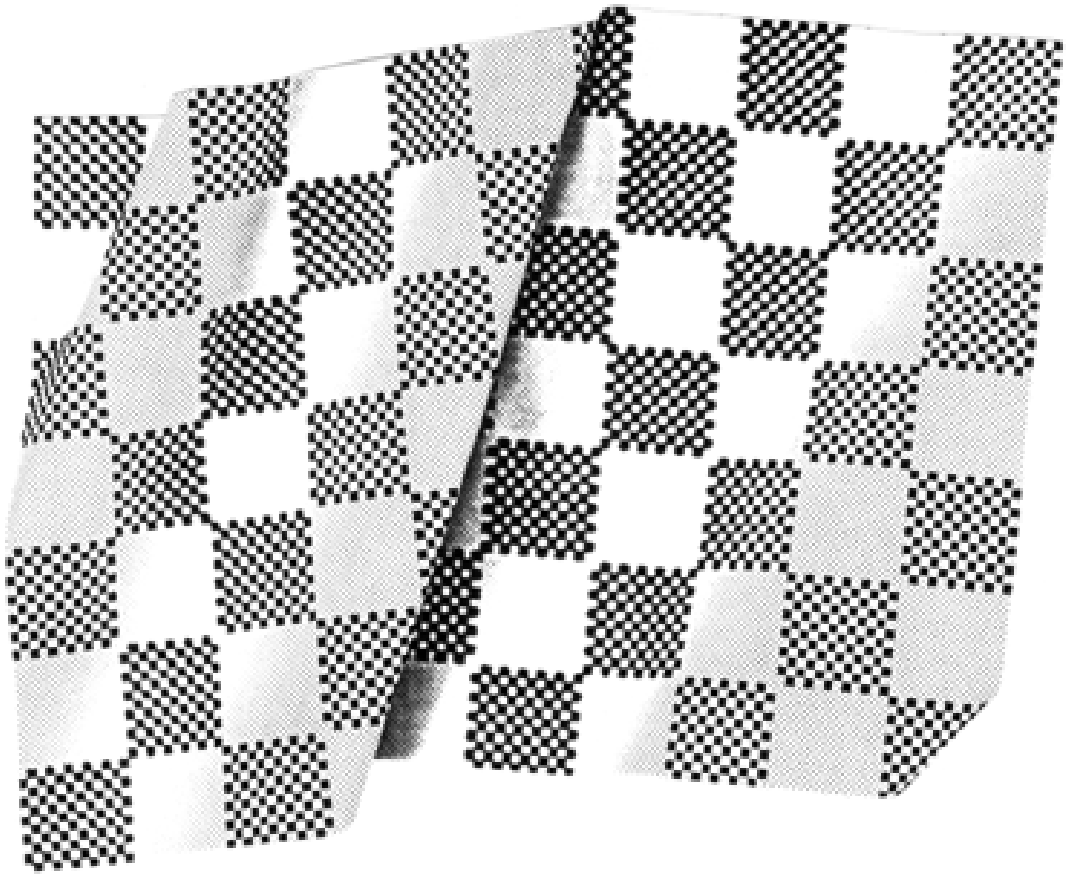
EQUALITY IN EMPLOYMENT

KEVIN DOWD



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INTRODUCTION

on June 24th, 1983, the federal government of Canada appointed a Royal Commission under Judge Rosie Abella to "explore the most efficient, effective, and equitable means of promoting equality in employment for four groups: women, native peoples, disabled persons, and visible minorities". It was also to enquire into ways of responding to ''deficiencies in imployment practices'' including, among others, the possibility of a mandatory affirmative action program. In addition, the Commission was to make a detailed examination of the practices of eleven major crown corporations. After an extensive consultation process, the Commission submitted its Report *Equality in Employment* in October, 1984.

THE RECOMMENDATIONS OF THE REPORT

The issues with which the Commission deals are very wide-ranging, and the Commission therefore took a very broad interpretation of its terms of reference. Though its mandate was federal, it makes recommendations on matters under provincial as well as federal jurisdiction; instructed to examine the practices of some of the crown corporations, it does that but interprets the problems it finds there as illustrative of more widespread issues.

The Report is divided into two parts. The first 'The Case for Equality' attempts to define the basic problem to be dealt with. The second 'Implementing Equality' considers what should be done about it and makes the Commission's recommendations. The thrust of the Report is that the measures taken so far to reduce discrimination have had relatively little effect, and what is required to tackle the problem is a widespread program of mandatory affirmative action.

The central issue with which the Report is concerned is discrimination. For the Commission this seems to mean

> "... practices or attitudes that have, whether by design or impact, the effect of limiting an individual's or a group's right to the opportunities generally available because of attributed rather than actual character- istics." (p. 2)

The Report believes that discrimination against these four groups - women, native people, disabled persons, and visible minorities - is widespread and responsible for many of the disadvantages they bear. Its task is to advocate measures which will remove this discrimination and bring about ''equality in employment'', a situation in which

> "no one is denied opportunity, for reasons that have nothing to do with inherent ability. It means equal access free from arbitrary obstructions." (loc. cit.)

The problem is how to achieve that. The Report considers various measures which have been taken in the past and concludes that none have been particularly effective in eradicating discrimination. For example:

> "Human rights acts, labour codes, and the Charter of Rights and Freedoms contain provisions to address the problem." (pp. 7-8)

But:

> "This approach ... based as it is on individual rather than group remedies, and perhaps confined to alleg- ations of intentional discrimination, cannot deal with the pervasiveness and subtlety of discrimination." (p. 8)

Another tried remedy is education:

> "This] has been the classic crutch upon which we lean in the hopes of coaxing change in prejudicial attitudes. But education is an unreliable agent, glacially slow in movement and impact, and often completely ineffective in the face of intractable views. It offers no relief despite the immediacy of the injustice."(loc. cit.)

Other measures have also been tried and failed. Equal pay legislation, for example, has been around for a number of years but the gender earnings gap continues nonetheless (pp. 235-9), and the affirmative action programs that have been adopted still leave the minorities they are supposed to protect with a disproportionate number of the low-paying, low-status jobs.

In the face of these failures, what is "needed to achieve equality in employment is a massive policy response to systematic discrimination" (p. 254). The Report therefore recommends a program of mandatory affirmative action. The program would need to be mandatory because

> "It is difficult to see how a voluntary approach, that is, an approach that does not include an effective enforcement component, will substantially improve employment opportunities for women, native people, disabled persons, or visible minorities. Given the seriousness and apparent intractability of employ- ment discrimination, it is unrealistic and somewhat ingenuous to rely on there being sufficient public goodwill to fuel a voluntary program." (p. 197)

This would mean that employers would be obliged to implement affirmative action - or, as the Commission prefers to call it, "employment equity" - programs, and an enforcement mechanism would be established to make sure that the programs were implemented properly. Without measures like these we will never get equality in employment. As the Report explains:

> "It is not that individuals in the designated groups are inherently unable to achieve equality on their own, it is that the obstacles in their way are so formidable and self-perpetuating that they cannot be overcome without intervention. It is both intolerable and insensitive if we wait and simply hope that the barriers will disappear with time. Equality in employment will not happen unless we make it happen." (p. 254)

DISCRIMINATION AND INEQUALITY

At first sight it seems hard to disagree with the message of the Report. It is well-established that the groups on which it focuses - women, native people, the handicapped, and visible minorities - have a disproportionate number of low-paid jobs, and no-one can deny that racial and sexual prejudice exists. It might then seem a natural step to conclude from this that the reason why those groups are in that position is *because* they are discriminated against. This is a point of view that has been repeated so often that few would stop to question it. It is also the central premise on which the Report's recommendations are based. We would insist, nonetheless, that *as a matter of fact* discrimination is *not* the cause of the inequalities we see, and these inequalities can be explained on other grounds.

This will probably strike many people as surprising, even shocking. How can one possibly claim that these inequalities are not due to discrimination in view of the mountains of statistics assembled in the Report? The answer is that however many statistics there are, they only tell us that different groups have different occupational dispersions and different average incomes. The question at issue, however, is not the *fact* of inequality but its *cause*. To claim that statistics of inequality *per se* constitute evidence of discrimination one has to maintain that without discrimination each group would have the same representation in jobs, the same average incomes, and so on. One must maint, in other words, that *regardless* of cultural or attitudinal differences among groups, *regardless* of age disparities or geographical dispersion, and *regardless* of differences in innate or acquired abilities, without discrimination one would still expect these groups to choose the same occupations, to earn the same income, and to be the same in just about any respect. No one can seriously believe that. It follows, then, that statistics of inequality *per se* do not constitute evidence of discrimin- ation. It may then be possible to explain these inequalities on other grounds, however large the inequalities are.

The claim that discrimination accounts for all, or at least a significant part, of the inequalities we observe is thus not a foregone conclusion. It is an empirical hypothesis about the real world that can be tested. However plausible it may seem, it does in fact fail when subjected to tests. Consider, for example, the case of blacks in the U.S.. In his book *Civil Rights: Rhetoric or Reality?* Thomas Sowell reports that in 1970 black family incomes in the U.S. were only 62% of the national average. If this were due to discrimination against blacks then presumably all black groups would show comparable figures. It turns out, however, that first-generation West Indians in the U.S. had family incomes 94% of the national average, and second-generation West Indians incomes *above* the national average.[1] Can one seriously argue that employers discriminate against American blacks, but not against West Indians? If West Indians can do reasonably well against discrimination, then it looks as though discrimination is not the reason for the American blacks' poor position. Again, if the low black incomes are due to discrimination, how is it, as Dr. Sowell also reports, that black husband-wife families outside the South earn incomes virtually identical to white husband-wife families outside the South?[2] The evidence thus indicates that once one allows for the many ways in which blacks as a group differ from the national average - their lower average age, their disproportionate number of one-parent families, their geographical dispersion, and so on - then there is no significant difference between their incomes and the national average. The same is true of women in the U.S. as well. Though they earn only about three-fifths of what men do on average, once one allows for the fact that more women work part-time most of the difference disappears. Thus women who remain single earn about 91% of what single men earn, in the 25-64 age range. The remaining 9% seems to be due to the fact that women are not as attracted to highly-paid but physically demanding jobs like construction work.[3] One could give many other compar- able instances of group differences that disappear once one allows for the various ways in which groups differ, or of anomalies that cannot be explained if discrimination is the cause of these differences.[4] For example, in both Canada and the U.S. Chinese, Japanese and East Indians have undoubtedly been victims of discrimination. How is it then that in both countries they earn incomes significantly above the average, and have a disproportionate number of professional jobs?[5] Discrimination has apparently not prevented them from progressing economically. But perhaps the most striking example is that of Jews. This is a group that has sometimes suffered the most blatant discrimination, and yet wherever they are they have always had higher incomes than the average and a vastly disproportionate number of professional positions.

The essential points, then, are (a) that one can explain the unequal outcomes we see on other grounds than discrimination, and (b) that there exist various empirical anomalies, such as the difference between American and Carribean blacks, which apparently cannot be explained if one believes that discrimination is significant factor in explaining those differences in outcomes.

MARKETS AND DISCRIMINATION

One of the beliefs underlying the Report is that markets tend to be conducive to discrimination, and that intervention in the marketplace is therefore necessary to counteract it. For example, the Report says:

> "Those who suggest that equal pay and other economic issues for women be left to the awakening sensibilities of the marketplace either do not appreciate that the values of the marketplace may themselves be discriminatory or do not care that they are not. The marketplace is a convenient altar upon which many needs are sacrificed." (p. 253)

This is another widely held view. It is, however, the very opposite of the truth. What its proponents do not appear to realise is that far from acting as an instrument of discrimination, free markets actually discourage it because they impose penalties on those who practice it. The essential point is that when a firm practices discrimination it deliberately restricts its own choice and passes over the best-qualified candidate. It thus forces itself to hire second-best personnel. On the other hand, firms that do not discriminate do not restrict their choices and can hire whom they choose. Thus firms that discriminate by the very act of discrimination reduce their own profits and give rivals that do not a competitive edge. This is the automatic penalty that free markets impose on discrimination.

The size of the penalty depends, however, on how competitive the markets are. If markets were perfectly competitive, for example, then no firm that practiced discrimination would be enough to price it out of business. Nor do markets need to be perfectly competitive to drive discriminators out of business: all one needs is that markets be sufficiently competitive. Firms can only practice discrimination and survive to the extent that there exist significant imperfections in markets which can protect them against non-discriminating competition. But even if they manage to survive, discriminating firms will always suffer from reduced profits, and this will reduce the market value of their equity. There is therefore always the scope for someone to make a capital gain by buying up the firm, abolishing its discriminatory practices and thereby raising its market value, and selling it again. Thus even if there exist significant imperfections in the markets in which the firm sells its product, discrimination will not persist provided that there exists a reasonably efficient capital market on which its shares are traded. It follows, then, that firms can practice discrimination *only* if they can protect themselves sufficiently from rivals' competition, *and* if they can prevent themselves from being bought out. To remove discrimination, what we need to do, therefore, is to promote competition in all markets as far as possible.

Perhaps the area where most could be achieved in this regard is deregulation. Many regulations tend to create enclaves where particular groups are sheltered from the blast of competition. These havens then provide an opportunity for discrimination to persist where it would otherwise be eliminated by market forces. Explicit discrimination is not the only problem, either, since reglations often have differential impacts on different groups that are very similar to the effects of discrimination. In his book *The State Against Blacks* Walter E. Williams presents evidence that occupational licensing laws in the U.S. have had disastrous racial effects, and have forced blacks out of many positions where they were previously well-represented. To give an example, in most major American cities the number of taxi-cab licenses is strictly regulated, and this had has the effect of driving up their market value. In New York, for instance, they sell for about $60,000 each. The effect has been to put taxi- driving beyond the reach of most poor groups. Thus Philadelphia has 17 licensed black cab-drivers out of 1500. On the other hand, in Washington where there is no restrictive licensing, about 70% of the city's 10,000 licensed cab-drivers are black.[6] The restrictive licensing of taxi-cabs thus drastically reduced the total number of cabs and radically altered the racial composition of those left. One could tell similar stories for other regulations like rent controls or minimum wage regulation. Rent controls, for example, tend to reduce the supply of housing and thereby raise its shadow price. Even though the direct monetary rent may be held down, when one allows for such costs as housing becoming harder to find, its quality deteriorating, and so on, its overall costs is actually *increased* by controls.[7] Rent controls thus tend to harm the poorer groups in society that they are designed to help. Attempts to standardise wages or impose minimum wages tend to remove the incentive to employ workers who may be less qualified or less experienced than the average. Groups like blacks thus find themselves out of many of their jobs.[8]

There are many other ways besides deregulation to unleash market forces to remove discrimination. Free trade, for example, tends to expose protected domestic industries to the blast of foreign competition and make discriminatory practices much more expensive to maintain. Measures to reduce or to remove monopoly privileges also have the same effect. These measures would all tend to promote competition in product or labour markets. One could also promote competition in capital markets as well. At the moment most firms are subject to the threat of takeover. Crown corporations are an exception, however, because their shares are not traded. This gives them more scope to get away with discriminatory practices should they practice them. Perhaps the best way to remove this scope is simply to privatise them.

The worst way to combat discrimination, therefore, is to interfere in markets and regulate them. Interference and regulation tend to promote discrimination because they provide the sheltered environment it needs to survive. If we really want to eradicate discrimination we should open up markets to the competitive pressures which will destroy it.

THE ARBITRARINESS OF 'EQUALITY OF OUTCOMES'

The message of the Report is that we need to take measures to ensure that market outcomes are equal. What is not appreciated, however, is that this ideal of 'equality of outcomes' is necessarily arbitrary, and that those who promote it are in effect arguing for the creation or strengthening of agencies with arbitrary powers. One can see this when one compares 'equality of outcomes' with alternative principles like equality before the law, the protection of property, and so on. When we say that individuals should be equal before the law, we mean *all* individuals should be treated equally by the law; when we talk of the protection of property we mean that the law should protect everyone's property, and so on. The essential point is that the rule tells us exactly what to do in any given situation. But what do we mean when we talk of 'equality of outcomes'? Do we really mean that by what- ever standards we use to measure outcomes, they should be exactly the same for any individuals or groups? Do we really mean that for any individuals or groups one cares to take, we should ensure that their incomes, their education, their job satisfaction, or anything else, should be exactly the same? But if advocates of 'equality of outcome' are not arguing for the levelling of everybody in every respect, then what are they advocating? They seem to be arguing that certain characteristics are to be equalised and others should not, but how is one to decide which? And how is one to choose the groups to be compared to ensure that whatever characteristics one wants to equalise are indeed equalised?

What one means by 'equality of outcomes' thus depends entirely on which characteristics one equalises and which groups one chooses to compare. These are entirely arbitrary. If one decides to equalise incomes one gets one kind of outcome, if one tried to equalise education one gets another, if one tries to equalise incomes and education, one gets a third, and so on. The principle that outcomes should be equalised does not tell us *which* outcomes to equalise. The same problem arises with the choice of groups to compare. Should one compare, for example, visible minorities with WASPs or the overall average? Should one break

down visible minorities to allow for the fact that some of them do much better than others? Even if we could decide on this sort of issue, at what level of aggregation do we compare our groups? Do we compare them across the country, across a region or province, or just across the local community? One gets very different outcomes with each of these decisions. The problem with the principle of equality of outcomes is that it gives us *no* guidance as to what decisions to make on these matters. It is therefore necessarily arbitrary.

Proponents of 'equality of outcomes' are thus in effect arguing for the establishment of bodies with wide-ranging powers to achieve an outcome which is entirely arbitrary. To this they might try to reply that whatever the outcome is, it would be one in which 'equality of outcome' would be achieved, or they might argue that we could rely on their authorities to use their discretion to make these decisions. Neither of these will do since they both avoid the main problem. It is no good arguing that whatever outcome comes out is one in which equality of outcome is achieved because one must specify what equality of outcome actually *means*. The problem is that there is nothing in the principle of equality of outcome to tell us what an equal outcome looks like or how it differs from an unequal one. *Defining* the outcome as equal provided it has gone through the affirmative action process simply begs the issue. Nor is it any good trusting that the relevant agencies will use their discretion reasonably. The problem is that the principle gives them *no* criteria on which to base their discretion. There is therefore no basis on which to judge whether they were being reasonable or not.

It is a sound principle of legislation that when we establish an agency we do it to achieve some particular ends. We should *never* establish some agency without some clear idea of the ends it will achieve, especially if we endow it with very considerable powers we give to 'human rights' tribunals and affirmative action agencies. The proponents of 'equality of outcome' must specify exactly what it would mean in practice, and why they would equalise in certain ways but not in others. They cannot ask society to sign blank cheques in the name of the nebulous ideal that outcomes should be equal. They must first tell us exactly what it means.

AFFIRMATIVE ACTION

One of the problems with affirmative action is that it fails to take proper accound of the fact that other factors than discrimination may explain unequal outcomes. To the extent that discrimination *is* the cause of these inequalities, of course, a program of affirmative action *may* be an appropriate policy, though we would argue that even in that case a vigorous policy of promoting competition would be much more effective because it would remove the shelter which the practice of discrimination requires to survive. In this case it may be possible to mount an argument to the effect that we should fight discrimination with discrimination of our own - usually called 'reverse discrimination' - *provided* that in doing so we could attain the situation that would have prevailed if there had been no discrimination in the first place. Achieving the situation that would have prevailed in the absence of discrimination is the basic justification for affirmative action. It can be defended, therefore, *only* to the extent that discrimination accounts for the inequalities we see. But we have already seen that there is no basis for believing that the inequalities we observe are in fact due to discrimination. There is therefore no justification for any affirmative action.

In these circumstances the implementation of affirmative action would not serve to reduce discrimination, but would in fact introduce a system of discrimination of its own whereby perfectly eligible candidates were passed over simply because they did not belong to the 'minority' groups favoured by the program. This means that if our aim is to promote equality of employment we have no choice but to *oppose* what the Report recommends. This is so even on the basis of the Report's own definition of equality of employment. This, it will be recalled, is a situation where

> "no one is denied opportunities for reasons that have nothing to do with inherent ability. It means equal access free from arbitrary restrictions." (p. 2)

Another problem is that measures like affirmative action are often advocated by people who have very little idea of the effects they would have on the groups they are designed to help. Though affirmative action and the various measures associated with it have certainly helped some members of 'minority' groups, they appear to have had the effect of *retarding* the progress of those group members who were genuinely disadvantaged to begin with. For example, in 1967 black male high school dropouts in the U.S. with less that six years work experience earned about 79% of the incomes of their white counterparts. This fell to 69% by 1978. Similarly, in 1970 black female-headed households earned 70% of the incomes of white female-headed households. By 1980 this had fallen to only 62%.[9] Over the same period, those who were better off to begin with benefited considerably. For instance, the incomes of college educated blacks with six or more years of work experience rose from 75% of the incomes of their white counterparts in 1967 to 98% in 1978.[10] The general effect of affirmative action and the measures associated with it in the U.S. has therefore been to benefit those 'minority' members who were relatively well-off to begin with, but at the expense of those at the bottom of the scale. The reason, we would suggest, is that by making it more difficult to avoid hiring or promoting members of minorities, affirmative action encourages employers to hire and promote those of them who were more experienced or better-qualified. On the other hand, the battery of 'equal pay' and other regulations that have accompanied affirmative action have tended to raise the wages of those at the bottom end of the scale, with the effect of pricing them out of the market.

The United States has had much more experience with affirmative action than Canada. It is hard to argue that it has had much success. Though there have been 'improvements' in some areas, it appears to have differential effects within the minority groups themselves, with the better-off gaining and those who were disadvantaged to begin with losing out. It has also had some insidious side-effects. In particulary, American society has become much more polarised than it was before and it is hard to argue that these measures have done anything to foster racial or sexual harmony. The growth of hate organisations in the U.S. suggests, if anything, that bigotry and prejudice are on the increase there. American experience with these measures should be a lesson for Canada. We would do well to learn

from it since otherwise we may condemn ourselves to repeat it.

EQUALITY OF OUTCOMES VERSUS EQUALITY BEFORE THE LAW

The Report refers repeatedly to values like equity, equality and justice. Quite what it means by these terms is not altogether clear, however. Sometimes it talks as if equity or justice meant simply freedom from discrimination. At other times, these terms seem to mean an outcome that is equal in some way, or at least more equal than the current one. An obvious problem, of course, is that these notions of justice or equity are by no means the same: it is one thing to label an unequal outcome as unjust because it was caused by discrimination; it is quite another to label an outcome as unjust simply because it is unequal. The Report repeatedly switches from one notion to the other and back again: it often asserts, for example, that there was discrimination in some particular situation, and then goes on to quote statistics of inequality as if they were evidence of discrimination. This is only the case, as we have already mentioned, if discrimination is the *only* cause of inequality. One must either accept that discrimination is not the only cause of inequality, in which case all the statistics of inequality as such prove nothing about discrimination, or else one can argue that it is inequality *per se* that is wrong. But one cannot shift from one meaning of equity to the other and back again as one pleases. One has to adopt one consistent meaning of the term and stick to it.

The ambiguity of the Report's ethics is a major weakness, but that is not its most serious problem. Its main problem is its rejection of the idea of justice as 'equality before the law'. Its attitude to this notion of justice is made quite clear at the heading of chapter one when it quotes Anatole France's oft-repeated dictum that "The law, in its majestic equality, forbids the rich as well as the poor to sleep under bridges, to beg in the streets, and to steal bread". The Report repeatedly stresses that this idea of justice is simply not enough. We are told again and again that the evil of discrimination is so widespread and pervasive that we cannot trust the market mechanism to eradicate it; the injustice is so bad that nothing less than an immediate and massive program of affirmative action is needed to deal with it. One cannot pretend that one can adopt measures like this and still maintain the principle that the law treats everyone equally. If the law maintains that preference should be given to individuals from some groups over individuals from others, then the law discriminates and does not treat individuals equally. *Programs like affirmative action work precisely because they violate the principle of equality before the law*. The two principle of 'equality of outcome' and 'equality before the law' are thus mutually incompatible. We must decide which one to adopt and which one to reject.

The conflict between these two ideas of justice runs very deep. It is in fact just one issue in an ongoing conflict between two mutually opposed ideologies. On the one hand there is classical liberalism, which asserts that principles like equality before the law and the protection of liberty and property are absolutely fundamental. According to this view, these principles represent the basic rights of the individual, and anything that conflicts with these rights is to be rejected. The classical liberals would add to this that if these principles were observed the resulting order of society would be one in which, on average, everyone's welfare would be the highest that could be attained. This would come about because the market mechanism would encourage each individual to engage in those activities that were most valued by everyone else. This would come about completely spontaneously through the co-ordination of the market mechanism. The corollary of this, however, is that attempts to interfere with individual rights or the market co-ordination process will prevent this outcome and damage the social order.[10] The alternative view rejects this and argues that the 'negative' rights of classical liberalism are simply not enough. People also have 'positive' rights which classical liberalism ignores. These include such 'rights' as the right to work, the right not to be discriminated against, the right to adequate housing, and so on.

At first sight, this might seem reasonable enough. Most of us, after all, believe that people should have jobs, should not be discriminated against, should have proper housing and the like. This kind of argument only seems appealing, however, because those who make it argue as if the issue were between those (i.e. themselves) who are concerned about the evils of unemployment, discrimination, homelessness, and so on, and those who oppose them, who, almost by definition, are not. This is *not* the issue. The reason why classical liberals opposed the 'new' rights is not because they were unconcerned with these various social evils, but because they realised that these 'new rights' were not 'rights' at all, but merely aspirations, and that the attempt to enforce them would undermine the free order of society on which everything ultimately depends.

When we talk of the 'rights' of individuals there is strictly speaking a corresponding duty falling on some specific individual or organisation.[11] If I have a right to the protection of my property it is essential that there is someone or some organisation on whom I can rely to ensure that my right to my property is enforced. If a child has a right to be fed someone or some organisation must have the duty to feed him. It is of the essence of the notion of 'right' that there be some established means of realising or enforcing that right. It is also essential to make clear the precise circumstances in which the obligation arises and the precise nature of the obligation itself. Without this the term 'right' is simply meaningless. The problem with the 'new' rights is that they do not specify what the corresponding duties are or on whom they fall. If pressed, proponents of the 'new' rights will reply that theser are rights against 'society'. This argument, however, is based on a fallacy. For a right to be properly defined, the agent on whom the associated duty falls must be capable of fulfilling that duty. But 'society' is nothing more than a catch-all term for the community in which we live. 'Society' does not think or act. It is only the individuals or organisations in it that can do that. One can speak of rights against specific individuals or organisations in society, but one can never speak of 'rights' against society itself. Treating 'society' anthropomorphically is a classic example of what philosophers call a 'category mistake'. There is no denying that the objectives for which these 'new rights' strive are in the main highly desirable. But however desirable they may be, they are not rights and to speak of them as if they were is to debase the term and play an irresponsible game with it.

The danger with the so-called 'new rights' is that the means we use to try to attain them may conflict with 'old' rights on which the survival of a free society depends. This is a very real danger because many of the proponents of the 'new rights' seem to regard them as more important than the old, and are quire ready to sacrifice the old rights if they get in the way. We already see the beginnings of this in the quasi-judicial machinery which has been set up to promote affirmative action and what are misleadingly referred to as 'human rights'. Not only have these agencies seen fit to interfere arbitrarily with individuals' freedom of contract and their right to dispose of their property, they have also taken the unprecedented step of reversing the presumption that parties are innocent until proven otherwise. These are all major infringements of rights that were once considered inviolable. We cannot undermine the basis of our free society and at the same time take the benefits of a free society for granted. If we chase after what pass for 'new rights' and undermine our old rights in the process, we risk losing everything we already have.

CONCLUSIONS

The basic premise of the Report is that the unequal outcomes we observe are due to widespread and entrenched discrimination. This view is one of the great superstitions of our age. It is so widely-held that it is usually considered to be self-evident. It is so obvious that empirical evidence is usually considered superfluous. It is nonetheless empirically false. It is also irrational. It completely ignores the role of markets in penalising discrimination. If one really wants to eradicate discrimination all one needs to do is take measures to ensure that markets are as competitive as possible. This will remove the shelter from competition that discrimination needs to survive. Yet proponents of the view that unequal outcomes are due to discrimination argue as if markets actually functioned as instruments of discrimination. They then propose to counter discrimination with extensive intervention and regulation, not realising that those are the very things that make discrimination possible.

On the basis of this false and irrational premise they then propose that we should take all necessary measures to achieve an ideal known as 'equality of outcomes'. This deal, however, is completely vacuous, and we would never even know we had it if we got it. Yet we are asked to compromise many of our most important civil rights to help attain it. In the process we would compromise the foundations on which free society is based. To some extent, we already have. The sooner we realise this and give up this chase after the Holy Grail, the better off and safer we will all be.

NOTES

1. Sowell (1983), pp. 77-9.
2. Op. cit., pp. 80-1.
3. Op. cit., p. 92.
4. For U.S. evidence see Sowell (1983).
5. Williams (1982), p. 75.
6. Sowell (1983), pp. 89.
7. One can show this with basic supply and demand analysis. The imposition of controls will shift the supply curve of rented accomodation to the left. With price interpreted as shadow price, the demand curve remains where it is. Hence the shadow price rises.
8. Op. cit., p. 52.
9. Loc. cit.
10. For some modern exponents of this philosophy, see Nozick (1974) or Hayek (1973), (1976), (1979).
11. This argument is based on Hayek's ''Justice and Individual Rights'' in the second volume of *Law, Legislation and Liberty* (1976).

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