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## The rediscovery of character: private virtue and public policy

JAMES Q. WILSON

T

HE most important change in how one defines the public interest that I have witnessed—and experienced—over the last twenty years has been a deepening concern for the development of character in the citizenry. An obvious indication of this shift has been the rise of such social issues as abortion and school prayer. A less obvious but I think more important change has been the growing awareness that a variety of public problems can only be understood—and perhaps addressed—if they are seen as arising out of a defect in character formation.

*The Public Interest* began publication at about the time that economics was becoming the preferred mode of policy analysis. Its very first issue contained an article by Daniel Patrick Moynihan hailing the triumph of macroeconomics: “Men are learning how to make an industrial economy work” as evidenced by the impressive ability of economists not only to predict economic events accurately but to control them by, for example, delivering on the promise of full employment. Six months later I published an essay suggesting that poverty be dealt with by direct income transfers in the form of a negative income tax or family allowances. In the next issue, James Tobin made a full-scale proposal for a negative income tax and Virginia Held welcomed program planning and budgeting to Washington

as a means for rationalizing the allocative decisions of government, a topic enlarged upon the following year by a leading practitioner of applied economics, William Gorham. Meanwhile, Thomas C. Schelling had published a brilliant economic analysis of organized crime and Christopher Jencks a call for a voucher system that would allow parents to choose among public and private purveyors of education. In a later issue, Gordon Tullock explained the rise in crime as a consequence of individuals responding rationally to an increase in the net benefit of criminality.

There were criticisms of some of these views. Alvin L. Schorr, James C. Vadakian, and Nathan Glazer published essays in 1966, 1968, and 1969 attacking aspects of the negative income tax, and Aaron Wildavsky expressed his skepticism about program budgeting. But the criticisms themselves often accepted the economic assumptions of those being criticized. Schorr, for example, argued that the negative income tax was unworkable because it did not resolve the conflict between having a strong work incentive (and thus too small a payment to many needy individuals) and providing an adequate payment to the needy (and thus weakening the work incentive and making the total cost politically unacceptable). Schorr proposed instead a system of children's allowances and improved social security coverage, but he did not dissent from the view that the only thing wrong with poor people was that they did not have enough money and the conviction that they had a "right" to enough. Tobin was quick to point out that he and Schorr were on the same side, differing only in minor details.

A central assumption of economics is that "tastes" (which include what non-economists would call values and beliefs, as well as interests) can be taken as given and are not problematic. All that is interesting in human behavior is how it changes in response to changes in the costs and benefits of alternative courses of action. All that is necessary in public policy is to arrange the incentives confronting voters, citizens, firms, bureaucrats, and politicians so that they will behave in a socially optimal way. An optimal policy involves an efficient allocation—one that purchases the greatest amount of some good for a given cost, or minimizes the cost of a given amount of some good.

This view so accords with common sense in countless aspects of ordinary life that, for many purposes, its value is beyond dispute. Moreover, enough political decisions are manifestly so inefficient or rely so excessively on issuing commands (instead of arranging incentives) that very little harm and much good can be done by urging

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public officials to "think economically" about public policy. But over the last two decades, this nation has come face to face with problems that do not seem to respond, or respond enough, to changes in incentives. They do not respond, it seems, because the people whose behavior we wish to change do not have the right "tastes" or discount the future too heavily. To put it plainly, they lack character. Consider four areas of public policy: schooling, welfare, public finance, and crime.

### Schooling

Nothing better illustrates the changes in how we think about policy than the problem of finding ways to improve educational attainment and student conduct in the schools. One of the first reports of the 1966 study on education by James Coleman and his associates appeared in this magazine. As every expert on schooling knows, that massive survey of public schools found that differences in the objective inputs to such schools—pupil-teacher ratios, the number of books in the library, per pupil expenditures, the age and quality of buildings—had no independent effect on student achievement as measured by standardized tests of verbal ability.

But as many scholars have forgotten, the Coleman Report also found that educational achievement was profoundly affected by the family background and peer-group environment of the pupil. And those who did notice this finding understandably despaired of devising a program that would improve the child's family background or social environment. Soon, many specialists had concluded that schools could make no difference in a child's life prospects, and so the burden of enhancing those prospects would have to fall on other measures. (To Christopher Jencks, the inability of the schools to reduce social inequality was an argument for socialism.)

Parents, of course, acted as if the Coleman Report had never been written. They sought, often at great expense, communities that had good schools, never doubting for a moment that they could tell the difference between good ones and bad ones or that this difference in school quality would make a difference in their child's education. The search for good schools in the face of evidence that there was no objective basis for that search seemed paradoxical, even irrational.

In 1979, however, Michael Rutter and his colleagues in England published a study that provided support for parental understanding by building on the neglected insights of the Coleman Report. In *Fifteen Thousand Hours*, the Rutter group reported what they learned

from following a large number of children from a working-class section of inner London as they moved through a dozen non-selective schools in their community. Like Coleman before him, Rutter found that the objective features of the schools made little difference; like almost every other scholar, he found that differences in verbal intelligence at age ten were the best single predictor of educational attainment in the high school years. But unlike Coleman, he looked at differences in that attainment across schools, holding individual ability constant. Rutter found that the schools in inner London had very different effects on their pupils, not only in educational achievement but also in attendance, classroom behavior, and even delinquency. Some schools did a better job than others in teaching children and managing their behavior.

The more effective schools had two distinctive characteristics. First, they had a more balanced mix of children—that is, they contained a substantial number of children of at least average intellectual ability. By contrast, schools that were less effective had a disproportionate number of low-ability students. If you are a pupil of below average ability, you do better, both academically and behaviorally, if you attend a school with a large number of students who are somewhat abler than you. The intellectual abilities of the students, it turned out, were far more important than their ethnic or class characteristics in producing this desirable balance.

Second, the more effective schools had a distinctive ethos: an emphasis on academic achievement, the regular assignment of homework, the consistent and fair use of rewards (especially praise) to enforce generally agreed-upon standards of conduct, and energetic teacher involvement in directing classroom work. Subsequent research by others has generally confirmed the Rutter account, so much so that educational specialists are increasingly discussing what has come to be known as the “effective schools” model.

What is striking about the desirable school ethos is that it so obviously resembles what almost every developmental psychologist describes as the desirable family ethos. Parents who are warm and caring but who also use discipline in a fair and consistent manner are those parents who, other things being equal, are least likely to produce delinquent offspring. A decent family is one that instills a decent character in its children; a good school is one that takes up and continues in a constructive manner this development of character.

Teaching students with the right mix of abilities and in an atmosphere based on the appropriate classroom ethos may be easier in private than in public schools, a fact which helps explain why Cole-

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man (joined now by Thomas Hoffer and Sally Kilgore) was able to suggest in the 1982 book, *High School Achievement*, that private and parochial high schools may do somewhat better than public ones in improving the vocabulary and mathematical skills of students and that this private-school advantage may be largely the result of the better behavior of children in those classrooms. In the authors' words, "achievement and discipline are intimately intertwined." Public schools that combine academic demands and high disciplinary standards produce greater educational achievement than public schools that do not. As it turns out, private and parochial schools are better able to sustain these desirable habits of work behavior—this greater display of good character—than are public ones.

### Welfare

Besides the Coleman Report, another famous document appeared at about the time this magazine was launched—the Moynihan Report on the problems of the black family (officially, the U.S. Department of Labor document entitled *The Negro Family: The Case for National Action*). The storm of controversy that report elicited is well-known. Despite Moynihan's efforts to keep the issue alive by publishing in these pages several essays on the welfare problem in America, the entire subject of single-parent families in particular and black families in general became an occasion for the exchange of mutual recriminations instead of a topic of scientific inquiry and policy entrepreneurship. Serious scholarly work, if it existed at all, was driven underground, and policymakers were at pains to avoid the matter except, occasionally, under the guise of "welfare reform" which meant (if you were a liberal) raising the level of benefits or (if you were a conservative) cutting them. By the end of the 1960s, almost everybody in Washington had in this sense become a conservative; welfare reform, as Moynihan remarked, was dead.

Twenty years after the Moynihan Report, Moynihan himself could deliver at Harvard a lecture in which he repeated the observations he had made in 1965, but this time to an enthusiastic audience and widespread praise in the liberal media. At the same time, Glenn C. Loury, a black economist, could publish in these pages an essay in which he observed that almost everything Moynihan had said in 1965 had proved true except in one sense—today, single-parent families are twice as common as they were when Moynihan first called the matter to public attention. The very title of Loury's essay suggested how times had changed: Whereas leaders once spoke of "welfare reform" as if it were a problem of finding the

most cost-effective way to distribute aid to needy families, Loury was now prepared to speak of it as "The Moral Quandary of the Black Community."

Two decades that could have been devoted to thought and experimentation had been frittered away. We are no closer today than we were in 1965 to understanding why black children are usually raised by one parent rather than by two or exactly what consequences, beyond the obvious fact that such families are very likely to be poor, follows from this pattern of family life. To the extent the matter was addressed at all, it was usually done by assuming that welfare payments provided an incentive for families to dissolve. To deal with this, some people embraced the negative income tax (or as President Nixon rechristened it, the Family Assistance Plan) because it would provide benefits to all poor families, broken or not, and thus remove incentive for dissolution.

There were good reasons to be somewhat skeptical of that view. If the system of payments under the program for Aid to Families of Dependent Children (AFDC) was to blame for the rise in single-parent families, why did the rise occur so dramatically among blacks but not to nearly the same extent among whites? If AFDC provided an incentive for men to beget children without assuming responsibility for supporting them, why was the illegitimacy rate rising even in states that did not require the father to be absent from the home for the family to obtain assistance? If AFDC created so perverse a set of incentives, why did these incentives have so large an effect in the 1960s and 1970s (when single-parent families were increasing by leaps and bounds) and so little, if any, such effect in the 1940s and 1950s (when such families scarcely increased at all)? And if AFDC were the culprit, how is it that poor, single-parent families rose in number during a decade (the 1970s) when the value of AFDC benefits in real dollars was declining?

Behavior does change with changes in incentives. The results of the negative income tax experiments certainly show that. In the Seattle and Denver experiments, the rate of family dissolution was much higher among families who received the guaranteed annual income than among similar families who did not—36 percent higher in the case of whites, 42 percent higher in the case of blacks. Men getting the cash benefits reduced their hours of work by 9 percent, women by 20 percent, and young males without families by 43 percent.

Charles Murray, whose 1984 book, *Losing Ground*, has done so much to focus attention on the problem of welfare, generally en-



dorses the economic explanation for the decline of two-parent families. The evidence from the negative income tax experiments is certainly consistent with his view, and he makes a good case that the liberalization of welfare eligibility rules in the 1960s contributed to the sudden increase in the AFDC caseload. But as he is the first to admit, the data do not exist to offer a fully tested explanation of the rise of single-parent families; the best he can do is to offer a mental experiment showing how young, poor men and women might rationally respond to the alternative benefits of work for a two-parent family and welfare payments for a one-parent one. He rejects the notion that character, the *Zeitgeist*, or cultural differences are necessary to an explanation. But he cannot show that young, poor men and women in fact responded to AFDC as he assumes they did, nor can he explain the racial differences in rates or the rise in caseloads at a time of declining benefits. He notes an alternative explanation that cannot be ruled out: During the 1960s, a large number of persons who once thought of being on welfare as a temporary and rather embarrassing expedient came to regard it as a right that they would not be deterred from exercising. The result of that change can be measured: Whereas in 1967, 63 percent of the persons eligible for AFDC were on the rolls, by 1970 91 percent were.

In short, the character of a significant number of persons changed. To the extent one thinks that change was fundamentally wrong, then, as Loury has put it, the change creates a moral problem. What does one do about such a moral problem? Lawrence Mead has suggested invigorating the work requirement associated with welfare, so that anyone exercising a "right" to welfare will come to understand that there is a corresponding obligation. Murray has proposed altering the incentives by increasing the difficulty of getting welfare or the shame of having it or so as to provide positive rewards for not having children, at least out of wedlock. But nobody has yet come to grips with how one might test a way of using either obligations or incentives to alter character so that people who once thought it good to sire or bear illegitimate children will now think it wrong.

#### Public finance

We have a vast and rising governmental deficit. Amidst the debate about how one might best reduce that deficit (or more typically, reduce the rate of increase in it), scarcely anyone asks why we have not always had huge deficits.

If you believe that voters and politicians seek rationally to maxi-



mize their self-interest, then it would certainly be in the interest of most people to transfer wealth from future generations to present ones. If you want the federal government to provide you with some benefit and you cannot persuade other voters to pay for your benefit with higher taxes, then you should be willing to have the government borrow to pay for that benefit. Since every voter has something he would like from the government, each has an incentive to obtain that benefit with funds to be repaid by future generations. There are, of course, some constraints on unlimited debt financing. Accumulated debt charges from past generations must be financed by this generation, and if these charges are heavy there may well develop some apprehension about adding to them. If some units of government default on their loans, there are immediate economic consequences. But these constraints are not strong enough to inhibit more than marginally the rational desire to let one's grandchildren pay (in inflation-devalued dollars) the cost of present indulgences.

That being so, why is it that large deficits, except in wartime, have been a feature of public finance only in the past few decades? What kept voters and politicians from buying on credit heavily and continuously beginning with the first days of the republic?

James M. Buchanan, in his 1984 presidential address to the Western Economic Association, has offered one explanation for this paradox. He has suggested that public finance was once subject to a moral constraint—namely, that it was right to pay as you go and accumulate capital and wrong to borrow heavily and squander capital. Max Weber, of course, had earlier argued that essential to the rise of capitalism was a widely shared belief (he ascribed it to Protestantism) in the moral propriety of deferring present consumption for future benefits. Buchanan has recast this somewhat: He argues that a Victorian morality inhibited Anglo-American democracies from giving in to their selfish desire to beggar their children.

Viewed in this way, John Maynard Keynes was not simply an important economist, he was a moral revolutionary. He subjected to rational analysis the conventional restraints on deficit financing, not in order to show that debt was always good but to prove that it was not necessarily bad. Deficit financing should be judged, he argued, by its practical effect, not by its moral quality.

Buchanan is a free-market economist, and thus a member of a group not ordinarily given to explaining behavior in any terms other than the pursuit of self-interest narrowly defined. This fact makes all the more significant his argument that economic analysts must understand "how morals impact on choice, and especially how an

erosion of moral precepts can modify the established functioning of economic and political institutions.”

A rejoinder can be made to the Buchanan explanation of deficit financing. Much of the accumulated debt is a legacy of having fought wars, a legacy that can be justified on both rational and moral grounds (who wishes to lose a war, or to leave for one's children a Europe dominated by Hitler?). Another part of the debt exists because leaders miscalculated the true costs of desirable programs. According to projections made in 1965, Medicare was supposed to cost less than \$9 billion a year in 1990; in 1985, the bill was already running in excess of \$70 billion a year. Military pensions seemed the right thing to do when men were being called to service; only in retrospect is their total cost appreciated. The Reagan tax cuts were not designed to impose heavy debts on our children but to stimulate investment and economic growth; only later did it become obvious that they have contributed far more to the deficit than to economic growth. The various subsidies given to special interest groups for long seemed like a small price to pay for insuring the support of a heterogeneous people for a distant government; no one could have foreseen their cumulative burden.

No doubt there is some truth in the proposition that our current level of debt is the result of miscalculation and good intentions gone awry. But what strengthens Buchanan's argument, I believe, is the direction of these miscalculations (if that is what they were) and the nature of these good intentions. In almost every instance, leaders proposing a new policy erred in the direction of understating rather than overstating future costs; in almost every instance, evidence of a good intention was taken to be government action rather than inaction. Whether one wishes to call it a shift in moral values or not, one must be struck by the systematic and consistent bias in how we debated public programs beginning in the 1930s but especially in the 1960s. It is hard to remember it now, but there once was a time, lasting from 1789 to well into the 1950s, when the debate over almost any new proposal was about whether it was *legitimate* for the government to do this at all. These were certainly the terms in which Social Security, civil rights, Medicare, and government regulation of business were first addressed. By the 1960s, the debate was much different: how much should we spend (not, should we spend anything at all); how can a policy be made cost-effective (not, should we have such a policy in the first place). The character of public discourse changed and I suspect in ways that suggest a change in the nature of public character.



## Crime

I have written more about crime than any other policy issue, and so my remarks on our changing understanding of this problem are to a large degree remarks about changes in my own way of thinking about it. On no subject have the methods of economics and policy analysis had greater or more salutary effect than on scholarly discussions of criminal justice. For purposes of designing public policies, it has proved useful to think of would-be offenders as mostly young males who compare the net benefits of crime with those of work and leisure. Such thinking, and the rather considerable body of evidence that supports it, leads us to expect that changes in the net benefits of crime affect the level of crime in society. To the extent that policymakers and criminologists have become less hostile to the idea of altering behavior by altering its consequences, progress has been made. Even if the amount by which crime is reduced by these measures is modest (as I think in a free society it will be), the pursuit of these policies conforms more fully than does the rehabilitative idea to our concept of justice—namely, that each person should receive his due.

But long-term changes in crime rates exceed anything that can be explained by either rational calculation or the varying proportion of young males in the population. Very little in either contemporary economics or conventional criminology equips us to understand the decline in reported crime rates during the second half of the nineteenth century and the first part of the twentieth despite rapid industrialization and urbanization, a large influx of poor immigrants, the growing ethnic heterogeneity of society, and widening class cleavages. Very little in the customary language of policy analysis helps us explain why Japan should have such abnormally low crime rates despite high population densities, a history that glorifies samurai violence, a rather permissive pattern of child-rearing, the absence of deep religious convictions, and the remarkably low ratio of police officers to citizens.

In an essay in this magazine in 1983 I attempted to explain the counterintuitive decline in crime during the period after the Civil War in much the same terms that David H. Bayley had used in a 1976 article dealing with crime in Japan. In both cases, distinctive cultural forces helped restrain individual self-expression. In Japan, these forces subject an individual to the informal social controls of family and neighbors by making him extremely sensitive to the good opinion of others. The controls are of long standing and have so far remained largely intact despite the individualizing tendencies of

modernization. In the United States, by contrast, these cultural forces have operated only in certain periods, and when they were effective it was as a result of a herculean effort by scores of voluntary associations specially created for the purpose.

In this country as well as in England, a variety of enterprises—Sunday schools, public schools, temperance movements, religious revivals, YMCAs, the Children's Aid Society—were launched in the first half of the nineteenth century that had in common the goal of instilling a "self-activating, self-regulating, all-purpose inner control." The objects of these efforts were those young men who, freed from the restraints of family life on the farms, had moved to the boardinghouses of the cities in search of economic opportunities. We lack any reliable measure of the effect of these efforts, save one—the extraordinary reduction in the per capita consumption of alcoholic beverages that occurred between 1830 (when the temperance efforts began in earnest) and 1850 and that persisted (despite an upturn during and just after the Civil War) for the rest of the century.

We now refer to this period as one in which "Victorian morality" took hold; the term itself, at least as now employed, reflects the condescension in which that ethos has come to be regarded. Modernity, as I have argued elsewhere, involves, at least in elite opinion, replacing the ethic of self-control with that of self-expression. Some great benefits have flowed from this change, including the liberation of youthful energies to pursue new ideas in art, music, literature, politics, and economic enterprise. But the costs are just as real, at least for those young persons who have not already acquired a decent degree of self-restraint and other-regardingness.

The view that crime has social and cultural as well as economic causes is scarcely new. Hardly any lay person, and only a few scholars, would deny that family and neighborhood affect individual differences in criminality. But what of it? How, as I asked in 1974, might a government remake bad families into good ones, especially if it must be done on a large scale? How might the government of a free society reshape the core values of its people and still leave them free?

They were good questions then and they remain good ones today. In 1974 there was virtually no reliable evidence that any program seeking to prevent crime by changing attitudes and values had succeeded for any large number of persons. In 1974 I could only urge policymakers to postpone the effort to eliminate the root causes of crime in favor of using those available policy instruments—target hardening, job training, police deployment, court sentences—that



might have a marginal effect at a reasonable cost on the commission of crime. Given what we knew then and know now, acting as if crime is the result of individuals freely choosing among competing alternatives may be the best we can do.

In retrospect, nothing I have written about crime so dismayed some criminologists as this preference for doing what is possible rather than attempting what one wishes were possible. My purpose was to substitute the experimental method for personal ideology; this effort has led some people to suspect I was really trying to substitute my ideology for theirs. Though we all have beliefs that color our views, I would hope that everybody would try to keep that coloration under control by constant reference to the test of practical effect. What works?

With time and experience we have learned a bit more about what works. There are now some glimmers of hope that certain experimental projects aimed at preparing children for school and equipping parents to cope with unruly offspring may reduce the rate at which these youngsters later commit delinquent acts. Richard J. Herrnstein and I have written about these and related matters in *Crime and Human Nature*. Whether further tests and repeated experiments will confirm that these glimmers emanate from the mother lode of truth and not from fool's gold, no one can yet say. But we know how to find out. If we discover that these ideas can be made to work on a large scale (and not just in the hands of a few gifted practitioners), then we will be able to reduce crime by, in effect, improving character.

#### Character and policy

The traditional understanding of politics was that its goal was to improve the character of its citizens. The American republic was, as we know, founded on a very different understanding—that of taking human nature pretty much as it was and hoping that personal liberty could survive political action if ambition were made to counteract ambition. The distinctive nature of the American system has led many of its supporters (to say nothing of its critics) to argue that it should be indifferent to character formation. Friend and foe alike are fond of applying to government Samuel Goldwyn's response to the person who asked what message was to be found in his films: If you want to send a message, use Western Union.

Since I yield to no one in my admiration for what the Founders created, I do not wish to argue the fundamental proposition. But the federal government today is very different from what it was

in 1787, 1887, or even 1957. If we wish it to address the problems of family disruption, welfare dependency, crime in the streets, educational inadequacy, or even public finance properly understood, then government, by the mere fact that it defines these states of affairs as problems, acknowledges that human character is, in some degree, defective and that it intends to alter it. The local governments of village and township always understood this, of course, because they always had responsibility for shaping character. The public school movement, for example, was from the beginning chiefly aimed at moral instruction. The national government could afford to manage its affairs by letting ambition counteract ambition because what was originally at stake in national affairs—creating and maintaining a reasonably secure commercial regime—lent itself naturally to the minimal attentions of a limited government operated and restrained by the reciprocal force of mutual self-interest.

It is easier to acknowledge the necessary involvement of government in character formation than it is to prescribe how this responsibility should be carried out. The essential first step is to acknowledge that at root, in almost every area of important public concern, we are seeking to induce persons to act virtuously, whether as school-children, applicants for public assistance, would-be lawbreakers, or voters and public officials. Not only is such conduct desirable in its own right, it appears now to be necessary if large improvements are to be made in those matters we consider problems: schooling, welfare, crime, and public finance.

By virtue, I mean habits of moderate action; more specifically, acting with due restraint on one's impulses, due regard for the rights of others, and reasonable concern for distant consequences. Scarcely anyone favors bad character or a lack of virtue; but it is all too easy to deride a policy of improving character by assuming that this implies a nation of moralizers delivering banal homilies to one another.

Virtue is not learned by precept, however; it is learned by the regular repetition of right actions. We are induced to do the right thing with respect to small matters, and in time we persist in doing the right thing because now we have come to take pleasure in it. By acting rightly with respect to small things, we are more likely to act rightly with respect to large ones. If this view sounds familiar, it should; it is Aristotle's. Let me now quote him directly: "We become just by the practice of just actions, self-controlled by exercising self-control."

Seen in this way, there is no conflict between economic thought and moral philosophy: The latter simply supplies a fuller statement



of the uses to which the former can and should be put. We want our families and schools to induce habits of right conduct; most parents and teachers do this by arranging the incentives confronting youngsters in the ordinary aspects of their daily lives so that right action routinely occurs.

What economics neglects is the important subjective consequence of acting in accord with a proper array of incentives: people come to feel pleasure in right action and guilt in wrong action. These feelings of pleasure and pain are not mere "tastes" that policy analysts should take as given; they are the central constraints on human avarice and sloth, the very core of a decent character. A course of action cannot be evaluated simply in terms of its cost-effectiveness, because the consequence of following a given course—if it is followed often enough and regularly enough—is to teach those who follow it what society thinks is right and wrong.

Conscience and character, naturally, are not enough. Rules and rewards must still be employed; indeed, given the irresistible appeal of certain courses of action—such as impoverishing future generations for the benefit of the present one—only some rather draconian rules may suffice. But for most social problems that deeply trouble us, the need is to explore, carefully and experimentally, ways of strengthening the formation of character among the very young. In the long run, the public interest depends on private virtue.

ADDITIONAL FACTS PERTAINING TO THE CASE  
PAUL E. JOHNSON v. TRANSPORTATION AGENCY,  
SANTA CLARA COUNTY, CALIFORNIA

CWJ  
P.S.J

A careful reading of the District Court records and exhibits has revealed a large amount of information that does not appear to have been discussed in The Supreme Court decision. This information pertains to the qualifications of the candidates for the job in question--that of road dispatcher; to the results of the two oral examinations; to the manner in which Diane Joyce was ultimately selected; and to the economic rationale for invoking the affirmative action plan. The following summarizes the information on these points.

BACKGROUND

The case involved the selection of Diane Joyce, a female applicant, over Paul Johnson, a male applicant, for the position of road dispatcher in the transportation agency of Santa Clara County. One issue was whether Joyce was selected over Johnson solely because she was a woman, and despite weaker qualifications, in order to meet the goals of the county's affirmative action plan.

Job Description: The position of road dispatcher is an office job, under general supervision, involving the assignment of road crews, equipment, and materials and the maintenance of records pertaining to the crews, equipment, and materials.



Job Requirements: As stated in the job vacancy announcement of December, 1979, the job requires a minimum of four years in dispatching trucks or construction equipment in a related field, or four years of road maintenance work in Santa Clara County.

#### EXPERIENCE OF CANDIDATES

Among the twelve applicants for the job were Paul Johnson and Diane Joyce. Johnson had worked for the Transportation Agency since 1967--that is, for 12 years, at the time the vacancy was announced. For 17 years prior to coming to the agency Johnson had been a dispatcher and then a dispatcher/supervisor with the Pacific Cement and Aggregate Switches Company, which furnished road materials for the city of San Jose and Santa Clara County (transcript, p. 126, 142). Johnson left Pacific Cement and Aggregate and went to work for the County to avoid uprooting his family, since PCA wanted to transfer him to Oakland (transcript, p. 126). At the Santa Clara Transportation Agency Johnson worked as a Road Yard Clerk II. In 1974, one of the two road dispatcher positions became vacant. Johnson competed and placed second after Ronald Neal, who was appointed to the job. When the job of Road Yard Clerk was eliminated as a separate job and merged with the lower paying Account Clerk II position, Johnson transferred to the job of Road Maintenance Worker II in order to position himself for either the next road dispatcher opening or

promotion to a Road Maintenance Worker III job. When the position of Road Dispatcher became vacant due to the promotion of Mr. Neal, the incumbent, in September 1979, Johnson was appointed acting road dispatcher (W.O.C., "working out of class") where he served for almost ten months,--that is until Joyce was appointed to the job. Also, over the years he was with the Agency, Johnson estimated that he had filled in as dispatcher (during absences of the dispatcher for vacation, sick leave, etc.) for an accumulated period of two and a half to 3 years (transcript, p. 140).

Joyce had come to the Transportation Agency in 1972 and therefore had worked at the Agency for 7 years by the time the dispatcher vacancy was announced. Before coming to the Agency Joyce had worked for ten years as a bookkeeper outside the state (1960 to 1970), and two years as an account clerk in the County's Education Office. She worked first for the Transportation Agency as an account clerk, and then was promoted to a senior account clerk. In 1974, Joyce too tried to apply for the position of road dispatcher but her application was rejected due to her lack of qualifications. (She had neither the requisite experience as a dispatcher nor as a road maintenance worker at that time.) In 1975 Joyce moved into the position of road maintenance worker which would improve her credentials and where she worked until her appointment to the dispatcher post in 1980 (transcript, p. 107). Joyce had at one time worked two weeks "out of class"



as road dispatcher (transcript, p. 94). Also when she was an account clerk, (between 1972 and 1975), she said that during the dispatcher's lunch hour she often filled in for the dispatcher (transcript, p. 106). (This could have accumulated to about one-third of a year in total over the three year period.)

RESULTS OF THE EXAMINATION FOR THE 1979 OPENING FOR ROAD DISPATCHER

An opening for the position of road dispatcher was posted in December, 1979. On April 24, 1980 an oral board consisting of a Mr. Estruth and a Ms. Barnes interviewed the nine applicants who met the basic job requirements. Johnson tied for second with a score of 75; Joyce was fourth with a score of 72.5 (Exh. 8). According to the rating scale, a score between 70 and 74 means, "would appoint with hesitation"; a score of 75-84 means, "would appoint without hesitation." So, despite the seeming smallness of the numerical score differences, there is a significant difference in a substantive sense between Joyce's and Johnson's scores. It is also noteworthy that the rater, Ms. Barnes, wrote the following comment across her sheet rating Ms. Joyce: Where she had checked "yes" to the question "would you hire this person as a road dispatcher?" she wrote "but marginal (Ms. Barnes' emphasis)." Ms. Barnes was disturbed

by Joyce's answer to the "critical question number 4," which tested judgment. 1/ (Exh.#7) Johnson, by contrast, was given an unqualified "yes" by both raters.

The second examination was an oral interview of the seven applicants who met the minimum cutoff in the first exam. It was conducted by three supervisors from the Road Operations Division. In this exam Johnson placed first and Joyce placed third after another applicant, Richard Jadrach. Johnson was unanimously recommended by the board as the best qualified for the promotion. Mr. Ronald Shields, Road Operations Division Director of the Transportation Agency recommended to James H. Graebner, head of the Agency, that Johnson be appointed to the job (transcript, p. 17).

With respect to the qualifications of the two applicants it should be noted that the evaluations of Johnson and Joyce cited in Justice Brennan's opinion (Op. p.7) are not the original evaluations of these two applicants made by the examination panel. The evaluations made by the road division for Johnson and Joyce were removed after the selection of Joyce, and replaced by comments written by Myra Beals, as affirmative action coordinator (transcript, p. 213). Ms. Beals testified

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1/ Joyce had stated, ironically, that she thought this first oral interview was fair "because there was a woman on the interview board" (transcript, p. 99). Yet, the female interviewer has a lower opinion of Joyce than the male interviewer.



that only the evaluations of Johnson and Joyce were replaced; the evaluations of the other five candidates remained the same (transcript, p. 224.) Ms. Beals was asked by Mr. Shields, after the selection of Joyce, to prepare comments. When asked why, in court, her halting response was:

I can't recall directly. The usual thing would be, as I explained, when somebody had--was making a choice between the two candidates that they felt might both be qualified for the job, that sometimes it would be--it helped them summarize their reasons for picking one over the other.

(transcript, p. 227).

In response to the question whether Mr. Shields had told her that Diane Joyce had been chosen, Ms. Beals replied: "Again, I don't recall specific comments. It's my recollection that the decision had been made to appoint Diane, and it was on that basis that I was helping with the comments." (transcript, p. 227).

Ms. Beals also testified that she did not use any of the information from the two examinations for her appraisal but simply looked at the applications of Johnson and Joyce to make up her comments (transcript, p. 225 and 226). 2/

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2/ In writing up the comments, Ms. Beals denigrated Johnson's experience by failing to note that he had successfully acted in the dispatcher job for the past 10 months. Instead, she wrote that he had previous outside dispatcher experience emphasizing "but was 13 years ago." Nor does she note that his outside dispatcher work had spanned 17 years and was in a closely related area. Also, note that although the county claimed that the dispatcher job was a skilled craft, Beals put forward Joyce's 18 years of clerical experience as her first qualification. Johnson, of course, had also had considerable clerical experience. Moreover, his clerical experience was directly relevant to the job since he had been a Road Yard Clerk for 11 years (see Exh. 12).

THE PROCESS OF SELECTING DIANE JOYCE

The testimony of Mr. Graebner, the head of the Transportation Agency, reveals how he made the selection of Diane Joyce. Graebner testified that Mr. Shields conveyed to him that Johnson was his choice based on the road division's recommendation (transcript, p. 17). It is clear from the following that had affirmative action considerations not been voiced, Johnson would have been promoted:

Q. If Diane Joyce had not been on the list, Mr. Graebner, do you think that the matter would have [ever] come to your attention?

A. I don't know. It -- it may have for other reasons, or it may not have.

Q. You have no opinions?

A. No.  
I suspect there's more of a possibility that it wouldn't have, since she was the only female, and it was my understanding she was the only minority in the group. So it may not have needed to come to me.

Q. In your mind, is that why the matter didn't come to your attention?

A. I think so.  
Affirmative action issues involved in that promotion was the reason it finally gravitated up to me.

Q. And if it hadn't come to your attention, Mr. Johnson, I believe we've already discussed, would have been appointed by Mr. Shields, is that correct?

A. If it hadn't come to me, the appointment would probably have been made by Mr. Shields after review from affirmative action. And probably the actual upshot would have



been that Mr. Morton and Mr. Shields would have not had any disagreement, so it would never have had to come to me.

(transcript, p. 67-68).

Mr. Morton was the affirmative action coordinator and as it turned out, he did have a different opinion resulting from action taken by Diane Joyce. As described in the questioning of Joyce:

Q. Do you remember what you told Helena Lee [the Women's Coordinator] when you called her up in connection with the promotion?

A. What I remember telling Helena was that there was--I was a woman, number four on a list for a job for which no woman had [ever] held in this county before, and were they interested.

Q. Did you tell her anything else?

A. I may have. It was a very short conversation. She probably asked me where I worked, and I told her, and you know, what I was doing, and perhaps 'do you need the specs,' or something like that.

And--but that was my opening statement to her. It was a short conversation.

Q. Did you indicate to her that you thought that Mr. Di Basiolio was acting inappropriately?

A. No. Not that I remember.

Q. Did you indicate to her that you felt that prospectively the interview would not be fair?

A. I may or may not have, I don't remember.

Q. Did she indicate to you that she would look into the matter?

A. She asked me if I was interested in a job, in the job, and I said yes, I was, and that ended the conversation.

Q. To your knowledge, did she do anything as a result of that conversation?

A. I don't know. Common sense would say she must have called Vic Morton.

Q. You didn't discuss the matter with her afterwards at any point in time?

(transcript, pp. 97, 98.)

It is clear that Mr. Morton only intervened in the appointment process on behalf of Diane Joyce because she is a woman and not for any other reason. In the questioning of Mr. Graebner, note the following:

Q. Mr. Morton felt that Diane Joyce should be appointed?

A. Mr. Morton was less interested in the particular individual; he felt that this was an opportunity for us to take a step toward meeting our affirmative action goals, and because there was only one person on the list who was one of the protected groups, he felt that this afforded us an opportunity to meet those goals through the appointment of that member of a protected group.

(transcript, p. 18.)

What did Mr. Graebner consider in making his choice? When asked outright whether affirmative action goals were the determining factor in his appointment of Joyce, Graebner makes the following much quoted statement:

A. I tried to look at the whole picture, the combination of her qualifications and Mr. Johnson's qualifications, their test scores, their experience, their background, affirmative action matters, things like that. And I can't tell you, 'this was 2 percent of the decision and this was the



thing that--' I believe it was a combination of all those.

(transcript, p. 68.)

Earlier, however, Mr. Graebner's testimony suggested that he had not in fact ever examined the records of either candidate:

Q. After the matter came to you, Mr. Graebner, did you have occasion to inspect the applications and examine records of either Mr. Joyce or--Mrs. Joyce or Mr. Johnson?

A. I don't recall looking at them in great detail, no.

Q. Did you look at them at all?

A. I'm not sure at this point.

Q. You're aware that under the merit system rules, that you, as the appointing authority, certainly had the right to inspect the application and examine records?

A. Yes.

(transcript, pp. 23, 24.)

Evidently, Graebner was content to rely on comments made by the affirmative action officer (Mr. Morton) and the road division supervisor (Ms. Shields). After Graebner says that he knew that both were minimally qualified, the following occurs:

Q. At that time, Mr. Graebner, did you have any basis to distinguish as to whether or not one of the other was more qualified than the other?

A. No. The--as I've said, they both appeared, and my conversations with people tended to

corroborate, that they were both capable of performing the work.

Q. And if I understand you, those conversations were with Mr. Shields and Mr. Morton, is that correct?

A. At least. I may have been--there may have been other people that I talked to, but I don't recall particular individuals.

(transcript, p. 25).

When later questioned with respect to his statement cited above, that "he had tried to look at the whole picture" Graebner never identifies even one factor other than gender that would have swayed him to choose Joyce.

Did Diane Joyce think that her appointment was fair? The following episode is recounted by Joyce when asked to recall a conversation with Dick Jadrich, the applicant (who ranked second on the list after Johnson) a few days after her appointment:

Joyce: I was sitting in the waiting room waiting an assignment in the morning, Monday morning. He came to me and asked me, 'did you go to affirmative action to get this position?' I said, 'yes.' And then he said, 'Do you think it was fair?' and I said, 'No.' And he said something similar to 'Well, at least the S.O.B. is honest about it.'

That was the main conversation.

(transcript, p. 101.)

Later in the proceedings, Joyce tried to explain away her comment by suggesting that she was afraid of the road workers in the room and would have said anything



(transcript, p. 116); but she clearly had not volunteered this explanation earlier.

How did Graebner explain the situation to Johnson after Joyce was appointed? Graebner reports the following:

- Q. Did you have any conversations with Mr. Johnson after the appointment?
- A. [Graebner] Yes. I did.
- Q. Can you relate to us the general tenor of those conversations, the subject matter?
- A. The subject matter was basically I talked to Mr. Johnson about the decision that I had made and my feelings, that I recognized that he, as an individual, was a very competent and qualified person, and that I was very disappointed that it had to come to a position where I had to make a choice of this nature, or a decision of this nature, and that I hoped that he could understand the position and understand the difficulty that I faced; and also I would encourage him to keep up the good work, and certainly, as I said, he was qualified for promotion, and we would hope that that would happen.
- Q. Do you recall what you stated, if anything, as to the specific reason for appointing Diane Joyce over Mr. Johnson?
- A. Well, to Mr. Johnson?
- Q. Yes.
- A. I believe I mentioned that there had been affirmative action implications that had made their--had been made a part of that decision.

(transcript, pp. 73, 74.)

#### THE RATIONALE FOR INVOKING AFFIRMATIVE ACTION

Santa Clara County and its Transportation Agency have had aggressive and ambitious affirmative action plans.

The "goal" of both is to employ each protected minority in accordance with their share of the overall area's (private and public) work force. Based on the 1970 Census data, the goal for female employment (in 1979) was a 36.5 percent share. According to this goal women should be 36.5 percent of each EEOC job category in the Transportation Agency. In 1978, although the Transportation Agency exceeded (by a large margin) its goal for minority employment--the minority share was 32 percent compared to a 20 percent goal--it was deficient in its female share, which was 22.4 percent (Exh. 1)

The job in question, road dispatcher, had never been held by a woman. However, the position had only two slots at the time and, as noted, it was a job with low turnover. Moreover, the job had not existed formally for that many years as it had been done informally in the past by either road maintenance or clerical personnel (transcript, pp. 167,168). Recognizing that it is not feasible to establish affirmative action requirements for a job class containing only two persons, the Agency defended its decision largely by emphasizing the broader category to which they said the road dispatcher job belonged---skilled craft. The skilled craft aggregate also had what Justice O'Conner referred to as the "inexorable zero"--no women at all.

Two questions can be raised. One, which was addressed by the plaintiff's counsel, is whether the road dispatcher job was legitimately a skilled craft job as opposed to another category, such as "clerical" or "service and maintenance". The other question is whether even zero percent female is evidence of discrimination.

To take the classification question first, there is a big question whether the road dispatcher job fits in the skilled craft category at all. The job description clearly refers to office work (see attachment). In the County, all dispatchers other than road dispatchers (and including other Agency dispatchers), were counted in the "office and clerical" category. That category had no shortage of women, since 76 percent of the Transportation Agency workers in this category were female.

Other evidence suggests that road dispatchers were misclassified at the time of the Johnson trial. First, the Transportation Agency itself has changed the way it classifies road dispatchers who are now counted as "service and maintenance" (based on communication with the county personnel office). In 1978, 22 percent of service and maintenance workers were female--below the goal of 36.5 percent, but also far from the "inexorable zero." The broad category, dispatchers, it may be noted, was 20 percent female.



Outside Santa Clara County it appears that road dispatchers are classified as clerical workers. The Standard Occupational Classification System, on which EEOC classifications are usually based, classifies road dispatchers (which belong to the category "dispatcher, traffic or system"; see attached description) as a clerical occupation. A check of other counties in California found that the job of road dispatcher did not formally exist in many places, but when it did, it was usually handled by clerical personnel, and informally, clerical personnel handled the tasks. There clearly would have been little reason for affirmative action to be involved had road dispatchers been classified as clerical or even as service and maintenance workers, when Joyce sought to be promoted over Johnson.

It is also an open question whether the absence of women in skilled craft jobs reflects discrimination. Women have simply not flocked to the type of construction and maintenance jobs that arise in road work as they have to other kinds of "non-traditional" jobs (e.g. as lawyers, doctors, computer programmers). In 1970, women made up 1.7 percent of construction crafts and in 1980, 2.1 percent. One could attribute this low percentage to discrimination. But it may also be the case that most women have no interest in dirty, heavy, outdoor work.

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## The affirmative action stalemate

NATHAN GLAZER

**T**EN YEARS AGO the Supreme Court handed down its first decision on affirmative action. It dealt with the case of an applicant who had been denied admission to a medical school, while minority applicants with lesser academic qualifications had been admitted to fill a quota the medical school had set. The Supreme Court ruled, five to four, that quotas were illegal and that the applicant should be admitted. A different five-man majority (only Justice Powell was included in both majorities) also ruled that it was legitimate to take race into account in making admissions decisions. The Court seemed to have come down on both sides of the issue.

While the case was raised over admission to an educational institution, the Court's schizophrenia shaped the many decisions over employment that have come down year after year. Those affected by affirmative action—employers and employees, enforcement agencies and lawyers, applicants to selective programs and good jobs, jobholders threatened with termination—have waited for that final, clear decision that tells us just how to separate the constitutional and the legal in preference for minorities from the unconstitutional and illegal. But the Court has shown a remarkable skillfulness in chopping up the issue into finer and finer pieces—still without drawing that clear line that settles the controversy over affirmative action. Nor, in an eight-justice court, can we expect a conclusion to this Perils-of-Pauline routine in the present session.

This situation conforms neatly with the conditions usually associated with trench warfare: neither side seems able to advance, though attacks are mounted by both, and neither is weak enough to surrender. Even more remarkable, this stasis has characterized the issue for a dozen years despite a series of kaleidoscopic political changes that many expected to lead either to a rapid reduction in the scope of affirmative action or to its unchallenged institutionalization as the way in which Americans make decisions on employment, promotion, and admission to selective institutions of higher education. Thus we have moved from a Nixon presidency, which might have been expected to oppose affirmative action, but under which its procedures were formalized and extended; to a Ford administration, which tried to take some action to limit affirmative action, but retreated in the face of effective opposition from civil rights organizations; to a Carter administration, which was comfortable with it and in some ways extended it (as in appointments to the federal judiciary); to a Reagan administration, which is hostile to it—and which, as of this writing, seven years after it came into office, and after two electoral victories, presides over affirmative action requirements that are just about identical to those first formulated in the late 1960s and early 1970s.

### Court battles

The battles of politics—in presidential elections, in Congress, in the regulatory and administrative agencies—have left the overall structure of affirmative action unchanged through more than four presidential terms, and three transitions of power. Nor, surprisingly, have matters changed much in the federal courts, despite extended and endless battles. Almost every year since the mid-1970s, we have, it seems, awaited with hope or anxiety the determination of some major case by the Supreme Court that would tell us whether affirmative action transgressed the “equal protection of the laws” guaranteed by the Fourteenth Amendment and the apparent commitment to color-blindness of the Civil Rights Act of 1964, or whether, on the contrary, it was a legitimate approach to overcoming the heritage of discrimination and segregation by improving the condition of American blacks. But from the first major affirmative action decision to the most recent decisions of 1986, the Supreme Court has been split, with five-to-four or six-to-three decisions encompassing a range of conflicting positions in both majority and minority. We will, it seems, be living with the issues raised by affirmative action for a long time.

Policies we may legitimately call “affirmative action” have been undertaken in three crucial areas: jobs and employment, desegregation of public schools, and housing. In each American blacks have suffered from severe deprivation, rooted in racist prejudice, expressed in formal or informal discrimination and segregation. This is the basic underlying ground for affirmative action: it is because the heritage of prejudice and discrimination still weighs heavily on black Americans that the question of affirmative action cannot be expected to find easy resolution.

The term “affirmative action” appears in two places in American law. We find it in the Civil Rights Act of 1964, Title VII, dealing with discrimination in employment: “If the court finds that the respondent has intentionally engaged in or is intentionally engaging in an unlawful employment practice . . . , the court may . . . order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay . . . , or any other equitable relief as the court deems appropriate.” This applies to all employers of over fifteen persons. And it appears again in Executive Order 11246, applying to federal contractors, and imposing “affirmative action” on employment and promotion as a condition for receiving federal contracts. There is no similar requirement, either in the Civil Rights Act or in its 1972 revision or elsewhere, for “affirmative action” in admission to institutions of higher learning.<sup>1</sup> Yet the term has been widely applied to the practices of colleges, universities, and professional schools attempting to voluntarily increase minority enrollment. The first major case decided by the Supreme Court dealing with affirmative action arose in the context of higher education, but was widely interpreted as having some application to employment practices. This was the case of Allen Bakke, who sued the University of California because he was denied admission to the Medical School of the University of California at Davis, despite having higher grades than successful minority applicants, and received relief in the complex five-to-four decision in 1978, which simultaneously legitimated practices that could have denied him that admission.

Affirmative action in employment originally meant going beyond nondiscrimination: an employer who discriminated could not only be ordered to desist from his discriminatory practices, but could be

<sup>1</sup> The one exception to this rule are the universities covered by the *Adams v. Richardson* litigation: public institutions (primarily in the south), formerly restricted to whites or blacks, that are now required to fulfill affirmative action goals in the recruitment of students.



required to compensate those against whom he had discriminated, as the references to back pay and reinstatement in the Civil Rights Act make clear. The federal contractor providing goods and services to the federal government was not only bound by the Civil Rights Act, like all other employers, but also, regardless of whether he had ever discriminated, had to go beyond its requirements, by engaging in "affirmative action" to make his employment and promotion opportunities available and accessible to minority applicants.

### Controversy and the written law

Affirmative action in employment became controversial only when it went beyond the written language of the Civil Rights Act and the Executive Order, and began to require employers to hire or promote specific numbers of minority applicants or employees. Federal courts and the Equal Employment Opportunity Commission effected this radical extension of the law by interpreting Title VII of the Civil Rights Act of 1964 and 1972, and by the Office of Federal Contract Compliance Programs' enforcement of the Executive Order. "Quotas" or "goals and timetables" became the buzzwords of choice in disputes over the appropriate degree of "affirmative action." Back pay to those who proved discrimination, or requirements for advertising, recruiting, or training by federal contractors, which seem to be what the Civil Rights Act and the Executive Order call for, are not what we have in mind when we speak about the controversy over affirmative action, though they have a better claim to be called affirmative action than court-ordered quotas or agency-required goals and timetables. But under expanded federal regulations and judicial decisions, affirmative action has become a matter of setting statistical goals or quotas by race for employment or promotion. The expectation of color blindness that was paramount in the mid-1960s has been replaced by policies mandating numerical requirements. That is what we mean today by affirmative action.

The critic of quotas or goals and timetables is regularly attacked for opposing affirmative action, even though he may well support the clear intention of the "affirmative action" of Title VII as understood in 1964, as well as the "affirmative action" mandated by the Executive Order of 1965. But there is no point arguing with changes in the meaning of words: whatever the term meant in the 1960s, since the 1970s affirmative action has come to mean quotas and goals and timetables.

In the same way, whatever desegregation of schools meant when the Supreme Court declared the unconstitutionality of segregation

in 1954, or when Congress defined it in the Civil Rights Act of 1964, desegregation today has come to mean busing. The supporter of busing is thus said to support "desegregation," the opponent of busing is attacked for defending "segregation," even though the latter term originally meant state-ordered or city-ordered segregation of the races. But it has come to mean black concentration in schools, regardless of cause, even if that cause is residential concentration or parental choice.

In the early 1970s, the setting of statistical goals was becoming the favored means of advancing minority representation in employment and desegregating the schools; even the geographical redistribution of minority populations was being proposed. The 1954 decision of the Supreme Court declaring segregation in public schools unconstitutional, endorsed by Congress in the Civil Rights Act of 1964, had been reshaped, through court interpretations, into racial numerical requirements in schools, so that each had to attain such and such a proportion of minority and majority. The facts of residential distribution made it inevitable that such a requirement could be implemented only by transporting students to schools out of their neighborhoods: "busing" thus became the issue in public education that paralleled "affirmative action" in employment. And we also saw efforts in the early 1970s to redistribute the black population through government action, so that it would not be so highly concentrated in the central cities. Concentration led inevitably to black-majority schools, and, many believed, to reduced opportunities for employment. Here, too, the ambition was some numerical goal spelling the end of residential segregation and discrimination, but the policies with which the federal government tried to implement these aims were weak and without effect. The struggle to redistribute the black population through the construction of subsidized housing in white suburbs continues; the impact of such policies has been quite moderate, however, so (unlike affirmative action and busing) they have not become crucial national issues.

### An old pattern: immigration and advancement

The mere fact that a kind of stasis prevails, in which affirmative action is neither eliminated nor expanded, is surprising. In 1975, when I published *Affirmative Discrimination*, expansion seemed to be in the cards. If fixed numbers of blacks and other minorities had to be employed or promoted, why would such a requirement not be extended to other groups, since so many could claim to have met prejudice and discrimination? As these measures were implemented,

what hope was there, since they gave advantage to some groups, that they would ever be abandoned? If busing was implemented in some cities under the lax standards set by the Supreme Court for finding state-sanctioned segregation, why would it not spread to all major cities? Once instituted, how could the assignment of students by race ever end? If these policies became a permanent part of America's polity and society, how could we ever attain the ideal of a color-blind society based on individual rights, at which American liberals had long aimed?

Undergirding these concerns was a conception of American society and the role of race and ethnicity in it. We had seen many groups become part of the United States through immigration, and we had seen each in turn overcoming some degree of discrimination to become integrated into American society. This process did not seem to need the active involvement of government, determining the proper degree of participation of each group in employment and education. It had not happened that way in the past, and there was no reason to think it had to happen that way in the future. What was needed was that barriers to economic activity and education not be imposed, and that they be lifted where they existed. These barriers had been overwhelming for blacks, the one major group in American society (aside from American Indians) that does not owe its origins to free immigration. They had been lifted through the success of the civil rights struggle, and one could expect the economic and educational advancement of blacks that had been evident in the 1960s to continue. If progress could be expected to continue, why were quotas and goals, busing, and numerical targets for enrollment necessary?

I did not expect—nor should anyone have expected—that each group would reflect some national average in occupation and education, because the effects of history, past experiences, and yes, discrimination and segregation would continue to be felt. But the laws against discrimination were powerful and powerfully enforced. Blacks had made great progress in the 1960s without affirmative action. They were becoming prominent in public employment—in which they had more than “their share” of jobs (though not of the best jobs). In other areas, blacks had less than “their share.” But how different was this from Irish domination of police forces in the past, or Jewish concentration in small business? If this was the way things had worked in the past, I believed they would work that way in the future; the introduction of affirmative action and busing threatened only to increase racial and ethnic conflict, without achieving

much for the advancement of blacks. Further, as with many government policies, affirmative action was poorly adapted even to its central objectives, because along with blacks it had targeted American Indians, Asians, and Hispanics; the latter two were mixtures of very different groups, some of which could make no claims to special governmental solicitude and “fair shares” in view of their economic and educational progress.

One fear and one hope were not realized in the dozen years since the publication of *Affirmative Discrimination*. The fear was that affirmative action would spread beyond the initial groups targeted for government concern to include others; that the opportunity of individual Americans would come to depend on their racial and ethnic group; that ethnic and social conflict would escalate as rigid boundaries determined opportunity. This has not happened. The unrealized hope was that the progress of blacks would continue, making it evident that such measures were unnecessary.

Affirmative action has not spread markedly beyond the initial groups defined as its beneficiaries. In some areas (that of set-asides for minorities for government contracts) there has been some moderate expansion—for example, Asian Indians are now classified as minority contractors and may get the benefits of minority set-asides—but on the whole the original line dividing the benefited from all others has held. Within the initial boundaries, affirmative action, particularly as it affects blacks and women, has been institutionalized and has become an accepted part of the American economic scene. It will be very hard to uproot. There is now a serious question whether one should try.

### Stalemate

The stability we see is not only one of exhaustion and equally-matched political forces; it is also one of institutionalization—the acceptance of affirmative action as a legitimate norm by employers, even grudgingly by employees. When the Reagan administration began, after some years of quiescence that disappointed those who thought it would move against affirmative action, to finally bestir itself on this issue, it found, to its surprise, that business wanted no change in affirmative action requirements. Cities and counties did not want to be released from the consent decrees requiring goals or quotas in employment and promotion. “Businessmen like to hire by the numbers,” announced a September 16, 1985 article in *Fortune*. It points out, accurately, that “so far, in spite of the Administration’s rumblings, nothing much has happened that affects the way

companies run their affirmative action programs. The Labor Department's Office of Federal Contract Compliance Programs, which enforces equal opportunity in companies that do business with the federal government, has gone right on enforcing the rules." (A proposal by the Department of Justice in August 1985 to modify affirmative action requirements for federal contractors ran into opposition within the Administration itself, as the Department of Justice was challenged by the Labor Department. After two years, matters now stand where they have always stood: the rules remain unaltered.) The *New York Times* reported a similar finding on March 3, 1986: big business had no argument with affirmative action requirements, even though small businesses found the rules and the paperwork they required frustrating, excessive, and unrealistic.

Affirmative action had become a norm of employer behavior. As the economic columnist Robert J. Samuelson wrote in the *Washington Post* of July 11, 1984:

These pressures [the aggressive use of anti-discrimination laws, including affirmative action] have changed the ways labor markets work. Many firms have overhauled personnel policies. Recruitment has been broadened. Tests unrelated to qualifications have been abandoned. Promotions are less informal. When positions become open, they are posted publicly so anyone (not just the boss's favorite) can apply. Formal evaluations have been strengthened so that, when a manager selects one candidate over another (say, a white man over a woman), there are objective criteria.

Equally important, women and blacks increasingly are plugged into the informal information and lobbying networks that remain critical in hiring and promotion decisions.

Even more revealing than commentary and analysis is the sort of pragmatic advice that is handed out to business. Consider for example the warnings given in the "Small Business" column of the *Wall Street Journal* on February 4, 1985:

What's wrong with asking a woman job applicant these questions: Who takes care of your children when you're at work? What if they get sick? How does your husband feel about your taking business trips? What would he say if a male employee went too?

They may seem like reasonable questions. But in fact they could be construed as biased against women and could embroil the employer in charges of discriminating against female job applicants in violation of federal or state laws because male applicants aren't asked such questions.

Employment laws contain many traps for the unwary. More are being created in court decisions. . . .

Don't ask if someone has ever been arrested. (Because blacks are arrested more than whites, a federal court has held, such a question can be discriminatory against blacks.) However, asking about criminal con-

victions is usually safe. And not hiring a convicted felon can be justified as a business necessity for such reasons as not being able to bond the person.

Restrictive job requirements can get a company in trouble, too. It may be discriminatory to have an educational barrier to a position (only high school grads need apply) if it can't be justified as necessary to doing the job.

### Entrenchment and legitimation

Affirmative action has been institutionalized not only in business but also in government, which does not want to upset the applecart either. Thus, when the Justice Department requested that fifty-one cities, counties, and states operating under court orders and consent decrees requiring quotas or goals consider revising them, the governments involved were not eager to be released from these requirements. They may have fought them initially (ironically, almost all were the result of Justice Department suits under previous administrations), but once the quotas had been set, the state and local governments were willing to live with them.

Affirmative action is so well entrenched that the very government agencies of an administration that opposes quotas and goals report to the Equal Employment Opportunity Commission on their progress toward meeting affirmative action numerical goals! Only three agencies have resisted this requirement: the Department of Justice, the National Endowment for the Humanities, and the Federal Trade Commission. But a hundred others have not.

The institutionalization of affirmative action suggests that even with changes in its composition the Supreme Court will pause before considering the uprooting of processes so well established, involving thousands of employees, affecting the expectations of millions. And the Court is the only potential threat to continuing affirmative action. If the administration of Ronald Reagan has done so little in seven years through administrative action, it is hardly likely it will do more in its remaining time. The "stroke of the pen" that could have radically modified or eliminated the requirement to set hiring and promotion goals by race and sex for tens of thousands of government contractors has not been delivered. To those who find affirmative action an abomination, this is a tragedy. To those who feared its demise, it is a relief. In Congress, a point of view that may well reflect the opinions of a minority always holds sway. The protection of affirmative action is in the hands of the Congressmen who care, reflecting the views of civil rights organizations; most others stay away from the issue. "Civil Rights Lobby Plays Defense But Wins."



ran a *Washington Post* headline on June 7, 1986. The *Post's* summary is correct: the civil rights lobby had blocked the nomination of William Bradford Reynolds, a critic of quotas and goals who was in charge of civil rights for the Justice Department, as Associate Attorney General; by leaking a Justice Department plan to change affirmative action requirements it had started an uproar that led the Administration to retreat into silence; it had blocked an Administration nomination to the general counsel of the EEOC; it had blocked a number of lesser judicial appointments. And it has since defeated Robert Bork's nomination to the Supreme Court.

This strength must give one pause; it seems to make nonsense of polls showing that three-quarters of Americans oppose quotas. The success of the civil rights lobby suggests that the actual structure of decision making cannot be deduced from public opinion polls, party platforms, or Congressional opinion. Many players are involved; of these, the Court remains the strongest. But I believe the underlying force that keeps the system of numerical quotas and goals intact is the actual condition of blacks. It is the unrealized hope for black improvement, a hope that could have with reason been entertained in the early 1970s, that sustains affirmative action in employment and promotion, minority preference in admission to institutions of higher education, and busing in a number of major cities.

It is thus the condition of the black population of the United States, not the state of their rights, or the practices that affect them, that lends the strongest support to affirmative action. Other racial and minority groups are covered by affirmative action, but it is not *their* fate or *their* power or *their* claim on the American conscience that motivates this massive machinery. Japanese and Chinese moved ahead despite discrimination. Newer Asian immigrants—Filipinos, Koreans, Vietnamese, Asian Indians—can for the most part expect to do well. The Hispanic Americans are a mixed collection indeed, from the upwardly mobile Cubans to the depressed Puerto Ricans, but they would hardly have had the power to institute affirmative action or to sustain it. (Women are a separate story; their numbers ensure their protection by affirmative action.) It is the blacks who quite rightly affect the conscience of America: they were enslaved and rigidly kept down after emancipation by massive public and private discrimination and prejudice. If they had made rapid progress despite their grim history, we would undoubtedly never have felt the pressures to institute race-conscious policies in employment and discrimination. In some respects, they have made great progress. But the mass of misery characterizing their poor stands as the great argument for affirmative action.

We have seen a substantial reduction of the gap in earnings between blacks and whites, but we have seen other key measures of black well-being decline; the most important are the great increase in black female-headed families and children born out of wedlock, and the decline in the percentage of black males in the labor force. Many factors have been at work, and some measures of long-term well-being have been matched by other measures of decline. Would matters have been worse in the absence of affirmative action? That case can be made. Would they have been better in its absence? Even that case can be made. Thus Thomas Sowell and others argue that the employer who knows he must be careful in dealing with blacks in regard to promotions, pay, and terminations (because of the threat of charges of discrimination) will more cautiously select his black employees, so that the opportunities of less-skilled blacks will decline. However this argument is decided, it seems clear that the problems that now concern black leaders—teen-age pregnancies, family breakup, drugs, female-headed families, declining participation in the work force—will hardly be solved by affirmative action.

#### Affirmative action and the black condition

If it is the condition of blacks, imposing itself on the American conscience, that sustains affirmative action, the obvious question is what affirmative action does for that condition.

Although we know much more about this now than we did a dozen years ago, there is still room for argument as to the effect of affirmative action on the black condition. All firms with over fifteen employees are covered by the antidiscrimination provisions of Title VII; all firms with more than one hundred employees must provide EEO-1 forms to the Equal Employment Opportunity Commission listing the numbers of each group they employ at each occupational level. Federal contractors with more than \$50,000 in contracts and fifty employees must maintain affirmative action plans and report to the EEOC on how their employees break down by ethnic and racial group and occupation. It should be easy to compare firms covered by affirmative action with those not so covered. That has been done. The results are generally positive but surprisingly varied. Certainly black employment has increased in or shifted to the firms that report to EEOC and are covered by affirmative action. James P. Smith and Finis Welch, authors of *Closing the Gap: Forty Years of Economic Progress for Blacks*, report:

Black men were 10 percent less likely to work in covered firms in 1966. By 1980, however, they were 20 percent more likely to work in EEOC reporting firms. To put these changes in another way, less than

half (48 percent) of black male workers were employed in EEOC covered firms in 1966; the figure rose to 60 percent by 1980.

The largest employment changes occurred between 1966 and 1970 (the first four years of reporting). Between those years, there was a 20 percent increase in the number of blacks working in covered firms. The trend continued at a diminished pace until 1974, and then apparently stabilized.

The rapid increase of the period 1966-1970 came *after* the adoption of the Civil Rights Act banning discrimination, but *before* the regulations for affirmative action were firmed up and began to be widely enforced. Nevertheless, affirmative action *per se* has had its effect: within the covered sector, black jobs shifted toward firms with contracts with the federal government. Between 1970 and 1980, black employment in non-federal contractor firms that report to the EEOC grew by 5 percent. Among federal contractors, total black employment expanded by more than 15 percent.

As large as those increases in total employment seem, they pale next to changes within the managerial and professional jobs. Black managers and professionals were half as likely as white managers and professionals to work in covered firms in 1966. By 1980, black managers and professionals were equally likely to be found in covered firms.

Jonathan Leonard's analyses also show a great increase in black employment among federal contractors.

But to concentrate only on the firms covered by affirmative action is to miss something. Smith and Welch add:

Affirmative action resulted in a radical reshuffling of black jobs in the labor force. It shifted black male employment towards EEOC covered firms and industries, and particularly into firms with federal contracts. Reshuffling is the right term, because the mirror image is that black employment in the non-covered sector plummeted.

Despite the increases in the number of blacks employed by EEOC-covered firms and federal contractors, Smith and Welch, looking at the overall gap between black and white earnings for the entire period between 1940 and 1980, find that affirmative action must have had only a slight effect. Blacks improved their position both before affirmative action and after it. Improved education, the migration of blacks from south to north, the narrowing of the difference in earnings between north and south, and the collapse of discrimination in earnings against blacks in the south after the Civil Rights Act of 1966 seem to have played the greatest role in reducing the gap between black and white earnings in recent decades. "The slowly evolving historical forces we have emphasized in this report—education and migration—were the primary determinant of the long-term black economic improvement." At best, write

Smith and Welch, "affirmative action has marginally altered black wage gains during this long-term period."

Whatever the truth as to the impact of affirmative action (in terms of generating improvements for blacks in some areas, while causing decline in others), it seems clear that uprooting affirmative action would be very difficult. The Reagan administration is as determined an opponent as we are ever likely to see. But after about fifteen years of affirmative action, we have created expectations among blacks and practices in business and government that sustain it. Whatever black doubts about affirmative action there may be (and they do exist), moving against it would appear to black leaders, and to other blacks, as an attack on their interests and their well-being. A dozen years ago affirmative action was newly established, and the recollection of the intention of color blindness was strongly fixed in the minds of liberals and blacks. Today affirmative action looks back on a long history, and the memory of what was intended in 1964 recedes further and further into the distance.

#### How much affirmative action?

I believe opposition to affirmative action is often founded on a liberal vision as devoted to equality as that of its proponents. But principle often must give way to practicality and prudence: rather than an all-out assault, which it seems must fail, the issue now is to define, as some Supreme Court decisions do, where, when, for whom, and what kind of affirmative action is legitimate. Thus we should consider (though one is aware of the enormous political difficulties involved) eliminating Asians and Hispanics from the affirmative action categories. They would of course retain the protection all Americans have against discrimination on grounds of race, ethnicity, or national background. If such a limitation were possible—it could easily be done administratively—it would begin to send the message that we view affirmative action as a temporary expedient, to be increasingly dispensed with, in various areas, for various groups, over time. We should make clear, even if it is politically impossible to change the affirmative action regulations affecting blacks, that these are to be reviewed at regular intervals to determine their necessity or efficacy. Ideally, we should aim at a society in which individuals are treated without regard to race and ethnicity for purposes of employment, promotion, or admission into selective institutions: this is the kind of society, it is clear, that the majority of blacks would like to live in.

No other issue of statistical goal-setting for minority improve-

ment remains as controversial as that of affirmative action in employment. Busing is maintained in many communities, but it is hard to believe that a new, major busing program can be instituted in any large city. Whites have always opposed it, and blacks by now are disillusioned with its promise, even when it is instituted under the best of circumstances. One has the impression the civil rights leadership continues to demand busing without any conviction that it will get more, or that if it does it will do much for the education of blacks. Just as the theme of self-help becomes the dominant one in discussions of the social problems of blacks, so it becomes increasingly important in discussions of education. It is almost inevitable that this should be so, as the educational systems of our largest cities come increasingly under black leadership.

### The housing issue

The campaign for residential integration has been even less successful than that for busing. The *Gautreaux* litigation in Chicago was originally designed to get subsidized housing built in white areas there. It failed in that; and it has had very little success in its later emanation, as an effort to get blacks into subsidized suburban housing. The *Mt. Laurel* litigation in New Jersey also aimed at residential integration by overcoming restraints on subsidized housing in white suburbs. Subsidized housing would make it possible for low-income people to move into higher-income towns, and would also increase the number of blacks in those towns. It has had almost as tortuous a course as the *Gautreaux* litigation, with as modest results. Residential integration does proceed, but on the basis of the economic progress of blacks, not on the basis of the governmentally-required insertion of subsidized housing for low-income and black families into middle-class areas that resist it.

The issue of housing for blacks—like the issue of education—has always been complicated, because two objectives, not necessarily consistent or in harmony, are aimed at: in education, better *and* integrated education; in housing, better *and* integrated housing. In education, the attempt to produce a higher measure of integration in the schools through busing leads to “white flight,” increased disorder, disruptions of education, and, in the short run at least, no major improvement. (Admittedly, one may ask whether improvement would be greater if the integration objective was abandoned; but one could answer, why not? Many school systems, after all, are led by blacks, administered by blacks, and strongly committed to improving the education of blacks.) In housing, we have a similar

conflict. The policy of creating or maintaining a measure of integration is generally implemented by restricting the number of units in a development made available to blacks, in order to reduce white fears of a black majority that would lead them to move out, thus creating a segregated community. Ironically, this issue has recently pitted the Administration's chief opponent of any policy discriminating on the basis of race against a chief critic of goals and quotas in employment, who was appointed by the Administration to the United States Commission on Civil Rights. Assistant Attorney General William Bradford Reynolds has argued in federal court against an arrangement limiting the number of apartments available to blacks in Starrett City in Brooklyn, New York (a plan that was instituted to maintain Starrett City as an integrated development). Morris Abram, a lawyer who first achieved prominence fighting for civil rights in the South, defends Starrett City.

My own position is pragmatic: where integration can be maintained, as it has been in Starrett City, such policies should be allowed to continue. One would be distressed to see a policy of color blindness adhered to so absolutely that examples of residential integration, valuable—and few—as they are, and dependent on color-conscious policies, could not be maintained. But such a policy differs from a quota or goal in employment in a number of key respects: it does not undermine the rights or expectations of the previous tenants—indeed, it maintains them, for they expected and were provided with an integrated community when they moved in; it does not lower the standards for admission, by including, for example, families that would be disruptive or would be unable to pay the rent. Racial quotas in housing thus do not threaten the living environment; indeed, they protect against its deterioration. In employment, on the other hand, goals and quotas are inseparable from attacks on testing and standards.

### Lessons

The most important lesson from the study of public policies designed to improve the condition of blacks is that people will resist what government does to improve it directly more than they will any individual's effort to improve his own position. The black in a job finds no problem with his colleagues; but a problem may arise when that job is gained through quotas and goals in a particularly egregious manner. The black family sending its children to a white majority school will find no problem, if it is a neighborhood school, a private school, or a Catholic school; it may have a problem when



the assignment to a school is made by government against prevalent expectations of how children are assigned to or select schools. The black family in a white majority neighborhood rarely runs into trouble; but a policy designed to spread low-income black families into middle-income areas, black or white, through subsidized housing, does mean trouble. No American can be satisfied with the overall condition of black Americans, despite progress in recent decades; but government actions that aim at statistical goals for minorities are not likely to do better in improving that condition than the work and efforts of blacks in an open and, it is to be hoped, more prosperous society. That government should prevent and punish discrimination is universally accepted by Americans. When government tries to determine how many members of a particular ethnic group should get certain jobs or promotions, attend particular schools, or live in designated areas, however, it runs into widespread opposition.

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## TO OUR READERS AND CONTRIBUTORS

*The Public Interest* moved to Washington, D.C. on January 4, 1988. Our new address is as follows:

1112 Sixteenth Street, N.W.  
Suite 545  
Washington, D.C. 20036  
(202) 785-8555

## Freedom, Virtue, and the Founding Fathers

DAN HIMMELFARB

IN 1983, many conservatives found themselves—and no doubt uncomfortable—positioned for a review to a book by, of all people, George F. Will, *Statecraft as Soulcraft*<sup>1</sup>, insofar as it called into question the assumptions of American democracy, seemed profound and, as such, was bound to annoy.

What is Will's thesis? It is that "liberal democracy is ill founded"; America has "defective philosophy" because the Founding Fathers are defective because the Founding Fathers are the tradition of modern political thought: they are the descendants of Machiavelli and Hobbes, who brought the philosophies of classical antiquity and the Christian tradition opposed to the ancients (and Christians), for the *raison d'être* is the cultivation of positive habits, for moderns have rather low expectations and aim at "duties" with "natural rights"; they seek to restrain—rather than restrain and transcend—the human passions; they prefer the realizable to the ideal. The end of government is the protection of individual liberty, the inculcation of public virtue. Thus the "dilemma of liberal democratic societies: How to balance the general, corporate interest in societies founded on an exclusive reference to individual self-interest."

*Prima facie*, Will's argument has considerable force. Are moderns: the American polity is built on the basis of individual interest; the cultivation of virtue is not the primary purpose of American governance. As the foremost authority on the thought of the Founding Fathers, the late Martin D. Sklar, wrote: "[The] removal of government from the business of character tending the formation of character is central to the American political system, on the basis of which the American polity is built."

<sup>1</sup> George F. Will, *Statecraft as Soulcraft: What Founding Fathers Thought*. Schuster, 186 pp. \$13.95.

DRAFT/Date August 25  
RR / CV / (Rev. I) / (Rev. II)  
(Drafter) (Rev. I) (Rev. II)

SPECIAL INSTRUCTIONS:

Enclosures:

~~RUSTIN.870825~~

Dear Mr. Naegle:

*Mr. Naegle*  
I was saddened to learn of Bayard's death *and we join*  
*in sending our heartfelt sympathy to all his*  
*Bayard Rustin* *family &*  
*friends*

He will long be remembered for his fearless championing of civil rights and equal opportunity for blacks which helped redress the evil of discrimination and segregation in our land. His unflagging efforts in the service of such organizations as Freedom House, the International Rescue Committee, and the United States Holocaust Memorial Council are a shining tribute to his commitment to the dignity of man and human rights around the world.

May God bless you and keep you.

Sincerely,

Walter Naegle  
A. Philip Randolph Institute  
260 Park Avenue, South  
New York, New York 10010

MEMORANDUM

THE WHITE HOUSE  
WASHINGTON

*CV*

August 25, 1987

MEMORANDUM TO: ANNE HIGGINS  
FROM: *Bob Hobson*  
BOB HOBSON  
Associate Director  
Public Liaison

Please note the attached article regarding the death of Bayard Ruskin. Could we prepare a letter of condolence? It might be addressed to his adopted son:

Mr. Walter Naegle  
A. Philip Randolph Institute  
260 Park Avenue, South  
New York, New York 10010

Thanks.

Max -

Bob Hobson  
has asked  
that you review.  
Please call him  
at x 2135



THE WHITE HOUSE  
WASHINGTON

8-25-87

Date:

To:

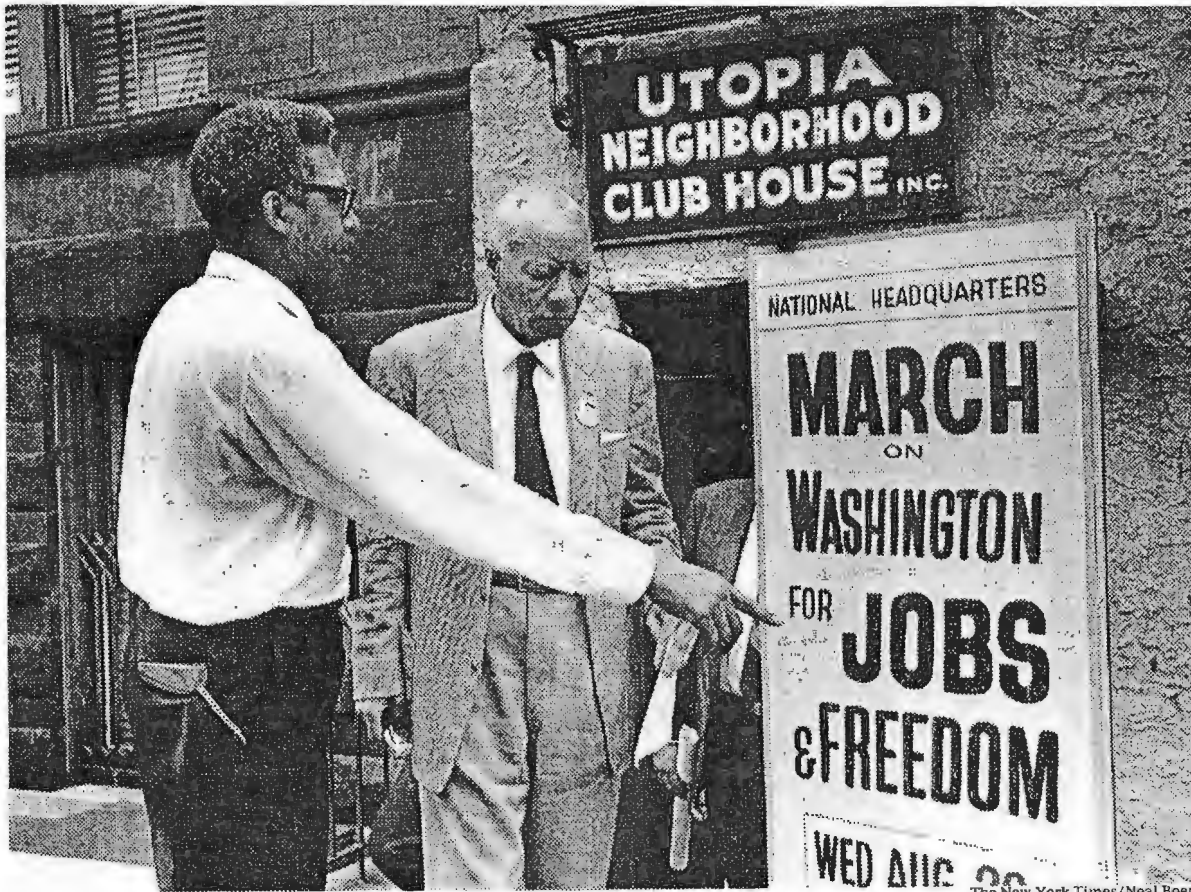
Bob Moran

Can we add  
a line or  
two here -  
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emphasized -

T

Anne

ANNE HIGGINS  
Special Assistant to the  
President and Director  
of Correspondence  
Room 94, x7610



Bayard Rustin, left, with A. Philip Randolph after a meeting in Harlem in 1963 to organize the march on Washington. Mr. Randolph was national chairman of the march committee.

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a major theme of his later years, also became controversial among blacks. In the late 1960's, commenting on what was widely regarded as a rise in anti-Semitism among blacks, he urged restraint as well as good will.

**Advocate of Black-Jewish Ties**

"I request the understanding, the cooperation and the aid of Jews," he said in addressing a conference of the Anti-Defamation League of B'nai B'rith. "I do so knowing that there is Negro anti-Semitism and knowing how Jews must feel when they hear some Negro extremists talk." He urged his audience to "remember that the issue never can be simply a problem of Jew and gentile or black and white. The problem is man's inhumanity to man." His enthusiasm for Israel was strong. "Since Israel is a democratic state surrounded by essentially undemocratic states which have sworn her destruction," he once declared, "those interested in democracy everywhere must support Israel's existence."

Bayard Rustin acquired his passion for civil rights during his boyhood in West Chester, Pa., where he was born March 17, 1912, the illegitimate son of an immigrant from the West Indies. He was reared by a grandfather who worked as a caterer.

**Early Fight on Discrimination**

The young Mr. Rustin first encountered discrimination when, while traveling as a member of the West Chester High School football team, he was refused service at a restaurant in Media, Pa.

"I sat there quite a long time," he recalled years later, "and was eventually thrown out bodily. From that point on, I had the conviction that I would not accept segregation."

After a succession of odd jobs and much travel, he had five years of university study in this country, successively at Wilberforce University in Ohio; Cheyney State Teachers College, in Pennsylvania and at City College. He

**'I believe in social dislocation and creative trouble.'**

did not take a degree.

In the late 1930's Mr. Rustin joined the Young Communist League because, he recalled once in an interview, "They seemed the only people who had civil rights at heart." But he resigned in 1941, he said, because the organization had displayed partiality toward war and discrimination.

In 1941 Mr. Rustin worked for the Congress of Racial Equality as a field secretary. In the same year he denounced Mr. Randolph for having called off a threatened civil rights protest march on Washington in which at least 100,000 blacks were expected to participate.

**Model for Large-Scale Protests**

Mr. Rustin had worked at organizing young people for the demonstration, which was to become a model for large-scale protests. But the demonstration was canceled after President Roosevelt, bowing to pressure from Mr. Randolph and other black leaders, took steps that led to the opening of thousands of military jobs to blacks.

Mr. Rustin, who was then more militant and radical than Mr. Randolph, also criticized Mr. Randolph later in the 1940's but subsequently became one of the union leader's most faithful followers and a mainstay of his old age.

In 1941 Mr. Rustin also began a dozen years of service as race relations director of the Fellowship of Reconciliation, a nondenominational group devoted to seeking solutions to world problems nonviolently.

From 1953 to 1955 he was executive director of the War Resisters League, a pacifist organization, and from 1955 to 1960 he worked for Dr. King, taking time out to organize several large

demonstrations. In 1960 he arranged civil rights demonstrations outside the Democratic and Republican convention halls.

Mr. Rustin began planning the 1963 march in December 1962, while on loan from the War Resisters League.

In his later years, Mr. Rustin continued to be active and outspoken on a wide variety of fronts. He was chairman of Social Democrats U.S.A., a descendant of the Socialist Party of Eugene V. Debs and Norman Thomas; chairman of the executive committee of the Leadership Conference on Civil Rights; and the first black trustee of the University of Notre Dame.

**Stand on Homosexuality**

In an interview published in The Village Voice on June 30, Mr. Rustin was quoted as saying he was homosexual. Asked in the interview how this and his 1953 arrest and subsequent sentence of 60 days in Pasadena, Calif., on a morals charge had affected his civil rights work, he said that "there was considerable prejudice amongst a number of people I worked with," although they would not admit it.

He added, "The fact of the matter is, it was already known, it was nothing to hide. You can't hurt the movement unless you have something to reveal." He contended that the arrest was the result of entrapment which, he suggested, was for political reasons.

Mr. Rustin was unmarried.

He is survived by an uncle, Earl Rustin, of West Chester, Pa.; an aunt, Anna Luff of Queens; three half-sisters, Ruth John of West Chester, Pa.; Elizabeth Munroe; and Adelaide Thomas of Coatesville, Pa., and his adopted son, Mr. Naegle, of Manhattan, who was his administrative assistant at the Institute for the last three years.

A small private funeral service is planned. A memorial service is to be held later in Manhattan; the time and place are to be announced.

Other obituaries, page B7.

PHOTOGRAPH BY  
 THE NEW YORK TIMES

# Bayard Rustin Is Dead at 75; Pacifist and a Rights Activist

THE NEW YORK TIMES

By ERIC PACE

Bayard Rustin, the pacifist and civil rights activist who was a chief organizer of the 1963 march in Washington and the 1964 New York school boycott, died early yesterday at Lenox Hill Hospital. He was 75 years old and was a longtime residence of the Chelsea section of Manhattan.

A spokesman for the hospital, Jean Brett, said Mr. Rustin was admitted to its emergency room Friday morning "complaining of abdominal pain" and later that morning he "underwent surgery for a perforated appendix and peritonitis." At 11:20 P.M. Sunday, a statement added, "Mr. Rustin went into cardiac arrest and died at 12 A.M." yesterday.

Mr. Rustin's administrative assistant and adopted son, Walter Naegle, said, "He seemed to be bouncing back and doing O.K., but he had a history of heart problems, and it appears that the strain of the operation caused the cardiac arrest."

At his death, Mr. Rustin was co-chairman, with Leon Lynch, of the A. Philip Randolph Institute, an educational, civil rights and labor organization based in New York, and president of its education fund.

Commenting on Mr. Rustin's death, Roy Innis, national chairman of the



Bayard Rustin

Congress of Racial Equality, said: "Bayard Rustin was a planner, a coordinator, a thinker. He influenced all of the young leaders in the civil rights movement, even those of us who did not

Continued on Page B8, Column 1

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## Activist, Dies

As time passed, Mr. Rustin became relatively more conservative, stressing what he saw as the prime importance of working for black progress through the trade union movement.

"I know that I have changed, but the changes have been in response to the objective conditions," he told an interviewer in 1970.

He advocated a coalition approach toward achieving "progressive change," drawing on support from the Jewish community and from liberal and leftist political circles in addition to the unions; and he served for many years as the president of the A. Philip Randolph Institute.

In his later years, Mr. Rustin's support of the unions and Israel, and his role as a prime interpreter of the black movement to the unions, to liberals and to various religious groups, won him both widespread praise and strong criticism; some blacks considered him to be an Uncle Tom, subservient to whites.

### Support and Criticism

In 1978 the American Jewish Congress gave Mr. Rustin one of its annual Stephen Wise awards for "illustrious leadership in the cause of racial justice, world peace and human understanding."

But Mr. Rustin was also criticized by blacks who were more militant than he on a variety of issues.

"Bayard has no credibility in the black community," James Farmer, the veteran official of the Congress of Racial Equality, once contended. "Bayard's commitment is to labor, not the black man. His belief that the black man's problem is economic, not racial, runs counter to black community thinking."

Mr. Rustin's insistence on nonviolence was also controversial. He believed in it so strongly that during rioting in Harlem in 1964 he went into the streets and tried to persuade the participants to stop. But bottles were thrown at him, and his efforts were criticized within the black community.

Mr. Rustin's advocacy of black-Jewish harmony and of support for Israel

Mr. Rustin was a complex, intense man with a flair for advocacy and a passion for detail. He built an international reputation as an organizer because of his skill at planning every aspect of protest demonstrations and his imaginativeness as a tactician.

### Analyst Without Power Base

He also won admirers as a political philosopher and analyst. But he never had a big power base among blacks, and late in life he was criticized by some who felt he was more an advocate of Jewish, labor and white liberal

road gang after being convicted of violating bus seating laws in a civil rights demonstration in 1947. And, as the years passed, he was imprisoned or arrested more than 20 times, in cases including numerous charges in connection with his civil rights and pacifist activity.

### Evolution of Philosophy

Early in life he was a radical: he belonged to the Young Communist League for several years, then embraced Socialism and for decades was associated with Mr. Randolph, who was a founder of the modern-day civil rights movement.

### Deaths

ARONOW—Rae Kamlet, Yeshiva University and its Albert Einstein College of Medicine mourn with sorrow the passing of a dear friend who was the beloved wife of the late David Aronow, former member of YU's Board of Trustees. The Aronows were longtime supporters, Century Guardians and AECOM Founders. We extend our heartfelt condolences to the entire Aronow family. May they be comforted among the mourners of Zion and Jerusalem. Dr. Norman Lamm, President

Yeshiva University  
Hon. Herbert Feinzer, Chairman  
Board of Trustees  
Burton P. Resnick, Chairman  
Board of Overseers  
Albert Einstein College  
of Medicine

ARONOW—Rae. The Board of Directors of University Settlement

### Deaths

CALDER—Alice H. of Somers, NY, formerly of Armonk, NY, on Aug 23, 1987. Age 73 years. Wife of the late Eckhardt Calder. Mother of Eckhardt M. Calder. Sister of Leon Hathaway. Grandmother of three. Graveside service Weds., Aug. 26, 11AM at Middle Patent Cemetery, Banksville, NY. Repeating at the Oelker and Cox Funeral Home, 262 Main St., Mt. Kisco, NY, Tues. 2-4 and 7-9PM. Memorial contributions to St. Stephen's Episcopal Church, Armonk, NY would be appreciated.

DEAN—Patricia A., on August 22, 1987. Loving sister of John P. and Florence. Fond aunt of Claire and Patrick. Funeral Thursday, 9 a.m., from the McLaughlin & Sons Funeral Home, Third Avenue at 97th Street, Brooklyn. Mass of Christian Burial, 9:45 a.m., St. Patrick's Church. Visitation Tuesday

### Deaths

Aronow, Rae  
Aster, Bella  
Bacile, Constance  
Bar-Ilan, Barbara  
Berkowitz, Harry  
Bliss, Randolph  
Bretan, Mary  
Bromfield, Max  
Budner, Harriet  
Calder, Alice  
Dean, Patricia  
Dupont, F  
Esikoff, Freda  
Ginsberg, Tania  
Glover, Peggy  
Gookind, Suzanne  
Guttman, Allan  
Haber, Stanley

Harowitz, Harry  
Iason, Jeanne  
Jacobson, Gerald  
Kleinman, Frederick  
Koven, Jack  
Kurzon, Lawrence  
Lash, Joseph  
Lave, Martin  
Levien, Arthur  
Levine, Howard  
Liddy, Edna  
Mathews, Eugene  
McGann, Barton  
McGroth, Frances  
Miller, Philip  
Morris, Larry  
Neideck, Eugenie  
Norden, Jack

Power, Esther  
Rakow, Otto  
Rovich, Charlotte  
Rosen, Hilda  
Rose, William  
Rustin, Bayard  
Salisbury, Budd  
Sarnev, Selma  
Schall, Bea  
Schotland, Ruth  
Shilensky, Morris  
Siegel, Jack  
Siegelman, Walter  
Silverman, Bess  
Stark, Irving  
Sternbach, Elinor  
Striano, Vincent  
Vidimani, Salvatore

LEVIEN—Arthi Trustees and C and Annie B press their de passing of the and extend th heartfelt cond family. His qui termination ar years contrib success of th leadership and the past sever ing the ravage spiration to all greatly missed.

Day

LEVIEN—Arthu touched my f deeper than an pine. All of our to a wonderful

EVENT: MARCH 18

*OK*



March 17, 1987

Coordinator  
testimonial Dinner

A. Philip Randolph Educational Fund  
260 Park Avenue, South  
New York, New York 10010  
(212) 533-8000

*C A P*  
*from [unclear]*

I am happy to join with everyone gathered to congratulate Bayard Rustin on his 75th birthday.

Mr. Rustin's work with Freedom House and the International Rescue Committee, and his service with the United States Holocaust Memorial Council, demonstrate his commitment to justice and to the rights of the individual that no government may abrogate. His work in the civil rights movement and his assistance to Dr. Martin Luther King, Jr., helped right the wrongs of segregation and discrimination in our land. These are powerful reasons to wish Mr. Rustin a happy birthday indeed, and many happy returns of the day.

My best wishes go to Mr. Rustin and to all of you. God bless you and God bless America.

RONALD REAGAN

RR:DE:AVH:ltd PM69  
✓ cc: K.Osborne/D.Engler/Pres.Msgs.Rm.18/CF  
EVENT: Mar 18 87  
DUE: ASAP  
3/17 Bayard Rustin Birthday



Bayard Rustin  
President  
Norman Hill  
Executive Director  
Mrs. Arthur C. Logan  
Treasurer  
Charles Bloomstein  
Secretary

# A. Philip Randolph Educational Fund

260 PARK AVENUE SOUTH / NEW YORK, N.Y. 10010 / (212) 533-8000

February 17, 1987

President Ronald Reagan  
The White House  
1600 Pennsylvania Avenue  
Washington, D.C. 20006

Dear President Reagan:

I am writing to ask if you would send a congratulatory greeting to Bayard Rustin on the occasion of his 75th birthday. Bayard is being honored at a testimonial dinner on Wednesday, March 18th, at the New York Hilton Hotel.

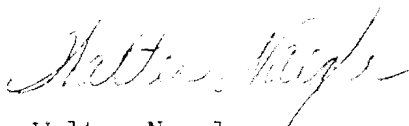
I am sure you are aware of Bayard's long history of fighting for justice and equal opportunity both in the U.S. and abroad.

Since the 1930s he has been active in the civil rights struggle here at home. He worked closely with the late A. Philip Randolph during his efforts to integrate the defense industry and the armed services. He was dispatched by Mr. Randolph to assist Dr. Martin Luther King, Jr. in the early days of the Montgomery bus protest. He was the chief organizer of the historic 1963 March on Washington. He is a founder of the A. Philip Randolph Institute which serves to strengthen relations between the black community and organized labor.

Bayard's involvement in international affairs includes his current work with the International Rescue Committee, Freedom House, Project South Africa, and the United States Holocaust Memorial Council. He has been a consultant and has organized American support for forces struggling against oppression and seeking to bring about democratic change through peaceful means in countries in Europe, Africa, Asia, and Latin America. He has assisted victims of tyranny in their own countries and in their efforts to escape to the free world as refugees.

I know Mr. Rustin would be deeply honored on this occasion to receive your recognition of his life achievements.

Sincerely yours,



Walter Naegle  
Assistant Dinner Coordinator

# BAYARD RUSTIN

Bayard Rustin has been active in the struggle for human rights and economic justice for over 50 years. Born in 1912, he was reared in West Chester, Pennsylvania where he was an outstanding student, athlete, and musician. He attended Wilberforce University, Cheyney State College, and the City College of New York, earning tuition at odd jobs and singing semi-professionally. A gifted tenor, he sang with Josh White's Carolinians, and also with Leadbelly at New York's Cafe Society.



naegle

A Quaker, Mr. Rustin placed his religious convictions above his musical interests, and in 1941 began a long association with the Fellowship of Reconciliation (FOR). Serving as its Race Relations Secretary, he toured the country conducting Race Relations Institutes designed to facilitate communication and understanding between racial groups. He was active in A. Philip Randolph's March on Washington Movement, and became the first field secretary of the Congress of Racial Equality (CORE). In 1942 he was dispatched to California by the FOR and the American Friends Service Committee to help protect the property of Japanese-Americans held in detention. In 1943, Mr. Rustin was imprisoned in Lewisburg Penitentiary as a conscientious objector.

In 1947, Bayard Rustin took part in a demonstration to test enforcement of the 1946 Irene Morgan case decision outlawing discrimination in interstate travel. Known as the "Journey of Reconciliation" this protest was a model for the Freedom Rides of the 1960s. Arrested in North Carolina, he served 30 days on a chain gang. His account of that experience, serialized in The New York Post, spurred an investigation which resulted in the abolition of chain gangs in North Carolina.

Mr. Rustin directed A. Philip Randolph's Committee Against Discrimination in the Armed Forces which was instrumental in securing President Truman's order eliminating segregation in the armed forces. At Mr. Randolph's request he was granted temporary leave from his position as Executive Secretary of the War Resisters League, to assist Dr. Martin Luther King, Jr. in the early days of the Montgomery Alabama Bus Boycott. His extensive background in the theory, strategies, and tactics of nonviolent action proved invaluable and were the foundation of his close association with Dr. King.

Mr. Rustin organized the Prayer Pilgrimage for Freedom in 1957, The National Youth Marches for Integrated Schools in 1958 and 1959, and was the Deputy Director and chief organizer of the 1963 March on Washington for Jobs and Freedom which, at that time, was the largest demonstration in the nation's history. Thought by many to be the high point of the Civil Rights movement, the March on Washington created the political climate for the passage of the major civil rights legislation of the 1960s.

In 1964 Bayard Rustin helped found the A. Philip Randolph Institute, named for his mentor, the noted labor and civils rights activist. The Institute has over 180 local affiliates involved in voter registration drives and programs designed to strengthen relations between the black community and the labor movement. A long-time supporter of workers's rights, Mr. Rustin has participated in many strikes and was arrested in 1984 while demonstrating in support of the clerical and technical employees of Yale University. During the mid-1960s he participated in the formation of the Recruitment

and Training Program (R-T-P) which successfully upgraded and increased minority participation in construction trades.

While working to promote democracy at home, Bayard Rustin has also supported human rights struggles worldwide. In 1945 he organized the FOR's Free India Committee which championed India's fight for independence from Great Britain. Following the examples of Gandhi and Nehru, with whom he consulted during visits to India, he was frequently arrested for protesting Britain's colonial role there. In the early 1950s, he was active in the fight to end colonial rule in Africa. He consulted with Kwame Nkrumah of Ghana and Nnamde Azikwe of Nigeria. At home he helped organize the Committee to Support South African Resistance, later renamed the American Committee on Africa.

Mr. Rustin has a long involvement with refugee affairs. As a Vice Chairman of the International Rescue Committee, he has travelled the world, working to secure food, medical care, education, and proper resettlement for refugees. His several visits to Southeast Asia helped to bring the plight of the Vietnamese "boat people" to the attention of the American public. In 1980 he was part of an American delegation which took part in the international "March for Survival" on the Thai-Cambodian border. He was Co-Chairman of the Citizens Commission on Indochinese Refugees, a non-governmental advocacy group working to assist the refugees fleeing Vietnam, Cambodia and Laos. In 1982, he helped organize the National Emergency Coalition for Haitian Refugees.

As Chairman of the Executive Committee of Freedom House, an agency which monitors international freedom and human rights, Mr. Rustin has observed elections in Zimbabwe, El Salvador, and Grenada, etc.

In 1975, Mr. Rustin organized the Black Americans to Support Israel Committee (BASIC). He has made numerous fact-finding visits to the Middle East and has written many columns and articles on that troubled area. He has worked for the freedom of Soviet Jews and was an early advocate for the Ethiopian Jews in their struggle to emigrate to Israel.

In 1983, Mr. Rustin and two colleagues made a fact-finding trip to South Africa. Their report, South Africa: Is Peaceful Change Possible? led to the formation of Project South Africa, a new program which seeks to broaden American's support of groups within South Africa which are attempting to bring about democracy through peaceful means.

A collection of Mr. Rustin's essays, Down the Line, was published in 1971. In 1976, he delivered the Radner Lecture at Columbia University which was published under the title Strategies for Freedom: The Changing Patterns of Black Protest.

Mr. Rustin is the recipient of numerous awards including The Murray/Greene/Meany award, The John LaFarge Memorial Award, and The Stephen Wise Award. He has been honored with more than a dozen honorary degrees including Harvard, Yale, Brown, and New York University. He currently serves as a member of the United States Holocaust Memorial Council.

Mr. Rustin currently serves as Co-Chairman of the A. Philip Randolph Institute and President of the A. Philip Randolph Educational Fund, a sister organization with an international human rights focus. He can be reached at: 260 Park Avenue South, New York, N.Y. 10010 Tel: 212-533-8000.

The Associated Press

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~~September 22, 1980~~ Monday, AM cycle

LENGTH: 140 words

HEADLINE: Black Leaders Support Carter

DATELINE: NEW YORK

KEYWORD: Political Briefs

BODY:

Terming the presidential election an "extreme crisis," a group of black leaders on Monday mapped out plans for a pro-Carter movement they admitted was as much an anti-Ronald Reagan and anti-John Anderson effort.

~~Bayard Rustin~~ joined black political and union leaders to announce formation of the the ~~Black Americans to Re-Elect President Carter~~ "to support Carter and to reveal the abysmal record of Anderson and the ultra-conservative record of Reagan."

"President Carter, like every president before him, has not achieved all that we would want in the area of economic and social programs," said Rustin, who chairs the committee.

But he added: "For us, as black Americans, there can be no question: faced with Ronald Reagan's ultra-conservative challenge, President Carter must have our full and unwavering support."