOC.⁶

In the past Congress, legislation was passed that will enable the EEOC to sue in the courts whenever it believes a violation of Title VII has occurred. While this legislation should represent a significant improvement over the current situation, stronger procedures would have been possible and were seriously considered in the Senate. Under this alternative proposal, the EEOC would have been given the power to issue cease and desist orders. Thus, once the EEOC judged that discrimination had occurred, the firm (or other institution) would not have been allowed to continue that discrimination pending trial. This defeated proposal would have been more equitable since it would give blacks (and other disadvantaged groups) the benefit of the doubt once the EEOC ruled that discrimination did exist. Even if enforcement procedures were greatly strengthened, however, important substantive issues would still remain.

Substantive Issues in Enforcing Equal Opportunity Legislation

Title VII of the Civil Rights Act of 1964:⁷

It shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual or otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual's race, color, religion, sex, or national origin.

While this legislation was designed to improve the economic position of minority groups, it explicitly disavows a number of actions that might be taken to improve the labor-market status of blacks and other disadvantaged groups. These restrictions are concisely summarized in a recent unsigned article in the Harvard Law Review:⁸

The Act's effectiveness in promoting minority employment was limited by the principle of color-blindness. Just as the employer was not to discriminate against minority groups, he was also proscribed from showing preference to them. Employers could continue to set rigorous qualifications for their job openings and test for worker productivity, as long as they did so fairly. The Act thus includes an antipreferential provision (e.g., no quotas are to be necessary), affirms the legality of professionally developed ability tests, and protects bona fide seniority systems. Help was to come to the black community, Congress reasoned, by a newfound opportunity to be judged by objective standards.

Unfortunately such objective standards are not a simple matter to establish. Let us start with the issue of discrimination in hiring. We define such discrimination in the following way: assume that two identical jobs are available in a given company and that there are two equally qualified applicants. If one applicant is black and the other white, then discrimination would occur if the firm hired the white, not the black applicant.

Now, let us examine some of the problems that occur when we try to apply this definition to specific cases. The first difficulty is in determining when two applicants are equally qualified. In this area, the most

controversial issue has been the role of educational requirements, either amount of schooling (e.g., a high school diploma) or scores on various kinds of tests. Recently the Supreme Court addressed itself to the following issue:⁹

Whether an employer is prohibited by the Civil Rights Act of 1964, Title VII, from requiring high school education or passing of a standardized general intelligence test as a condition of employment in or transfer to job when:
a) neither standard is shown to be significantly related to successful job performances, b) both requirements operate to disqualify Negroes at a substantially higher rate than white applicants and c) the job in question formerly had been filled only by white employees as part of a long-standing practice of giving preference to whites.

The Supreme Court answered in the affirmative and also implied that condition c) might not be necessary for the prohibition to apply.¹⁰

As others have pointed out, however, it is probably impossible to have tests that are perfect measures of job performance.¹¹ Moreover, it is expensive to develop tests that are even moderately accurate, and the net costs are likely to be high even after taking account of resulting improvements in worker performance.¹² On the other hand, it may also be costly for the firm to completely ignore the educational background of its applicants.

It is not yet clear what standards of proof the courts will require in order for a firm to demonstrate that its hiring requirements are job related. However, it appears that the courts will have to become involved in some very difficult issues involving tradeoffs between efficiency and equity. As we shall argue later, there may be ways to avoid some of these difficulties by judging equity in terms of results rather than process.

Even if we can clearly determine when two applicants are equally qualified, there are other difficulties in determining whether or not an

employer is discriminating in his hiring. Specifically, an employer's recruitment policies must be considered along with his hiring requirements. For example, many firms recruit primarily through current employees. Such recruitment procedures have significant benefits for both the employer and those considering employment with the firm.¹³ However, if the present workforce is virtually all white, important issues of discrimination occur.

The courts have generally ruled that such recruitment procedures are illegal if they result in a workforce whose racial composition is significantly different from that of the community.¹⁴ The natural remedy is for the employer to begin advertising his job vacancies in media serving the black community and/or with civil rights organizations. However, the question arises as to how much of this new recruitment activity must be undertaken, especially since racial quotas in employment are specifically disavowed under Title VII. Again the courts appear to have been forced into a very difficult question.

Next, let us turn from the issue of discrimination in hiring to other issues of discrimination in employment. Perhaps the most important of these issues are promotions, layoffs, and discharges. Promotions (and discharges) are based partly on ability (or lack thereof) and thus qualification standards in these areas are subject to many of the same issues as hiring standards.¹⁵ However, seniority also plays an important role in most promotions and almost all layoffs. If there is no history of discrimination in hiring, then seniority rules pose no difficulty since seniority is easier to measure objectively than most other potential criteria. However, if there has been past discrimination in hiring or promotions, then seniority rules may help to perpetuate this discrimination far into the future.

Let us assume that, prior to the Civil Rights Act of 1964, a firm employed blacks only in certain unskilled, low-paying positions,¹⁶ and that, for whites, there was a well-defined ladder for advancement, with promotions going to the man with the most seniority among those in the next lowest job who are considered qualified. Now, let us consider how blacks are to be integrated into this seniority system after passage of the Civil Rights Act. Three main possibilities have been advanced:¹⁷

a) 'freedom now,' requiring displacement of white incumbents by blacks who, without discrimination in the past, would have had their places; b) 'rightful place,' allowing a black to compete for a position on the basis of his total company service (without having to advance through each step of the ladder); and c) 'status quo,' preserving intact the rights of the white incumbents (blacks must start at the bottom of the white ladder and advance through each step on the same basis as newly entering whites).

Congress clearly indicated that it was not requiring the "freedom now" approach when it protected bona fide seniority systems.¹⁸ Of the other two alternatives, the "rightful place" approach has generally prevailed.¹⁹ Of course, there may be little practical difference between the "rightful place" and "status quo" approach if skills must be learned during each job on the ladder. Consequently, even if all discrimination in hiring and recruiting should cease, it could still take a long time to eliminate all the effects of past labor market discrimination.

The Use of Quotas

So far we have argued that it will be very difficult to eliminate all discrimination in employment (e.g., the issues of qualifications and of recruitment procedures) and that, even if such discrimination could be eliminated, the effects of discrimination will persist far into the future

(the role of seniority systems and the effect of such discrimination on the job skills of blacks). Because of these difficulties, we should consider whether Title VII might be amended in such a way as to encourage more comprehensive, faster reductions in labor market discrimination. The Harvard Law Review discussion, cited earlier, provides a very good summary discussion of the philosophy underlying Title VII and the limitations inherent in that philosophy.²⁰

The Congress that passed Title VII apparently never questioned the possibility of choosing workers by objective standards predictive of job success. Color-blindness in employment, it believed, would be achieved by the fair application of objective standards. Congress recognized, to be sure, that objective measures could be abused. Thus, while testing was permitted, the tests had to be 'professionally developed' and not 'used to discriminate.' Seniority systems were protected, but only if they were 'bona fide.' But throughout one finds indicia of a faith that measures can really measure, and that fair measures will help minorities.

Both propositions, it must be pointed out, are not apodictic. It has been alleged that 'most employment decisions are based on dreams: dreams that tests can sort out good employees, that diplomas have some meaning. Personnel selection is nothing but dreams and guesses.' Under this view, minority-aiding quotas are more attractive. If some workers are not predictably more efficient than others, it makes less difference when some of them are arbitrarily preferred over others Hiring may sometimes be more a product of faith than of reason. But since it is possible to make rational decisions about hiring and promoting, courts should be careful that in developing the law under Title VII they do not foreclose this possibility.

The second congressional belief, that objective standards will help blacks, has also been questioned. Sometimes the application of more subjective standards has proved to be beneficial for blacks. Such standards may see through technical deficiencies resulting from cultural deprivation to real potential. On the other hand, there is some merit to the suggestion that color-blind standards help the victim of racial discrimination. Once he qualifies under the standards, the way is cleared to future progress. And in a society where racial prejudice is endemic, an enormous policing effort would be required to insure that subjective standards do not harm minority workers. Quotas, of course, offer a third option, if neither objective nor subjective standards are satisfactory. But government imposed quotas present their own problems of unfairness and interracial strife, as well as dubious constitutionality.

As the above quotation indicates, in combatting employment discrimination against blacks, the main alternative to the present legal concept of "color-blindness" is the imposition of some kind of quota system. At least two variations of the quota approach are available. The first, which we shall call inflexible quotas, means that employers must employ at least a certain percentage of blacks and that no exceptions will be allowed. The second, which we shall call target quotas, means that the burden of proof is on the employer to show that he has not discriminated (or has fulfilled his contract commitment to take "affirmative action") if he does not employ as many blacks as stipulated by the quota. While Congress clearly indicated that Title VII was not to be interpreted as requiring any quota system, the executive branch has established a system of target quotas with regard to some government contractors.²¹

Under the Philadelphia Plan, contractors for government construction projects must make "good-faith" efforts to meet certain goals with regard to the hiring of minority workers. These goals are determined by the Office of Federal Contract Compliance (OFCC) on the basis of such factors as the new hiring predicted for the contractors, the number of minority-group members having the necessary skills, and, if this number is limited, the length of time necessary for training. Then these goals, indicating the number of minority employees to be hired in specified trades by specified times, are included as part of the job specifications on which the contractor bids. Although the Philadelphia Plan does set up very specific goals, these goals originally applied only to the actual government contracts and did not apply to the contractor's employment on other projects. Since firms could meet these requirements by switching black workers from their private projects

rather than by hiring more black workers, the program has recently been changed to cover a contractor's total employment.

Failure to meet the specified goals does not necessarily imply that the contractor has failed to comply with the terms of the contract. In the words of the Harvard Law Review:²²

A contractor can escape sanctions by proving that he made 'every good faith effort' to meet the requirements. Signs of a good faith effort are (1) communications of employment needs to certain minority community organizations; (2) maintenance of records showing disposition of minority job applications; (3) participation in community minority training programs; and (4) notification of the OFCC area coordinator whenever the employer's efforts to meet his goal have been impeded by union referral practices. It is specifically noted that failure of a union with which the contractor has a collective bargaining agreement to send minority applicants is not a sufficient excuse for noncompliance. Though the precise procedural consequences of failure to meet goals are not outlined in the Philadelphia Plan, it has been assumed that failure to meet specific goals forces the contractor to assume the burden of producing evidence of his good faith effort to meet his goals while the government has the ultimate burden of persuasion on the issue of noncompliance with the Executive Order program.

Although the legality of the Philadelphia Plan has been challenged on the basis of the antipreferential provisions of Title VII, the courts have upheld the government's right to institute such plans.²³ Originally the Philadelphia Plan was developed as a model to apply to other areas as well. However, the government's current approach is to encourage the development of "hometown plans," agreements negotiated among unions, contractors and minority-group representatives to increase the employment of the minority-group on all construction projects in the area. If no satisfactory hometown agreement is negotiated, then the government can fall back on the Philadelphia Plan approach.

Now that we have summarized the current status of approaches based on a quota-type system, let us discuss more carefully the advantages and

disadvantages of such an approach. The basic advantage of a quota system is that it judges performances in terms of results rather than in terms of specific procedures. Consequently we can expect to achieve a given set of results (e.g., full racial equality in employment) more quickly and with greater reliability under a quota system than under procedures which meet some criteria of color-blindness.

In addition to issues of constitutionality,²⁴ a quota system is open to at least three objections--an equity argument, an efficiency argument, and a political argument. The equity argument maintains that, if the individual worker or employer has not discriminated against blacks, then he should not have to bear the cost. Instead the costs should be borne by society as a whole (e.g., through general taxation) rather than by the white workers (often relatively unskilled) who would likely lose their jobs to blacks if a quota system were imposed. The efficiency argument maintains that a quota system is likely to reduce the productivity of many firms. Consequently, everyone might be better off economically if the quota system were replaced by an income subsidy to blacks. Finally, the political argument suggests that quotas, by giving some preferential treatment to blacks, may reinforce the anti-Negro stereotypes of many white workers and employers. Consequently a quota system may undermine the long-term political support which appears essential for any program to eliminate discrimination.

While the efficiency and equity arguments presented above might be dismissed by arguing that equity for blacks is more important, the political argument cannot be dismissed so easily. Moreover, the efficiency and "white" equity arguments are important politically since the general American public

obviously does not appear to share the view that these goals are insignificant relative to the goal of greater equity between the races. Therefore all three of these arguments against a quota system should be taken seriously.

A Proposal

While these objections are important in evaluating an inflexible quota system that would apply to all employers and all jobs, they may not be nearly as strong with regard to a more limited quota system. The author suggests instituting a system of target quotas that would apply only to new hiring and promotions (i.e., increases in employee compensation) on the part of large firms having contracts with the federal government. These quotas should probably be based on the racial composition of the area (or areas) in which the firm is located. As in the Philadelphia Plan, the proposal suggested here would not necessarily require that the quotas be rigidly fulfilled, but only that the employer make a good faith effort, with the burden of proof resting on the employer to show that he did make such an effort if he did not meet the quota. In contrast to the Philadelphia Plan, this proposal would involve quotas for hiring and promotions rather than for total employment. Moreover, rather than having quotas for different occupations, this plan would set overall quotas based on numbers of individuals and aggregate wage and salary income. By requiring that \bar{X} percent of the total money spent by the firm on new hires and X percent of the total spent on raises to present workers²⁵ go to blacks (and other disadvantaged minorities), it should be possible to guard against the firm hiring such workers only for low-level positions while at the same time giving the employers much more flexibility than if specific quotas were set for each occupation.²⁶

Hopefully this plan would represent a reasonable adaptation of the Philadelphia Plan to industries outside construction. Its main advantage relative to the Philadelphia, or hometown plan, is that it would apply to a much larger percentage of total employment. Note that this plan should apply to all employees working for (large?) firms with government contracts. Consequently the coverage of the program could be quite extensive since about one-third of all employees work for firms having federal contracts.²⁷

Next let us examine how responsive the above plan is to the objections to quotas that we discussed earlier, based on considerations of equity, efficiency, and political support. With regard to the equity issue, we note first that no incumbent white workers would lose their jobs under this proposal although, for some, the prospects for promotion are likely to be delayed. In this author's view, however, it is equitable to give some preference to blacks now in hiring and promotions as a partial compensation for discrimination suffered in the past.

While the quota system would presumably create some costs in terms of efficiency, it might be no less efficient than previous policies of discrimination. Perhaps of greater relevance, we should compare the quota system with other alternatives such as cash subsidies to blacks. In this regard we note: 1) that any subsidization plan is likely to create its own inefficiencies (e.g., cash subsidies may affect work effort); and 2) that equality of opportunity should be defined in terms of opportunity to participate as well as opportunity to consume.

The political argument is perhaps the most difficult to counter, at least in a short-run context. In the long run, however, it may be possible to convince more citizens that racial discrimination exists on a large scale

and that this rather limited quota system is an equitable, appropriate response to such discrimination.

Under the proposal, it is suggested that the government start gradually with firms (corporations rather than individual establishments) that have the largest total value of government contracts: 1) so that we can see if efficiency considerations are an important drawback; and 2) in the hope that political support for the program would develop (or at least that political opposition might weaken). The plan focuses on government contractors primarily because it seems more equitable to impose additional requirements on firms that are receiving special benefits from the government.²⁸ We begin with firms having a large total value of contracts partly for this same reason. However, these firms are also likely to be quite large. Consequently it seems likely that a significant increase in black employment can be achieved in such firms for a relatively modest effort expended in devising quotas and monitoring compliance. Moreover, from an equity point of view, the continued large size of such firms can perhaps be viewed as a privilege, given the aims of our antitrust legislation.

A somewhat similar plan has been developed by Galbraith, Kuh, and Thurow.²⁹ Their plan would apply to women, American Indians, and Spanish-speaking minorities as well as to blacks. Each group would have to receive a share of the highest paying jobs in proportion to their share in the labor force in areas where the firm is located. Coverage would start with firms of over 5,000 employees. Such firms would have ten years for complete compliance. A longer compliance period would be available for firms between 2,000 and 5,000 while smaller firms would be exempt. A program of educational grants to help train minority members is also included.

In our view, it would be a mistake to limit the quota system to high-paying jobs, especially for ethnic minorities,³⁰ because discrimination against such workers applies throughout the entire earnings distribution.³¹ Nevertheless, Galbraith and his colleagues do make an interesting argument for limiting their plan to the top jobs:³²

It will be asked why (the Galbraith Plan) is confined to the higher income jobs. Why not make it applicable to the shop floor? The answer is that no reform can accomplish everything. Existing government legislation and union rules are all but exclusively focused on the production worker and we seek to avoid conflict with these regulations, including any tangle with the unions. It is also important that our present willingness to act at the bottom be matched by a similar willingness to act at the top. As things now stand, a white construction worker can be kept out of a job by regulations that require the contractor to employ blacks. He must wonder, if he stops to think about it, why the white executive has no similar worry. Also, if women and members of the minority groups are properly represented at the top, it would seem reasonably certain that they will suffer less discrimination at the bottom.

Under our plan, firms could concentrate on the high-paying jobs if they wanted to avoid anticipated problems with a union or for any other reason. However, this is a decision that can be left to the firm rather than being built directly into the legislative or executive order.

Next let us compare some of the other features of the Galbraith Plan with the corresponding features of our proposal. First, we chose to emphasize the quotas for new hires and promotions, rather than levels of employment, in order to reduce the opposition of incumbent whites and thus increase the political saleability. In practice, the results may not be too different from the ten-year compliance process postulated by Galbraith. Galbraith's approach has the advantage of ensuring equal opportunity after ten years. Our approach has the advantage of setting clear-cut goals that can be achieved immediately.³³

Second, we prefer to concentrate on large government contractors rather than all large firms mainly because politically it seems easier to make a case for extra requirements on such firms as a quid pro quo for the "favor" of obtaining government contracts. In practice, we expect a high correlation between firms covered under the proposal and those covered under Galbraith's firm-size criterion.

In contrast to both the Galbraith plan and our own proposal, another alternative is to use a system of economic incentives instead of a quota system.³⁴ However, we prefer the quota approach, largely on the grounds that it seems simpler and politically more feasible to expand from the base of the present Philadelphia Plan rather than introduce an entirely new approach that is likely to be quite foreign to the thinking of non-economists.

Conclusion

Up to this point we have considered policies aimed directly at discrimination in employment. In conclusion, we need to emphasize that such discrimination may be heavily influenced by government policies that are aimed primarily at other goals. For example, labor market discrimination is likely to be greatest when labor markets are slack and unemployment is high since: 1) employers are more likely to use race as a screening device for good jobs under such conditions; and 2) unions and other craft groups are likely to be more discriminating as they seek to preserve control over scarce jobs.³⁵ Consequently any explicit government program to combat labor market discrimination is likely to have greater success if the government maintains a high level of aggregate demand. Given the goal of reducing labor market discrimination, there is a great need both for tight labor markets and for a quota system like the one proposed in this paper.

FOOTNOTES

¹Calculated from data in U.S. Bureau of the Census, Current Population Report, Ser. P-60, Nos. 36 and 80.

²For example, in Otis Dudley Duncan, "Inheritance of Poverty is Inheritance of Race?" in On Understanding Poverty, Daniel P. Moynihan, ed. (New York: Basic Books, 1968). We are attributing the effect of differences in occupation per year of school and differences in earnings per occupation as labor market discrimination. Note that some of Duncan's results standardize for differences in ability other than years of school with no significant effect on our measure of labor market discrimination.

³Special Analysis of the United States Government, Fiscal Year 1973 (a part of The Budget of the United States Government, 1973), p. 210.

⁴Note that the actual increase may be much smaller due to Congressional action.

⁵Special Analysis, p. 137. This comparison was first suggested to me by James E. Jones, Jr.

⁶See the discussion in Federal Civil Rights Enforcement Effort, a Report of the United States Commission on Civil Rights, 1970, especially Chapter 2, Sections V and VI.

⁷Civil Rights Act of 1964, Section 703.

⁸Employment discrimination and Title VII of the Civil Rights Act of 1964, an unsigned note in the Harvard Law Review, Volume 84, Number 5 (March 1971), p. 1114.

⁹Willie S. Griggs vs. Duke Power Company (U.S. Sup. Ct., No. 124, March 9, 1971).

¹⁰The court commented favorably on EEOC guidelines that interpret the language in Title VII that approves the use of tests as applying only in cases where the tests are clearly job-related.

¹¹Peter B. Doeringer and Michael J. Piore, Internal Labor Markets and Manpower Analyses (Lexington, Mass.: D.C. Heath & Co., 1971), p. 139.

¹²For example, on many jobs a simple test and a probationary period may be a more efficient procedure than a more elaborate test.

¹³For example, see the discussion in Albert Rees, "Information Networks in Labor Markets," Proceedings of the American Economic Association, (May 1966).

¹⁴See Harvard Law Review, Vol. 84, No. 5, pp. 1153-55. As that discussion indicates, however, if an employer's recruitment policies appear to be discriminatory on this basis, it seems reasonable to give the employer a chance to demonstrate that blacks have less interest or skill than whites in his line of work.

¹⁵As a result of union pressure, employers may have more carefully articulated rationales for their promotions and discharge policies than for their hiring policies. On the other hand, if a union wishes to discriminate it may not give adequate attention to grievances filed by blacks with regard to issues of promotion and discharge. Thus, policies that appear fair on the surface may be quite discriminatory in practice.

¹⁶If the firm (or union) is all white, a more extreme possibility is to apply the following analysis based on blacks in the community rather than on blacks in low-paying jobs within the company. See United States vs. Sheetmetal Workers Local 36, 416 F. 2d 123 (8th Cir. 1969).

¹⁷Harvard Law Review, Vol. 84, No. 5, p. 1158.

¹⁸However, this approach may be an appropriate remedy for a discriminatory system in effect after the Civil Rights Act of 1964 became effective. See Alfred W. Blumrosen, Black Employment and the Law (New Brunswick, N.J.: Rutgers University Press, 1971), pp. 202-205.

¹⁹Harvard Law Review, Vol. 84, No. 5, p. 1159.

²⁰Ibid., pp. 1164-65.

²¹See James E. Jones, Jr., "The Bugaboo of Employment Quotas," Wisconsin Law Review, Vol. 70, No. 2, for a discussion of the legal aspects of the quota issue.

²²Ibid., p. 1298.

²³Contractors Association of Eastern Pennsylvania vs. Shultz (D.C.-E. Pa., March 13, 1970). The Supreme Court refused to review this case.

²⁴This discussion is based on the analysis in the Harvard Law Review, Vol. 84, No. 5, pp. 1115-16. However, we have deemphasized the constitutionality issue since the Constitution could always be amended (cf. the current discussion with regard to busing).

²⁵Some tradeoffs might be necessary between promotions and hiring if very few incumbents were black (e.g., 2 X for hiring and 1/2 X for promotions.)

²⁶Arbitration procedures might be necessary to avoid discharges based on racial considerations and perhaps also to deal with complaints that promotions involved raises but no corresponding increase in authority.

²⁷All government contractors (with contracts over \$10,000) are currently required to undertake "affirmative action" programs to assure that non-discriminatory practices are being followed (Executive Order 11246). However, outside of construction the requirements have been vague and poorly enforced. See Harvard Law Review, Vol. 84, No. 5, pp. 1282-91 and U.S. Commission on Civil Rights, pp. 156-75.

²⁸Note that federal contracts are considered legally to be a privilege enjoyed by a firm rather than a right. In the decision cited in footnote 23, the court ruled that the executive branch has "unrestricted power to fix terms and conditions on those with whom it will deal" unless restrained by law.

²⁹John Kenneth Galbraith, Edwin Kuh, and Lester C. Thurow, "The Galbraith Plan to Promote the Minorities," New York Times Magazine, August 27, 1971. The plan is spelled out in considerably more detail in this article than in our discussion in the text.

³⁰Perhaps this restriction would be useful in the case of women since they clearly have easy access to secretarial level positions. On the other hand, women are restricted from a large number of jobs with average and below average pay rates. For a good discussion of female patterns, see Valerie Kincade Oppenheimer, "The Sex-Labeling of Jobs," Industrial Relations (May 1968).

³¹For results demonstrating discrimination within such lowly occupations as materials handler and janitor, see David M. Taylor, "Discrimination and Occupational Wage Differences in the Market for Unskilled Labor," Industrial and Labor Relations Review (April 1968).

³²Galbraith, et al., p. 40.

³³Part of the Galbraith plan deals with intermediate goals, but these short-run targets are given less emphasis. The obvious danger with emphasizing long-run targets is that the data can be pushed back or even repealed. Consequently it appears desirable to have a plan that can be supplemented quickly at full force (i.e., one that can quickly become an "established tradition").

³⁴See Duran Bell, Jr., "Bonuses, Quotas, and the Employment of Black Workers," Journal of Human Resources Vol. VI, No. 3, (Summer 1971).

³⁵See James Tobin, "On Improving the Economic Status of the Negro," Daedalus (Fall 1965).