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THE PREFERENTIAL HIRING
OF WOMEN
AS COMPENSATORY JUSTICE

BY

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As society becomes increasingly aware of the fact that hiring practices have been discriminatory against women, various solutions have been offered to rectify the situation. One such solution is preferential hiring, specifically of women who are less qualified than white males who apply for the job. In this way reparations could be made to women applicants as a matter of compensatory justice.

Many normative and even philosophical questions are raised by such preferential hiring. Should such preferential hiring apply only to women who have been discriminated against in past hiring situations, or to all women? Even though many women have never been discriminated against in a hiring situation, the vast majority of women are exposed to discrimination which may have hindered the development of their job qualifications. Should women be compensated for all forms of discrimination by preferential hiring? Since other groups of people in our society have been discriminated against in the past, do not they deserve such preferential hiring as well? If preferential hiring is to be regarded as compensation for past discrimination, who should be making the compensation, all employers or those who have practiced discrimination in the past? Are the employers or are the white male applicants actually the ones making the compensation? "The central questions remain

whether, when and in what sense compensation can be owed to a group as a whole, whether...women qualify as the proper kind of group." (Goldman, 1975: 292)

Initially, compensatory preferential hiring may seem to be the obvious solution to a history of discriminatory hiring practices. Upon closer observations, one discovers that such preferential hiring may result in causing more problems than it solves. I shall argue that compensatory preferential hiring is unjustified, and I shall argue this by refuting the main arguments for preferential hiring. In addition, I shall refute the narrowest claims for compensatory preferential hiring first and, then, as the claims for preferential hiring broaden in scope, so shall my arguments against these claims.

It should be noted at this point the boundaries of the issue which I shall consider. Hereafter when I speak of preferential hiring, I shall be referring only to compensatory preferential hiring. Additionally, hereafter it shall be assumed that the female applicant meets the threshold of adequate competence.

There are arguments for preferential hiring which have not been considered, such as utilitarian arguments for the lessened tensions within society, other teleological arguments for the increased self-esteem of women, and free-market arguments for increasing the quality of the applicant pool in the long run. This paper addresses only the arguments

for preferential hiring insofar as it is a matter of compensatory justice.

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It has been argued that the mere fact that a person is a woman is sufficient ground for her to deserve preferential hiring as a matter of compensatory justice. Of course, some claim such preferential hiring perpetuates injustice because it continues to use morally irrelevant grounds for special advantages. To counter this claim, the argument is offered that preferential hiring advantages are not given on morally irrelevant grounds (i.e. being a woman), but are given on morally relevant grounds (i.e. having been discriminated against in the past). The characteristic of being a woman has become morally relevant because it was the ground upon which the woman was discriminated against in the past. (Taylor, 1973) Originally the principles of distributive justice were violated because the woman was discriminated against on morally irrelevant grounds. However, based upon the principle of compensatory justice, "which applies only when a violation of other forms of justice has taken place," the fact that a person is a woman is made morally relevant for purposes of restitution because it was on that basis alone that she was discriminated against originally. (Taylor, 1973: 179-180)

This argument works only in the cases where a woman who has been discriminated against in a hiring situation in the past is the one receiving compensation. Otherwise the

principles of compensatory justice do not apply because there has been no injury to the woman. That is to say that being a woman did not become a morally relevant factor because that factor was not the basis for any prior discrimination in a hiring situation. Thus, for those women who have not been discriminated against in the past in a hiring situation, the fact that they are women is still morally irrelevant. Often in instances of preferential hiring, those women who were injured by the initial discrimination are not the same women as those who benefit from preferential hiring. "Because of this, preferential hiring is said to be both irrelevant to the aim of compensating for past injustices and unfair to those whose superior qualifications are by-passed." (Sher, 1979: 81)

For compensatory justice there must be "a perfect correlation" between the members of a group now preferred and those people who have been discriminated against. "But although discrimination against minority groups has been widespread, I do not believe that any of the present generation groups usually singled out for reverse discrimination can support this drastic a claim." (Goldman, 1975: 294) In reply to this comment, the argument has been made, "If this is the only practical way to help a group, the vast majority of which fully deserves compensation, that objection would only be grudging." (Boxill, 1978: 25) Yet one must question if the "vast majority" of women has been discriminated against

in a hiring situation. Plainly, preferential hiring cannot be justified as compensation for the group of women as a whole.

To further support this claim one may look at the sociological definition of a group which states that there must be interaction between the members and members must play certain reciprocal roles. Viewing groups in this sociological sense, compensatory justice may be justified in that a group has been directly disadvantaged by discrimination against one or more of its members. The member has an integral role in the group as a whole. However, since each woman does not interact with every other woman and does not possess an integral role within the group, discrimination does not injure the group. Thus preferential hiring should compensate the individual who was discriminated against in a hiring situation, but not the group of women as a whole. (Goldman, 1975) In effect, compensation should be determined by the history of discrimination against the particular applicant, not by the sex of the injured party. (Boxill, 1975)

One may argue that even though not every woman has experienced discrimination when applying for a job, most women have experienced discrimination in some manner which has been detrimental to her job skills. Yet there are different levels of discrimination to which each woman is exposed, so it is impossible to determine how much each woman should be compensated. Further, even if it could be determined how much her skills had been affected, and it was determined that, but for

the discrimination, she would have been on the same level as the white male applicant, the person who has made the effort to develop her skills deserves more than the person who would have made the effort if he had been discriminated against. (Sher, 1975)

Most importantly, even assuming that every woman has been discriminated against in a manner that has been detrimental to the development of her job skills, the single, all-encompassing compensation of preferential hiring is unjustified. If preferential hiring is to be viewed as compensation for past discrimination, then the reparation must be directly proportional to the injury. In addition, of course, assuming that every woman at some point in time was discriminated against, in a way which affected her job skills enough to warrant her deserving preferential treatment in the job market, is assuming far too much.

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Yet every woman has been the subject of some form of prejudice at some point in her life. Even if there are some women who have not been overtly down-graded, all women have experienced a lack of self-respect and a lack of confidence because of their lowered status in society.

For where a community accepts that a person's...being a woman (is) right and proper grounds for denying that person full membership in the community, it can hardly be supposed that any but the most extraordinarily independent woman will escape self-doubt. (Thomson, 1973: 381)

Thus society owes females and would be remiss if it did not compensate them. (Thomson, 1973)

However, why must the compensation for subjection to prejudice be in the form of jobs? To give a woman a job just because she is a female, that is a minimally competent female, will not increase her self-confidence. Rather, only if women believe that they are hired because of their abilities and not merely because they are women will their collective self-confidence increase.

Further, there are many women who have not been at all economically disadvantaged, in that they are daughters of wealthy or middle class parents. These women should not be given preference over white males who have had disadvantaged backgrounds. (Blackstone, 1975)

On the other hand it has been argued that the advantaged would only be competing with the advantaged and the disadvantaged would only be competing with the disadvantaged. If the advantaged women were lowered by prejudice so much as to compete only with the disadvantaged white male, then obviously the advantaged woman has been discriminated against. (Boxill, 1978)

It must be noted that this reasoning leaves many questions unanswered. For instance, what of the advantaged white male who is now competing on the same level as the female applicant? By parallel reasoning, if the advantaged male were lowered to such a position then he must have been discriminated against in the past. In any case, the argument actually

considers only an idealistic world where a person's status as a job applicant is a direct result of her past advantages and naturally has the same status as others with similar advantages. Also, the argument does not consider the situation where a disadvantaged white male puts forth a great deal of effort and achieves the status of an advantaged woman who may have put forth little effort. The argument would automatically attribute the equality of status to past discrimination against the woman which would be, at best, jumping to conclusions.

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Against preferential hiring, there is the argument that if preferential hiring is put into effect because women have been discriminated against in the past, then the same thing must be done for other minorities as well. Even WASP's may be considered a minority. In actuality there is no majority in the United States. Additionally, having different minority groups compete against one another in order to receive preferential hiring would result in producing power struggles and popularity contests. (Newton, 1973)

In the preceding argument, however, even though there was the claim that WASP's are a minority, there was no claim that WASP's as a group have been discriminated against. True, the United States is comprised of minority groups, but not all minorities have suffered discrimination. Further, among those who have, they have not suffered in equal amounts. The mere fact that a minority group has suffered discrimination does

not put it on the same level as all other minority groups and does not automatically justify preferential hiring of the members of the group. So the preceding argument against preferential hiring is unsound. But also, the reasons that it is unsound remind us that to claim that women have been discriminated against is not to claim that women have suffered enough to warrant preferential hiring as compensation.

* * * * *

Judith Jarvis Thomson compares the situation of females to that of veterans trying for civil service jobs. Both should be preferred because of what society owes them. If a woman, who has had a feminist upbringing, encouragement to achieve and has been raised in an upper-middle class family, gets a job before a poor struggling applicant, could this be considered unjust? Thomson maintains that it is as unjust as an unscarred upper-middle class veteran being preferred to a poor, struggling nonveteran. Even in a case where the candidate was hired at random, the poor, struggling man would lose out. In reality, any method of choosing candidates would have this result, other than one which chooses candidates based upon the difficulty of their lives. (Thomson, 1977)

Yet it is easy to recognize Thomson's comparison as a weak one. I am here concerned with the case of a veteran trying for a civil service job and getting preference for it only insofar as it can be seen as a case of compensatory

justice. The injured party is getting compensation by the injurer, which is directly proportional to the injury. Not every veteran is wounded in battle but many were taken away from their jobs or job opportunities in order to serve the government. According to Thomson's reasoning, every male should be given preference for civil service jobs because males live with the fear that they may some day be drafted.

Thomson does make a valid point, while almost contradicting herself, that any method of choosing candidates, other than one based upon the difficulty of their lives, would have the effect of occasionally neglecting the fact that some of the candidates had disadvantaged pasts. But one, for the sake of practicality, cannot hire applicants, even adequately competent applicants, solely on the basis of how disadvantaged their backgrounds have been. Rather my view is that people should be hired on their qualifications alone; not because they have experienced some past privations.

* * * * *

As noted previously, a justification offered for preferential hiring is that it may be regarded as a form of compensatory justice. Females are regarded as the injured party and white males as the injurers. However, citing the "common sense principles," the claim has been made that the injurer is responsible to the injured party for the wrong that was committed. In response to the argument that women

who have been discriminated against in hiring situations in the past deserve compensation, but other women do not, the claim is made "(at best) the wrongdoer has an imperfect obligation to compensate the group." (Bayles, 1973: 306)

But this line of reasoning does not recognize the need for the employer to have been part of any wrongdoing. To be sure, by being a member of the group which did the discriminating, the employer, it might be said, was a member of the group which received the benefits. (Bayles, 1973)

In saying that the group of employers who discriminated against female applicants received benefits, it should be noted that these employers may have been put at a disadvantage as well. To have hired a white male when a female may have been more qualified for the job, in fact, may have had a negative effect upon the business. Even so, to say that one employer received benefits because he hired only white males is to say that other employers suffered because they did not hire only white males and thus did not receive "benefits". Therefore, the fact that some employers received "benefits" for their discriminatory hiring practices, does not obligate all other employers to hire less qualified female applicants. Hence, non-discriminatory employers should not be obligated to compensate female applicants for the injuries incurred to them by discriminatory employers.

Nevertheless, even if the discriminatory employers decided to compensate for their past practices and preferentially

hire women, is it the employer who is making the reparations, or is it actually the white male applicant?

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The claim has been made that preferential hiring does not penalize the white male applicant with superior qualifications. Even if he is not to blame for discriminatory practices of the past, since he has had more benefit from the discriminatory practices, it is fair that he relinquish his unfair advantage and compete on an equal level with applicants who have been the object of past discrimination. (Sher, 1975)

It is obvious what benefits white male applicants have received from having been hired preferentially over females. However according to that argument, it is exactly these men, the ones who have already been hired, who should relinquish their unfair advantages. But it would be admittedly highly impractical to request that all the white males in the United States relinquish their unfair advantages, and give the jobs which they already hold to women.

Even if there were a particular woman who had been discriminated against in the past, the man who at present holds the job should not be obligated to give his job to her, even though he has been receiving the benefits of the employer's discriminatory hiring practices. For if the employer preferentially hires a female applicant over a male applicant who has received the benefits of discrimination in the past,

the employer is still acting unjustly. The white male applicant may have benefitted from society, but he has done so involuntarily, so he is not the one who owes compensation.

(Fullinwider, 1975)

The claim has been made that the white male should make reparations to females even when he may not have intentionally discriminated against women in the past. If society maintained and supported discrimination against women in the past, then society is obligated to compensate all women for the injustice.

The issue of the justifiability of reverse discrimination does not have to do with an individual's making up for his own acts of injustice against this or that person. (Taylor, 1973: 181)

Thus preferential hiring is justifiable in that it rights "the wrongs committed as an integral part of an organized social practice whose very essence was to discriminate against women." (Taylor, 1973: 181) The victim of the past discrimination was the group of women since they became a collective object of an unjust institutionalized practice. Thus because an institutionalized injustice has occurred, an institutionalized compensation is required. Any man in the society has a duty to comply with and support the practice of preferential hiring which society has decreed. (Taylor, 1973) However it could be that it was the unquestioned support of what society has decreed which could have caused discrimination against women to occur initially.

It must be noted that not all white males have directly benefitted from past discriminatory hiring practices. The white male applicant who is in the job market for the first time has not received any such benefits. Actually it is the white male applicant who is the least likely to be receiving the benefits of discriminatory hiring practices. It is quite possible that he does not have a job, that is why he is applying for one. To assume that it is the white male applicant who is receiving the benefits of having been hired preferentially would be erroneous in many instances. True, the white male applicant may have been hired preferentially in the past, but, again, it would be unfair to assume that all white male applicants have benefitted in this way. In addition, as was mentioned previously, even if some white male applicants did benefit in this way, they did so involuntarily.

Against this argument, there is the claim that preferential hiring does not place the burden of compensation upon white males because the jobs which they have are not being taken away from them. Instead the white male is denied an equal opportunity for a job. This is not something which he gives to women to compensate for his past deeds. Rather it should be regarded as the community taking the opportunity from him to make amends to women. Jobs are the best form of compensation since that is what will best reinstate women's dignity and self-respect. So white males have to pay the

price since they have what society wishes to give to females. White males have had the advantages of self-respect and self-esteem so they should be willing to let women have a chance. (Thomson, 1973)

But, this practice does discriminate against the white male applicant because society is taking away his opportunity for a job so that society can make amends for its past injustices. As with the example of robbing Peter to pay back Pauline, the discrimination is merely reversed and is now against the white male applicant because of society's past mistakes. Again, it is not the white male applicants who have what women "are owed," but the white male jobholders. Therefore they are the ones who should compensate the women if anyone should. After all, it is the white male jobholder who is reaping the benefits of self-esteem and self-respect from his job.

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The above criticisms of the main arguments for compensatory preferential hiring contain the following case against it. (Again, this paper addresses only the arguments for preferential hiring as a matter of compensatory justice, and no other cases for or against preferential hiring.) Women who receive the benefits of preferential hiring are often not the same women who received the initial hiring discrimination. Even if these women have in the past been discriminated against in some manner, that does not warrant their

being given preferential treatment in a hiring situation. Many groups have been discriminated against in the past and it would be virtually impossible to determine which applicant has overcome the most hardships, even if every applicant is a member of only one group, because many people are members of more than one group. Besides, an applicant's qualifications, not his or her underprivileged background, should determine his or her desirability as an applicant. If anyone needs to make compensations, the employers who formerly practiced hiring discrimination are the ones who should do so; but to do so through preferential hiring would merely serve to discriminate against the current white male applicants.

Justice should be seen as "equal treatment under the law for all citizens." (Newton, 1973: 310) Thus injustice can be interpreted as discrimination for or against a group of citizens on bases other than those upon which they should be fairly judged. Therefore, preferential hiring can be equated with the original discrimination in a hiring situation against females. Both are forms of discrimination and both undermine the public equality which is granted by citizenship and alter the grounds upon which choices among applicants are made. (Newton, 1973)

BIBLIOGRAPHY

- Bayles, Michael. "Compensatory Reverse Discrimination in Hiring." Social Theory and Practice, 2 (1973), 301-312.
- Blackstone, William T. "Reverse Discrimination and Compensatory Justice." Social Theory and Practice, 3 (1975), 253-288.
- Boxill, Bernard R. "The Morality of Preferential Hiring." Philosophy and Public Affairs, 7 (1975), 246-268.
- Fullinwider, Robert K. "Preferential Hiring and Compensation." Social Theory and Practice, 3 (1975), 307-320.
- Goldman, Alan H. "Limits to the Justification of Reverse Discrimination." Social Theory and Practice, 3 (1975), 289-306.
- Newton, Lisa H. "Reverse Discrimination as Unjustified." Ethics, 83 (1973), 308-312.
- Sher, George. "Reverse Discrimination, the Future and the Past." Ethics, 90 (1979), 81-87.
- Taylor, Paul W. "Reverse Discrimination and Compensatory Justice." Analysis, 33 (1973), 177-182.
- Thomson, Judith Jarvis. "Preferential Hiring." Philosophy and Public Affairs, 2 (1973), 364-385.