Affirmative Action under Attack

Sheila Tobias
"God Bless Title IX" say the newest buttons in Washington, D.C. (available for 25¢ from the Project on the Status of Women, 1818 R Street, Washington, D.C. 20009) and the mood of feminists there and along the east coast is equally equivocal. Some feel that the Guidelines raise more problems than they solve; others are glad to have anything at all with which to approach the sexism of school systems; and most wish the Guidelines were firmer, more specific, and more inclusive. At the same time, there is some concern about the life of female or feminist institutions, especially those that are of an extraordinary nature. What is to be the future of women's centers, for example?

Last spring, we commissioned two lengthy and necessarily speculative essays on the Title IX Guidelines. These arrived almost as the Guidelines were issued in June, and for that reason we did not print them in the Summer issue. Instead, we are now publishing a joint Fall/Winter issue in order to include one lengthy summary of the issues raised by feminists about the Guidelines and several additional comments.

We understand, from the Office of Civil Rights, that 4,000 separate comments have been received on the Guidelines, many of these representing the views of organizations. Copies of the full Guidelines may be obtained from your Representative or Senator. You may also ask them for the Congressional Record, July 18, 1974, E4863-4869, which contains a more detailed critique of the proposed Title IX regulations prepared by Representative Bella Abzug and the Women's Equity Action League (WEAL).

Obviously, to devote so large a portion of this Newsletter to Title IX suggests our view of its importance. We'd like to hear your opinions as well since we plan to include at least one feature on this subject in forthcoming issues.

F. H.
AFFIRMATIVE ACTION UNDER ATTACK (continued)

Ph.D.'s that it could set us back a decade or more in our attempt to open up the hiring process in universities.

The central issue for Lester is the inadequate supply, both in numbers and in quality, of the pools of minority and female candidates for academic jobs. A second and related issue is the incomparability of any two individual candidates. Always, he assumes, there is an obviously "better" or "best" applicant and by extension one who is "worse" or "not as good." He presumes, to say it differently, that if an academic department does not get the man it would have hired in the absence of the affirmative action program, it will necessarily have done "worse."

There is no question, as demonstrated by the 30 cases of alleged sex discrimination at the tenure level currently in the courts, that sex or race discrimination is difficult to prove, and it would be foolish to argue that any two professionals in any field could be "identical." But it does not follow at all that candidates cannot be "essentially equal." On the contrary, complex combinations of talent among candidates and multiple criteria at work in the selection process both mean that any university hiring committee is always trading off one set of strengths (and weaknesses) against another. As a result, it is quite possible that several candidates for any one job will be of the same overall value to the hiring body and that many will, for all practical purposes, be essentially equal, even though they may not be essentially alike.

Besides, the point of view of the "elite" schools which Lester clearly represents is of only marginal significance to a discussion of affirmative action nation-wide, since affirmative action has been designed to benefit society as a whole as well as individuals. Society is not any worse off if a particular white male candidate does not get a job at Princeton, but is employed instead in another "lesser" university, so long as he is employed somewhere in teaching and research. Perhaps his productivity will be reduced, teaching at a non-elitist college or university. But any such reduction would be offset by the increased productivity of a female or minority professor offered the opportunities for productivity at Princeton. There might, in fact, be a net gain to society even if—as is by no means necessarily the case—there was some loss of productivity at Princeton. Princeton's "loss" would be offset by the "gain" of a lesser university. Even assuming one could measure these hypothetical gains and losses, Lester's logic suffers from the unstated assumption that what's good for Princeton is good for the United States.

"The reason you are treated as inferiors," the old saw goes, "is because you are inferior." Lester proceeds, in a series of undocumented (and undocumentable) assaults on the presumed quality of female and minority Ph.D.'s, to "prove" that they constitute "an ill-defined pool of supposedly qualified and available candidates," and as a result, that affirmative action goals are "inflated in terms of the supply of fully-prepared women and members of minority groups."

Blacks are under-represented in the annals of research because the colleges which usually have hired them have emphasized teaching over research. Women have lost out because they "prefer teaching to research." According to Lester, the fact that blacks and women are absent from the higher ranks of faculty is not evidence of discrimination as this data is usually employed, but proof that they suffer from lower "productivity" than white males. The following is a typical untested allegation: "Because on the average female faculty devote less time and energy to professional development (especially research) than men and more time to home responsibilities, a smaller number of women really qualify for the upper ranks." (italics added)

Absent from his book are many documented insights into the relationship between institutional location, institutional support and productivity: Jessie Bernard's comment that the productivity index for women is equal to men where women have equal access to scientific information by face to face interpersonal contacts similar to those of men; or Helen Astin's note that most of the difference in productivity between men and women in a sample she studied were attributable to their respective institutional affiliation (university vs. college).

Most questionable of all is Lester's fascination with outdated correlations between age and productivity. Women and blacks miss the "crucial years of professional productivity between 25 and 35," according to Lester. Women are distracted and depleted, driven out of their fields by marriage and child-rearing. As a result, they fall behind early and are unlikely ever again to catch up with men. If, indeed, women have demonstrably lower productivity in the years immediately after the Ph.D. (a point we shall return to), then holding age constant, he might have a point. A woman of 35 who had stopped working at 30 might be unable to best a man of 35 who had never stopped. But suppose instead one were to hold experience constant, can we presume that a 40-year-old candidate for an assistant professorship would not be competitive with a 30-year-old? Minority men and women miss the crucial years, too, for financial reasons. Most minority B.A.'s do not start graduate work immediately after college and their productive period, as a result, may begin only when they leave school in their late thirties.

Lester writes as if the subject of age and creativity were not, as Zuckerman and Merton put it modestly in a recent book, "short on facts and long on conjecture." Some 20 years ago, Harvey Lehman argued in Age and Achievement that the creative years for 19th-century scientists were from their late twenties through their middle thirties. But Lehman's hypothesis cannot be verified and, indeed, has been criticized for not having been adjusted for longevity (some "young men" simply died young), or for "newness to the field" as an independent variable.

Some of Lester's criticisms of affirmative action procedures are more constructive. But even here one must be careful about his premises. For if one accepts his notion that universities are entirely different from ordinary business, for example, one may find oneself agreeing...
AFFIRMATIVE ACTION: PROCESS OR PRODUCT?

There seems to be a trap lying in wait not too far down the road for those of us committed to affirmative action. Let’s carry out the logic of “open hiring” procedures—if we may use that term to describe a process of broad advertising and search to fill each vacant position. Increasingly, in a tight job market, every advertisement produces a flood of applications: 90 to fill one history position; hundreds to fill another. Even the most humane committee or administrator will search for mechanical means to categorize a large number of unknown quantities. The logic of the process leads toward “weighing” applicants by as many “objective” standards as one can find. Those who score highest on the “objective” measures become finalists. That way, “merit” will allegedly emerge, and in that manner, everyone will have had allegedly equal opportunity to demonstrate merit.

But what qualities can be “objectively” weighed? Teaching ability? That doesn’t even show up on a vita. Openness to new ideas and new students? Commitments to the goals of affirmative action? Hardly, since these items involve personality and politics. What can be categorized are matters of another sort: holding of “good degrees,” to use a familiar administrative expression—i.e., those from an elite university. How much publication does the vita contain, and in which reputable journals? So many points for a Swarthmore B.A.; so many more for a Harvard Ph.D.; and more still for 50 pages of publications.

It is clear, even in this very slight exaggeration, that that way meritocracy lies. But it is also clear that the ladders to meritocracy are not, nor have they ever been, equally available. Even in the most elite institutions—the “ivy league” colleges and the “seven sisters,” for example—many more places have been available for men than for women, for whites than for blacks, Puerto Ricans, Chicanos, Native Americans, or Asians. Dozens of other forms of inequity (in funding, opportunity for admission, the quality of primary and secondary institutions), familiar by now to most people, limit the aspiration and productivity of disadvantaged groups of people. Applying the logic of an increasingly mechanical system of affirmative action can only reinforce the privilege of privileged groups, in much the way that I.Q. tests have been used to give allegedly “objective” evidence to the supposed superiority of the privileged. To say it another way: one cannot end inequality by applying presumably objective criteria which, in fact, themselves reflect the very sources of inequality.

Certainly, the alternative is not to return to the “old boys’” network, with its informal and exclusionary tactics. It may be that we have to insist that another dimension be added to affirmative action procedures. The advertisement that reads, “Sociologist, Assistant Professor, Salary to $13,500, courses include Introduction, Social Stratification, Organization,” leads directly into the meritocratic trap. Perhaps the ad should go on to say, “Applicants are asked to describe why they wish to teach in interdisciplinary program with large non-traditional student population, and what qualifies them to do so.” Perhaps hiring committees and administrators are required to state more fully and clearly what they actually require of a new faculty member—it is always more than that certain designated courses be covered.

There are many other possibilities, but in a larger sense, they finally evade the issue. For they get back to “process,” as Sheila Tobias puts it, rather than to “product”; they are designed to provide an “equal shake” to all those, rich and poor, aspiring to avoid sleeping under the bridge. No such set of processes will, obviously, overcome the inequalities that a society so stratified as ours by race, sex, and class produces. That’s why the defenders of the status quo—the Hooks and Lesters—inveigh so mightily against “Quotas” or “Goals” or other “mere numerical devices.” For these force the hard political questions, overcoming artificial distinctions like that between de jure and de facto segregation. And for this reason, it’s clear that while processes that reinforce privilege should be avoided, realistic affirmative action goals and success in actually achieving them must remain the primary focus.

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with him on the need to replace contract compliance procedures with a mediation or arbitration system. Yet, to use mediation in civil rights disputes would constitute nothing less than a major retreat in civil rights legislation. How is mediation to settle class-action suits? How are we to defend the role of the Equal Employment Opportunity Commission (EEOC) and of the Justice Department (which is now empowered to prosecute units of state and local government for not providing effective affirmative action)? Who is to protect the claimant from being harassed? Or to keep him from going to court anyway if the arbitration goes against him?

Lester is critical of affirmative action goals also because they are outcome-oriented rather than process-oriented. He would prefer a system where the emphasis was on improving the search and referral procedures. So would we all, if this would work. But we have found that targets raise consciousness and give departments and colleges some measure of how they are doing.

One must agree with him that the new surveillance may discourage candor in assessing candidates for tenure and result in self-censorship. There is surely the possibility that adversary proceedings may lead to bitter rifts that undermine faculty self-government as we know it. And his criticism of the inconsistencies and variation in enforcement between regional EEOC offices is well known and his point well taken. Yet time and greater resources will probably iron out these problems, unless of course, the new Administration decides, for reasons of its own, not to enforce affirmative action any longer.

To solve the problem of the absence of women and minority persons from the ranks of tenured and non-tenured faculty, a problem to which he readily admits, Lester would advocate an increase in the supply of women and minority Ph.D’s. He points out quite correctly that until now universities have not been rewarded for adding women and minorities to their graduate schools. But as Tom Wicker noted, this recommendation only shifts the problem from hiring policy to admissions policy without really solving either.

What we are left with then is not a serious and comprehensive critique of affirmative action (as we were led to believe), but a list of complaints, some petty, some cogent, and a frequently reiterated insistence that until now universities have not been rewarded for adding women and minorities to their graduate schools. But as Tom Wicker noted, this recommendation only shifts the problem from hiring policy to admissions policy without really solving either.

For any female who finished graduate school a decade ago only to be turned down for jobs where comparable (if not lesser) men were hired, the reading of Lester’s book is a very painful and insulting experience, though it is unlikely that he intended it to be either. It is simply too early to say that discrimination against women and minorities has ceased to exist; and far too late to say it was not their fault but ours.

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