

Discrimination, Sex Prejudice and Affirmative Action

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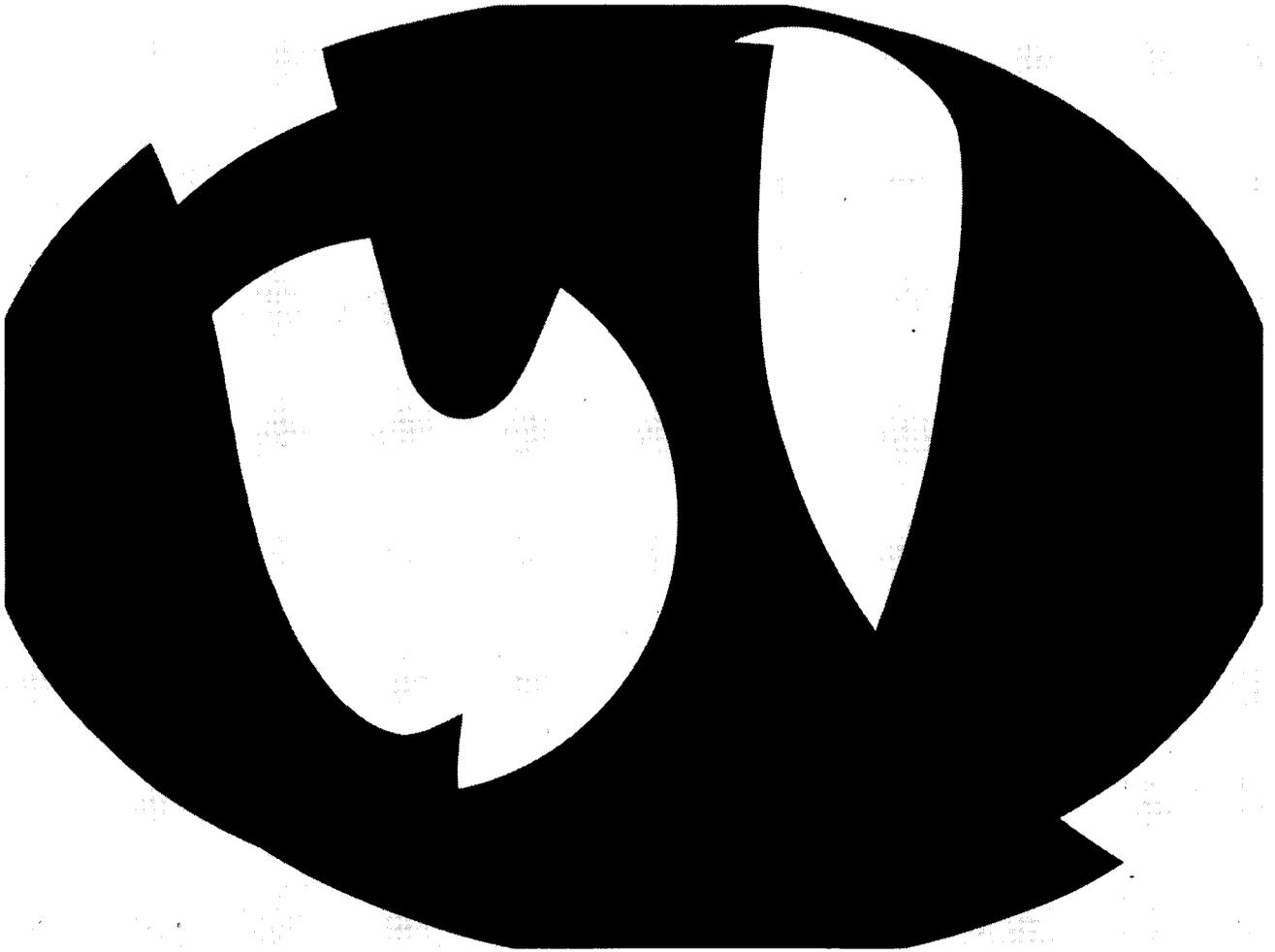
The question what to do about sexual and racial discrimination in Canadian society is still a pressing one. Controversy surrounds the introduction of affirmative action plans—not only because they are perceived as a threat to the privileged, especially in times of low economic growth—but also because people with a genuine desire for justice are concerned about whether these plans are a form of ‘reverse’ discrimination designed to ‘compensate’ women and racial minorities for past injustices at the expense of young white males, who did not cause the injustices in the first place. Some writers have defended affirmative action as a form of compensatory justice.¹ Others have argued that the best reasons for adopting affirmative action are not backward-looking

concerns to compensate for past injustices but forward-looking concerns to create a better society, especially to raise the social and economic status of oppressed groups and to provide role models for young people.² Although it is not widely understood, an equally important forward-looking reason for affirmative action programs is that they help to prevent further discrimination against women and racial minorities.

This paper is an attempt to clarify some of the philosophical and practical problems involved in preventing discrimination. It is my argument that we cannot prevent discrimination with anti-discrimination laws and policies so long as the degree and kind of sex prejudice that is embedded in our society persists. Therefore, we cannot hope to eliminate the adverse effects of discrimination in the foreseeable future without adopting new hiring practices—either a quota system or some form of preferential hiring.

DISCRIMINATION

Discrimination, in the pejorative sense, is usually defined as treating some irrelevant characteristic of a person or group as though it were relevant to the distribution of some good.³ Turning down an applicant for a job because she is black would be considered a classic case of discrimination. The problem is, of course,



INTROSPECTION
Sarah Gersovitz, 1972,
Silkscreen, 26" x 20".

to specify just what sorts of characteristics are relevant to the distribution of just what sorts of goods. Since those who want to outlaw discrimination are understandably unwilling to leave it to the law enforcers to decide which characteristics are relevant ones, anti-discrimination or 'human rights' legislation usually specifies that certain characteristics shall never (or almost never) be considered relevant. A basic form of the legislation is this:

No person or organization shall exclude or prevent another person from doing X on the grounds that he/she is a member of class A (where class A is a 'protected' class, e.g., a race, religion, colour, sex).

Such legislation may at first seem to avoid the problem of relevant characteristics; however, we find ourselves confronting it again when we consider how to enforce the laws against discrimination, for it will often be difficult to determine that membership in a protected class has been the grounds of refusal to, for instance, employ someone, or that reasonable cause did not exist for the refusal. This is a general problem of enforcing anti-discrimination legislation—the difficulty of distinguishing genuine demands for qualifications from discriminatory behaviour. But it is not only a problem of enforcement. It is a problem of understanding the nature of discrimination, of knowing when we are really behaving in a non-discriminatory manner (and not merely deceiving ourselves about it), and even of judging whether it is always desirable to prevent discrimination against groups we want to protect.

I shall now examine the clear and the not-so-clear areas of discrimination against women and the prejudices which feed them both. Much of what I say will be applicable to discrimination and prejudice against groups other than women, but I restrict my examination to these kinds of sex discrimination and sex prejudice because I believe they have important features which may be unique. I shall use the example of hiring practices to illustrate problems common to all situations where there is the possibility of genuine demands for

qualifications. Moreover, I shall restrict the example to hiring for government jobs (i.e., public service jobs with competitive selection procedures) so that no question will arise about the private employer's right to hire whomever he/she prefers, and so that it will be clear that my conclusions are not remarks about capitalism but apply to any society in which both public service jobs and sex prejudices exist.

There are three kinds of discrimination against women which can occur in the hiring process:

- (1) An employer (i.e., the person or persons who do the hiring for a job) refuses to consider hiring any woman for the job, for example by refusing to accept applications from women.
- (2) An employer consistently hires men rather than women who apply with equal qualifications.
- (3) An employer hires a man who is *less* qualified for the job than a woman applicant.⁴

It is in category No. 1 that the clearest cases of sex discrimination occur. Such an employer may advertise for a man and may greet a woman applicant by stating that he/she wants a man for the job, that women should not be in this field of employment, etc. These are hardly cases in which the onlooker can be deceived; the evidence is overwhelming that the employer is excluding women from the job on the grounds that they are women.

The employer, in honesty or in self-deception, may believe something like this: "I have nothing against women. It's just that they're such inefficient workers." We would call this belief a prejudice, because we know not only that it is false but also that there is so much available evidence against such a belief that if he/she had taken any interest in the evidence, he/she would not hold it. Either the employer is in the habit of forming beliefs on very little evidence and sticking to them or he/she is deceiving himself/herself and does have 'something against women' which predisposes him/her to believe that they are inefficient. In any case, the employer has *pre-judged* all (or nearly all)⁵ women, in-

cluding the applicant, and shows no interest in the evidence of their abilities to do the job.

On the other hand, the employer's refusal to consider women for the job may be based on a belief that has some evidence in its favour and no available evidence against it. For example, suppose the employer were hiring people for an engineering job which no woman has successfully performed anywhere and in which he/she has already given several women an opportunity to work. He/she has concluded on the basis of this evidence that women cannot do the job, and we would not consider that belief a prejudice, because the employer has shown interest in the evidence and the available evidence does not contradict the belief.

To say that this employer's refusal to consider women for the job is based on a belief which is not a prejudice is not to say that his/her refusal is not a case of sex discrimination or that we should not disapprove of it. It is a case of sex discrimination, because he/she is excluding each woman on the grounds of her sex without considering her qualifications to do the job. Furthermore, there are several good reasons to guard against the employer's acting on his/her belief:

(a) Evidence of the form "No women have successfully done X," for beliefs of the form "No woman can do X" or even, "Most women cannot do X," is doubtful evidence; for when we ask if women have had a decent opportunity to do X (decent enough to justify the belief), we often find that we cannot answer "yes", and that we become embroiled in the very complex problems of understanding just when such an opportunity exists. We need some explanation to add to "No women have successfully done X" before it becomes plausible to say, "No woman can do X," or even "Most women cannot do X." For example, a physiological explanation based on the differences between men and women will do as evidence for "No woman can do X." A psychological or sociological explanation may do as

evidence for "Most women cannot do X." But when he/she has no explanation to back it up, an employer who acts on the belief "No woman can do X" by refusing to consider women's qualifications to do X is simply turning his/her back on possible counter-examples.

- (b) As Plato pointed out,⁶ even if there is evidence and an explanation for "Most women cannot do X," as long as there is a way, independent of sex, to determine or estimate ability to do X, there is no good reason for using sex as a qualification. Individuals, not classes, have the abilities the employer seeks.
- (c) There is far more at stake for the applicant than for the employer. The employer may lose a little time by considering the qualifications of individual female applicants. If he/she refuses to do so, the applicant loses a chance of exercising her abilities in productive work.
- (d) There is more at stake for the community than for the employer. As John Stuart Mill was fond of remarking,⁷ the community stands to lose the work of the best person for the job.
- (e) The generalization, "Most women cannot do X," if it is based on negative evidence and a strong psychological or sociological explanation, can be a self-fulfilling prophecy. Suppose (as seems likely) that many people need models of success with whom they can identify in order to develop abilities. Then, for example, if there are no women professors in a field, few women students go on to graduate study, very few become qualified to be professors, and the belief that most women cannot do it is reinforced.

Furthermore, if women are not considered for a particular kind of job, no woman with her own interests in mind will train herself to do it, few women will succeed at it, and the belief that most women cannot do it will per-

sist. Thus, an employer's acting on the belief that most women cannot do a job puts women as a class at a disadvantage which seems easily corrected by adopting the practice of considering each applicant's qualifications regardless of sex.

The form of anti-discrimination law discussed earlier outlaws type No. 1 discrimination of any kind. But I have been talking about cases of type No. 1 discrimination which are obvious to an observer. There are other cases which are not so obvious and may be difficult to prove. An employer may not in fact consider hiring women for a job, but if he/she accepts applications from women, then it may look to us like type No. 2 or type No. 3 discrimination is going on. We may be able to prove that, but we will not be able to prove that type No. 1 is going on.

Sometimes an employer declares that his/her policy is to hire the man if a man and a woman applicant are equally qualified, often because he/she believes that men, as the heads of families, need jobs more than women⁸ or that the proper sphere of women does not include the type of work in question, or because he/she believes that all women have some undesirable trait or lack some desirable trait, or because of a simple preference for working with men. Such a policy is a clear case of type No. 2 discrimination.

Given a group of applicants with equal qualifications, we would expect those hired to be a random sample, in respect of sex, of the group, if the employer did the hiring without regard to sex. But the employer may be hiring with regard to some trait which is inversely correlated with being female and which is admittedly *not* a qualification for the job itself, for example likelihood to benefit the department basketball team. To prevent this kind of discrimination, which Mary Anne Warren has called 'secondary sexism,'⁹ we would have to require that employers hire on the basis of job qualifications *alone* and use some random procedure for deciding among equally-qualified applicants.

If an employer has no women on a particular job, and we can prove that a substantial number of women applied with the same qualifications as the men who were hired, we can show that the employer used some other criteria besides qualifications, perhaps sex, perhaps some trait inversely correlated with being female, to select his/her employees. Furthermore, we assume that an employer should be looking for the best-qualified person for the job—a fair assumption in the public service. So if we find that he/she has hired a man who is less qualified for the job than a woman applicant, we have good reason to believe that the employer is hiring at least partly on the basis of sex or of some trait inversely correlated with being female. In both these types of cases, the main difficulties of proof are defining qualifications and finding an adequate method of comparing them that will enable us to justify a claim that the members of a particular group of applicants have equal qualifications or a claim that one applicant is better qualified than another.¹⁰

QUALIFICATIONS AS NECESSARY TRAITS

It is tempting to limit the scope of 'qualifications' for a job to just those traits which are necessary for its performance. It seems easier to decide between necessary and unnecessary traits than between genuinely useful traits and those which merely reflect the preferences of the employer (and it may in some cases be useful to cater to the preferences of the employer, however, irrational they are). Furthermore, although some useful traits would clearly be unfair requirements, it cannot be unfair to require a trait that is necessary to performing the job.

So let us look first at how we could decide which traits are necessary and which are unnecessary. Ordinarily, we make a commonsense evaluation of the requirements of the job; for example, a mail-sorter *must* be able to read and *must* have enough manual dexterity to make piles of mail, and if we want the job well done, he/she *must* be quick thinking, honest and conscientious. Of course, the job *can* be done by someone who is slow, dishonest

and/or careless, but it will not be done the way we want it done—quickly, reliably and thoroughly. An employee who is usually cheerful may greatly improve the efficiency of the mail-room, and ordinarily we would regard this as a bonus and not a necessity; but we could describe the new mail-sorter's job to include raising the morale of the other employees in the mail-room and improving general efficiency, in which case cheerfulness and perhaps leadership qualities become necessary to doing the job. So our ideas of which traits are necessary in an employee depend on our description of an adequate performance of the job.

I started by asking what sorts of traits will count as qualifications for a job; now we seem to be faced with a new question—what sorts of job descriptions will we accept?—for even if we limit the scope of 'qualifications' to those traits which are necessary to perform the job, it seems that an employer could call any traits 'qualifications' by describing the job in such a way that it requires them. There is, of course, the limitation imposed by the type of anti-discrimination law we are considering, that certain traits are not allowed to count as qualifications under any job description (with a few stipulated exceptions),¹¹ e.g., race, sex, religion. But unless we also set limits on the sorts of job descriptions we will accept, it will be so easy for an employer to justify either not having hired a particular person or class of persons or requiring whatever characteristics he/she prefers in an employee (including those closely correlated with sex, race, religion, etc.), that it will be impossible to prove or prevent even the most blatant cases of discrimination.

Surely some job descriptions are unacceptable to us, even to those of us who are not particularly concerned about discrimination. For instance, although employees are often hired in part to flatter the employer, or to display the employer's status (as in the case of the attractive receptionist who is carefully picked to impress the customers), the jobs are not announced or advertised under these descriptions, and applicants are rarely told

that obsequiousness or a certain taste in clothing and makeup are requirements of the jobs. Perhaps it is because these job descriptions offend a wide-spread sense of what sorts of tasks are compatible with human dignity.¹² For whatever reasons, we do now have some cultural (and legal) limitations on what sorts of jobs people should be hired to perform. And there are also limits to what descriptions of a job are believable. If an employer claims he hired only very strong men to work in his factory because the job requires heavy physical labour, and anyone who visits the factory can see that all the heavy work is done by machines, then his description of the job is plainly false and therefore unacceptable.

Certainly our descriptions of public service jobs would and should depend on our ideas of what is in the public interest. In addition, for the purpose of making sex discrimination detectable and reducing its occurrence, I suggest it is possible to make the following requirements of job descriptions:

- (a) That they be true to the actual tasks to be performed.
- (b) That they not be such as to require employees to have traits which are highly correlated with sex, *unless* it can be shown that the task which necessitates such traits is necessary for the public interest *and* cannot reasonably be accomplished in another way (for example by automation or by teamwork).
- (c) That they be made public and that they be used as the actual guidelines of hiring practices.

When we use what I have called the commonsense evaluation of a job, we come up with requirements that may include abilities, skills, knowledge, character traits (such as honesty and conscientiousness) and experience, i.e., previous successful performance of the tasks involved (in the case of jobs where the tasks are so complex as to require subtle combinations of abilities, skills,

knowledge and character traits which it would be too difficult to break down into their parts). Furthermore, we will probably come up with various proofs of these on our list of necessary traits, such as testimonies of character and of previous successful performance, and perhaps certain test results, when we have tests that require the performance of tasks like those required in the job or ask questions which call for knowledge necessary in the job.

STATISTICAL CORRELATIONS

It is possible that our knowledge of statistical correlations and predictions would lead us to add items to our list of necessary traits that a commonsense evaluation of the job would never produce.¹³ For example, suppose we know that people with normal-range blood pressure make fewer mistakes under stress than people with high blood pressure. Would we not want to make normal-range blood pressure a necessary trait of surgeons, air-traffic controllers and others who work in high-stress jobs which frequently involve life-and-death decisions? If the correlation were firmly established and very high, could any record of accuracy, no matter how long, overcome our qualms about an applicant with high blood pressure?

On the other hand, we would probably have reservations about acting on some information that statistical studies might yield. Suppose we know that mail-rooms composed of all married employees are 30% more efficient than those with single employees? Suppose factory workers between 16 and 35 years old have 20% higher productivity than all others? Suppose, as it is often claimed, the turnover rate of women in some jobs is so high that the time they work is not, on the average, worth the time invested in training them? Do we want to add to our list of necessary characteristics traits which are highly correlated either with requirements we arrived at by a commonsense evaluation of a job or with actual job performance?

I pointed out in the first section that the generalization

“Most women cannot do X” can be a self-fulfilling prophecy and that acting on it can put women as a class at a disadvantage which could be avoided by considering each applicant’s suitability regardless of sex. Acting on statistical information like that suggested in the preceding paragraph is likely to rule out the possibility of social changes that would change the statistics. It may be possible to find and reduce or eliminate causal factors in the hypothetical inefficiency of having unmarried people in mail-rooms, lower productivity of factory workers over 35, and high turnover rates of women in some jobs, but it will not happen if hiring practices conform to these statistics.

Yet what of the blood pressure-mistakes correlation? Should we give people with high blood pressure a chance to prove that they are exceptions, where accuracy is a matter of life and death? Here we are brought back, as we were in the problem of describing jobs, to balancing the public interest against the desire to avoid putting classes of applicants at a disadvantage. Where success in the job is crucial to the consumers of the goods or services, our scruples about using any statistical methods of prediction should be lessened. Otherwise, we should be wary of correlations and predictions, and seek out the best ways of judging the suitability of each individual applicant by his/her provable abilities, skills, knowledge, character traits and/or experience.

Supposing still that we count only traits necessary to the performance of a job as ‘qualifications’ for the job, and supposing that we have a complete list of the necessary traits, how shall the employer choose an employee from among the applicants? The only applicants we will consider qualified for the job are those who have *all* the necessary traits, since by our hypothesis no one else can adequately perform the job. And how shall the employer choose among the qualified applicants? Not by comparing their qualifications, because among those who have the necessary traits, no one is more qualified than another. It might at first seem that someone who has *more* of a necessary trait than the others will be more

qualified than them, but that is not true; for example, if conscientiousness is a necessary trait in a mail-sorter, it is not the case that the more conscientious the better the mail-sorter, since there is a point at which it interferes too much with speed, so that an approximate degree of conscientiousness will be the necessary trait which an applicant either does or does not have. Since the employer cannot compare their qualifications, he/she shall have to choose among qualified applicants by some random selection process, in order to safeguard against discrimination and guarantee that qualifications are the only criteria used in hiring.

QUALIFICATIONS AS BENEFICIAL TRAITS

At this point we must consider whether we do want to limit the scope of 'qualifications' for a job to those traits which are necessary for its performance. We found that what we consider necessary depends on the job description we have, which should in turn depend on our ideas about what is in the public interest. But is it in the public interest to require employers to content themselves with asking for only the traits necessary to performing a job and then choosing randomly from among the qualified applicants? Surely some among the applicants who meet the requirements could do the job far better than others. Should we not allow employers to try to find the *best* person for each job? The excellence of the work done by people who are best suited to a job often raises our standards of an adequate performance of the job; and a job description changes with the innovations brought to it by the people who do it. Indeed, this process on a large scale is a means by which the standard of living of a whole society is raised. Should we leave it to chance whether those most capable of bringing excellence to their work are hired, or should we let employers make some effort to find them? If we want to do the latter, we will have to allow them to compare the qualifications of those who meet the minimum requirements of the job; to do that we will have to extend the scope of 'qualifications' to include not only those traits which are necessary to performing a job but also those which are likely to be beneficial in some way and lead to excellent work.

If we extend the scope of 'qualifications' beyond necessary traits to beneficial traits, will it not be more difficult for us to distinguish genuine qualifications from the preferences of the employer and therefore more difficult for us to discover and prove that an employer is hiring men preferentially over women with equal or better qualifications? Let us see what can be done.

We can at least limit the range of 'beneficial traits' to those traits which can plausibly be associated with the job. If we describe our government jobs according to our ideas of what is in the public interest, and if we employ the further requirements I suggested we make of acceptable job descriptions, then we will rule out practices like hiring someone partly for his ability to benefit the department basketball team (*unless* the job is described that way, which would have to be justified in terms of the public interest). Of course, there is plenty of room for disagreement over what is in the public interest, but, assuming we do have an acceptable job description, it does limit the range of traits which an employer can call genuine qualifications. Furthermore, for the reasons already given, I suggest we continue to be wary of statistical correlations and predictions and not consider them relevant to genuine qualifications unless an extremely important matter of public interest is involved; this limits our 'beneficial traits' to the commonsense classes of abilities, skills, knowledge, character traits and experience. Unfortunately, we now have the problem of comparing qualifications.

SEX PREJUDICE AND COMPARING QUALIFICATIONS

Comparing qualifications is difficult under the best conditions, i.e., in the absence of prejudices about class, sex, race, religion, etc. Actually, there are two kinds of comparison to be made: first, weighing one kind of beneficial trait against another, e.g., if one applicant has a lot of practical experience and another has a lot of formal training; and second, comparing the values of the same kind of trait as had by more than one applicant, e.g., comparing the values of two applicants' experience.

All comparisons of the qualifications of applicants are more or less complicated combinations of these two kinds of comparison. The second kind can sometimes be made with relative ease and objectivity, if the tasks required by the job are simple enough that reliable tests of the knowledge and abilities of applicants can be devised and the comparisons can be made by means of test scores. But both kinds are often difficult and, in our world, fraught with the dangers of prejudice.

The kind of sex prejudice which enters into the process of comparing qualifications, unlike the kind that consists in beliefs that all women have some undesirable trait or lack some desirable trait, cannot be defeated by counter-examples. It consists of the attitude that the activities and achievements of women are less valuable than those of men, whatever those activities and achievements may be, and that is an attitude deeply embedded in our society. For example, it is well-known that the status and remuneration of elementary education, social work and home economics were greatly raised when men entered those fields. A boy who likes to play girls' games is far more worried-over by adults and despised by other children than a girl who likes to play boys' games. And homemaking, although it involves tasks that are absolutely necessary to the well-being of every human being, is perhaps the lowest-status job of all, as shown by the ridicule and/or pity with which a male homemaker is regarded, while a woman doctor partakes of some, but not usually all, the status of a male doctor.

As further evidence of this prejudice, we see that the pay for jobs done mostly by women is less than that for jobs done mostly by men, regardless of the skills, knowledge, training and effort involved. For example, until recently at the University of British Columbia the jobs with the lowest average salaries were jobs filled almost exclusively by women—Clerks, Secretaries, Library Assistants and Food Service Workers.¹⁴

While I do not think that sex prejudice alone accounts for this phenomenon, the expectations of both men and

women that women will be paid less for the kind of work they do clearly help to perpetuate it. Supply and demand do not account for it, since, for example, skilled typists were obviously in shorter supply than men capable of raking leaves on the grounds crew.

How might this kind of prejudice, this attitude that the activities and achievements of women are less valuable than those of men, enter into the process of comparing qualifications? When women and men applicants are being compared, it would certainly affect the weighing of different kinds of traits against each other; and if the prejudice extends to the achievements of individual women in normally male fields, it would also affect the comparison of their traits of the same kind. I will not try to argue here that the prejudice does extend to the achievements of women in normally male fields. There is evidence from academia that it does, but we need only realize that it is a practical possibility to become concerned about its consequences.¹⁵

We can see how employers who believe they are hiring strictly on the basis of qualifications may actually be hiring on the basis of sex plus qualifications, i.e., the sex of the applicants enters into the hiring decision when the employers' comparisons of applicants' qualifications are warped by a tendency to undervalue the achievements of women. Employers may have a very clear idea of what sorts of traits count as qualifications for the job and even of what sorts of traits in an employee lead to excellence and innovation; they may stick very closely to comparing applicants only with regard to which of these traits they have and to what degree, and to selecting the best person for the job only on the basis of the comparison; and *then* they may bring in sex as a consideration in the comparison, perhaps without even realizing it. Thus, even with the firm intention of being objective, employers may discriminate against women by consistently hiring men over women with equal qualifications or by hiring men who are less qualified than women applicants.

We will want to prevent the discrimination that arises

from giving lower value to the activities and achievements of women, both because it puts women at a disadvantage in the hiring process, and because it is not in the public interest, since it gets in the way of having the truly best qualified person for the job. If we are to prevent it by means of anti-discrimination laws, we will have to be able to detect and prove it, and that brings us back to our old problem that to detect and prove cases of types No. 2 and No. 3 discrimination we need a definition of 'qualifications' and an unprejudiced method of comparing them.

Let us assume we can get a good definition of 'qualifications'—in effect a list of the necessary and beneficial traits for each job. We then need an unprejudiced procedure for weighing the different kinds of traits of applicants and an unprejudiced method of comparing the value of the same kinds of traits as had by different applicants. Only unprejudiced people with a thorough knowledge of the jobs to be done could give us either of these. Conceivably they could create an ordered list for each job that would rank traits from 'barely helpful' to 'absolutely necessary' and also rank combinations of traits. For some jobs, objective tests might be devised for comparing applicants' knowledge, skills and abilities; but, in cases where we want to compare the quality of their experience, no fixed procedure could be used and each comparison would have to be validated by the judgment of some unprejudiced person experienced in the field of work. Often, as in most professional fields, the person doing a comparison of applicants' experience or potential must have the unprejudiced judgment of people in the field who have direct knowledge of the applicants' previous work. In short, we need the good judgment of large numbers of unprejudiced experts just to detect sex discrimination. Preventing it by means of detecting, proving and punishing cases is, of course, an even greater task, which would require even more unprejudiced people. And where are these unprejudiced people to come from, when the attitude of undervaluing the activities and achievements of women is deeply embedded in a society?

The possibility of preventing sex discrimination by means of anti-discrimination laws looks even more remote when we realize that so far we have only been considering the hiring process; yet if prejudice is embedded in the society, discrimination against females is probably putting them at a disadvantage long before they reach the hiring process: in admission to training and education and advancement through those systems, and long after it: in the pay and encouragements they receive at work and in promotion through the ranks of their occupations. The thought of the legions of unprejudiced people it would require to prevent all this is staggering, for the same difficulties of defining and comparing 'qualifications' must be met in all these instances.

HOW TO AVOID COMPARING QUALIFICATIONS

If we cannot prevent sex discrimination by means of anti-discrimination laws and policies, how can we deal with the very serious disadvantage to women that discrimination presents? We could avoid the process of comparing qualifications, where sex prejudice most easily and subtly leads to discrimination, by requiring employers to hire randomly from among the applicants who have all the necessary qualifications. Or we could adopt Mary Anne Warren's suggested 'weak quota system,' which would require employers to hire women in the same proportions as they are found among the qualified applicants. The 'random hiring' policy would, in the long run and in large groups, result in the same percentage of women being hired as Warren's quota system, but the latter would avoid possible extreme deviations from that percentage in the short run and in small groups. Furthermore, the quota system allows for comparison of applicants with others of their sex and selection of the best qualified of each sex.

Since by adopting either the random hiring policy or the weak quota system we would sacrifice the present (alleged) systematic search for the very best qualified person for each job, we could go further and move to counteract the effects of past discrimination by requiring

employers to hire women preferentially from among the qualified applicants until the percentage of women working in each job category reflects the percentage of women among the qualified applicants. This sort of preferential hiring is essentially the 'numerical goals' policy originally required by the United States Equal Employment Opportunities Commission (EEOC) as part of affirmative action programs.¹⁶ A similar policy to that of the EEOC is proposed by the Saskatchewan Human Rights Commission as part of Special Programs the Commission may approve or order. The proposed Saskatchewan regulations state:

Goals shall be based on the extent of underrepresentation identified and on the availability of members of the target or protected groups who are qualified, or who can become qualified through reasonable efforts on the part of the sponsor organization, or who are eligible or who can become eligible through reasonable efforts on the part of the sponsor organization, for positions or places within the sponsor organization.

'Underrepresentation' means having fewer members of the target or protected groups in a particular sector, unit, grouping, classification, or level within the sponsor organization than would reasonably be expected by their representation in the population, or in those subclasses of the population defined by qualification, eligibility, or geography, from which the sponsor organization may reasonably be expected to draw its employees, students, tenants, clients, customers or members.¹⁷

Of course, this sort of policy is not the only form of preferential hiring we could adopt to counteract the effects of past sex discrimination. We could, for instance, require employers to continue to hire women preferentially after their percentage in a job category reflects their percentage among the qualified applicants or their percentage in the work force or their percentage in the population as a whole. If we assume that the percentage

of women among the best qualified people for a job is the same as the percentage of women among the people qualified for that job, and if our only purpose in requiring employers to hire women preferentially is to prevent present discrimination and to counteract the effects of past discrimination in the hiring for that job category, then the most reasonable upper and lower limitation of hiring women preferentially is the point at which their percentage in the job category is equal to their percentage among the qualified applicants.

If we assume that in the absence of women's past and present disadvantages, the probability that a woman would be the best qualified applicant for a given job would be the same as the probability that a man would be the best qualified applicant for it, we may want to require employers to hire women preferentially until their representation in a job category equals their representation in the work force or in the whole population. Such a policy would put the entire burden of correcting the effects of women's past and present disadvantages on the hiring process. Some of that burden should be placed on the improved education and encouragement of girls and on the re-training of women. Then we could use the percentage of women among the qualified applicants as an indicator of how effective our educational improvements have been and require employers to hire women preferentially until they are represented in the same jobs in the same proportions as they are among the qualified applicants.

I have argued that if we want to prevent discrimination, it is necessary in a sex-prejudiced society to prevent or limit the comparison of job applicants' qualifications. We could do this by adopting a weak quota system which would require that the percentage of women among the newly-hired reflect their percentage among the qualified applicants; or we could do it by adopting some form of preferential hiring of women. Any form of preferential hiring of women discriminates against qualified men, as it involves at least consistently hiring women over equally qualified men. Such a policy must be justified on the grounds that it is more worth-

while to make the percentage of women in all job categories reflect the percentage of qualified women applicants as soon as possible than to protect qualified men from discrimination against them. That it is more worthwhile has been argued by others on the basis of compensatory justice and on the basis of long-range consequences. But it is clear that we cannot rely on the enforcement of anti-discrimination legislation alone to prevent sex discrimination in a sex-prejudiced society.¹⁸

NOTES

1. See, for example, George Sher, "Justifying reverse discrimination in employment," *Philosophy and Public Affairs*, Vol. 4, No. 2 (Winter, 1975), pp. 168-169.
2. See, for example, Marlene Gerber Fried, "In defense of preferential hiring," and Irving Thalberg, "Reverse discrimination and the future," both in Gould and Wartofsky (eds.), *Women and Philosophy* (New York: Capricorn, 1976).
3. See Ferdinand Schoeman, "When is it just to discriminate?" *The Personalist*, Vol. 56, No. 2 (Spring, 1975), p. 172.
4. Gertrude Ezorsky offers criteria of discriminatory hiring in "It's mine," *Philosophy and Public Affairs*, Vol. 3, No. 3 (Spring, 1974), p. 326. These are similar to hers, but for reasons which will become clear as we go along, these are more systematic and complete.
5. The employer may not have prejudged *all* women. He/she may base his/her prejudice on experiences of one or two inefficient women.
6. I accept Christine Pierce's interpretation in "Equality: Republic V," *The Monist*, Vol. 57, No. 1 (January, 1973), pp. 1-11.
7. John Stuart Mill, *The Subjection of Women* (Cambridge, Massachusetts: MIT, 1970), pp. 51-52.
8. This is a frequently given justification for this type of sex discrimination. Of course, if the employer were really concerned about the neediness of the applicants he/she could inquire directly into it and give the jobs to actual sole-supporters of families, sole-supporters of the largest families, etc.
9. Mary Anne Warren, "Secondary sexism and quota hiring," *Philosophy and Public Affairs*, Vol. 6, No. 3 (Spring, 1977), pp. 240-261.
10. These difficulties are mentioned by Mary K. Vetterling in "Some common-sense notes on preferential hiring," in Gould and Wartofsky (eds.), *Women and Philosophy* (New York: Capricorn, 1976), pp. 320-324. Note that these difficulties of proof apply to both 'primary' and 'secondary' sexism.
11. The Human Rights Code of British Columbia allows sex as a qualification when it relates to "the maintenance of public decency." The EEOC of the United States has a small category of jobs in which sex is a "bona fide occupational qualification," e.g., modelling and acting, and requires that all other jobs be open to both sexes.
12. These standards have long been lower for women than for men. "Wanted: Attractive, pleasant young woman . . ." was, until very recently, a common wording for newspaper advertisements.
13. Schoeman raises some questions about the use of statistical correlations and predictions in Schoeman, *op. cit.*, pp. 173-174.
14. In 1972-73, 922 women were in these categories and 48 men. See *A Report of the Status of Women at the University of British Columbia*. (Vancouver, 1973), pp. 48-49.
15. Judith Jarvis Thomson brings up this possibility when she remarks that women are sometimes disadvantaged by being considered less serious about their work. See Thomson, "Preferential hiring," *Philosophy and Public Affairs*, Vol. 2, No. 4 (Summer, 1973), pp. 365-366. For evidence of this prejudice at work in academia, see L.S. Fidell, "Empirical verification of sex discrimination in hiring practices in psychology," *American Psychologist*, Vol. 25 (1970), pp. 1094-1098. See also, Elizabeth Percival and Terrance Percival, "Is a woman a person?" *Atlantis*, Vol. 4, No. 2 (Spring 1979), pp. 71-77.
16. *Affirmative Action and Equal Employment, A Guidebook for Employers* (United States Equal Employment Opportunity Commission, Washington, D.C., 1974), pp. 26-27.
17. "Proposed Regulations under the Regulations Act, The Saskatchewan Human Rights Code, Section 46," paragraphs 53. (b) (iii) and 50. (e), respectively.
18. I am grateful to the editors and referees of *Atlantis* for their helpful comments and to Shelagh Day for information about affirmative action.