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TOWARDS LIFTING THE BURDEN  
OF STEREOTYPING  
Affirmative Action and Equality of Opportunity<sup>1</sup>

*Some may doubt whether the question of equality of opportunity applies to women anymore. In most Western countries every career is now, in theory, open to women. Firstly, while this may be true in Western countries, it is not true in others; there are still many careers barred to women outside the West. However, affirmative action is not a remedy where women are barred from given careers, for in such cases the principle of equality of opportunity has been rejected. Rather, affirmative action is a measure for achieving equality of opportunity.*

It has been objected that affirmative action is inconsistent with equality of opportunity because it requires discrimination (something that conflicts with the central aim of equality of opportunity). I will argue that affirmative action is not only consistent with equality of opportunity but may help to bring it about.<sup>2</sup> First, I will outline what I understand by equality of opportunity; namely, it is the chance an agent has to achieve a goal without a specified obstacle in their way. I point to some evidence that there is still discrimination against women in some Western countries.<sup>3</sup> Second, I will discuss the kinds of obstacles that stand between women and their employment goals. I will argue that women do not have equality of opportunity if it can be shown that they are under differential social and economic pressures. Third, I will argue that affirmative action is one way to overcome such obstacles and present some evidence that affirmative action can be effective under the right conditions. Fourth, I shall consider some objections to affirmative action.

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<sup>1</sup> I would like to thank Dr Gerald Harrison for comments on earlier versions of this article.

<sup>2</sup> My arguments here focus specifically on women, but can, and I think should, be applied to any group that is disadvantaged as a result of differential pressures. Other groups might include older people, those from a low income background, ethnic and religious minorities, transsexuals, and homosexuals.

Similarly, Kristina Meshelski argues that affirmative action is consistent with equality of opportunity. See Kristina Meshelski, “Procedural Justice and Affirmative Action,” *Ethical Theory and Moral Practice* 19, no. 2 (2016): 1-19.

<sup>3</sup> The focus here is on Western countries, from where most of the examples and data in what follows are drawn. However, the arguments would apply to any country/context where women (or any other group) face such obstacles.

## EQUALITY OF OPPORTUNITY

Equality of opportunity is the absence of unfair differential obstacles between men and women.<sup>4</sup> Equality of opportunity demands that anyone with relevant qualifications should be given equal consideration when seeking employment. I understand an opportunity as a relationship between an agent and a desired object that is less than a guarantee but more than a chance.<sup>5</sup> To put it formally: the relationship between an agent X, their goal Y, and a specified obstacle Z.<sup>6</sup> Equality of opportunity is a regulating principle of social justice that ensures two sets of agents (in this case men and women) have the same opportunities insofar as they are free from the same specified obstacles.

## EQUALITY OF OPPORTUNITY AND WOMEN

Some may doubt whether the question of equality of opportunity applies to women anymore. In most Western countries every career is now, in theory, open to women. Firstly, while this may be true in Western countries, it is

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<sup>4</sup> This paper is addressed to those who agree that equality of opportunity is a valid ideal so I shall not defend it here. What is at issue is how that goal is to be achieved.

There are of course disputes about what equality of opportunity is. See for instance: Gerald A. Cohen, "Equality of What? On Welfare, Goods and Capabilities," in *The Quality of Life*, ed. Martha C. Nussbaum and Amartya Sen (Oxford, England: Clarendon Press, 1993); Ronald Dworkin, "What Is Equality?, Part 1: Equality of Welfare," *Philosophy & Public Affairs* 10, no. 3 (1981): 185-246; Ronald Dworkin, "What Is Equality?, Part 2: Equality of Resources," *Philosophy & Public Affairs* 10, no. 4 (1981): 283-345; Simon J.D. Green, "Competitive Equality of Opportunity: A Defense," *Ethics* 100, no. 1 (1989): 5-32; Michael Levin, "Equality of Opportunity," *Philosophical Quarterly* 31, no. 123 (1981): 110-25; Andrew Mason, "Equality of Opportunity, Old and New," *Ethics* 111, no. 4 (2001): 760-81; Andrew Mason, "Equality of Opportunity and Differences in Social Circumstances," *The Philosophical Quarterly* 54, no. 216 (2004): 368-88; Richard Norman, "Equality, Priority and Social Justice," *Ratio* 12, no. 2 (1999): 178-94; John E. Roemer, *Equality of Opportunity* (Cambridge, MA: Harvard University Press, 1998); John E. Roemer, "Defending Equality of Opportunity," *The Monist* 86, no. 2 (2003): 261-82; Shlomi Segal, *Equality and Opportunity* (Oxford: Oxford University Press, 2013); Benjamin Sachs, "The Limits of Fair Equality of Opportunity," *Philosophical Studies* 160, no. 2 (2012): 323-43; Milton Friedman and Rose Friedman, *Free to Choose: A Personal Statement* (Boston: Houghton Mifflin Harcourt, 1990); Michel Rosenfeld, "Substantive Equality and Equal Opportunity: A Jurisprudential Appraisal," *California Law Review* 74, no. 5 (1986): 1687-712. But they all involve this kind of consideration.

<sup>5</sup> See Peter Westen, "The Concept of Equal Opportunity," *Ethics* 95, no. 4 (1985): 837-50.

<sup>6</sup> Gerald Allan Cohen expresses a similar opinion. He says that "equality of opportunity ... removes obstacles to opportunity from which some people suffer and others don't." Gerald Allan Cohen, *Why Not Socialism?* (Princeton: Princeton University Press, 2009), 13.

not true in others; there are still many careers barred to women outside the West.<sup>7</sup> However, affirmative action is not a remedy where women are barred from given careers, for in such cases the principle of equality of opportunity has been rejected. So, I shall not be discussing these cases here. Rather, affirmative action is a measure for achieving equality of opportunity. Equality of opportunity, as I have defined it, is less than a guarantee and more than a mere possibility (the possibility of absent obstacles). An opportunity is the absence of obstacles between an agent and their goal (goals). Thus, for the question of equality of opportunity to apply to women, it would have to be the case that there are obstacles that stand between them and their employment goals that do not stand between men and their employment goals. However, it does not follow that the removal of any obstacle constitutes an opportunity. For example, if women were allowed to participate in a particular career but were not allowed to gain the qualifications required for entry into that career, then they could not be said to have a real opportunity of entering that career. Thus, an opportunity is not the absence of any obstacle. It is a combination of the absence of specified obstacles and insurmountable obstacles.<sup>8</sup> So, the question is which obstacles need to be removed in order to achieve equality of opportunity?

It is difficult to determine which obstacles should be removed. What is equal by one measure is unequal by another and it may not be possible for any two people to have equality of opportunity in every respect.<sup>9</sup> However, the fact that it is difficult to establish criteria for equality of opportunity does not mean it is impossible. When discussing equality of opportunity between two random individuals it is very difficult to decide whether one should take into account things like class, education, family encouragement, natural ability, and to what extent these factors should count. However, when comparing the equality of opportunity of a man and a woman the case becomes a lot easier because we are concerned with those obstacles placed in women's way purely in virtue of the fact that they are women. Thus, the obstacles that should be removed are those that women, and not men, have to face because they are women. I shall outline some obstacles that need to be removed if women are to gain equality of opportunity.

<sup>7</sup> Valentine M. Moghadam, *Modernizing Women: Gender and Social Change in the Middle East* (London – Boulder: Lynne Rienner Publishers, 2003), 4; UNICEF, *The State of the World's Children 2007: Women and Children: The Double Dividend of Gender Equality*, vol. 7 (UNICEF, 2006); Gary S. Becker, *The Economics of Discrimination* (Chicago: University of Chicago Press, 2010); Christian Morrison and Johannes P. Jüttling, "Women's Discrimination in Developing Countries: A New Data Set for Better Policies," *World Development* 33, no. 7 (2005): 1065-81.

<sup>8</sup> See Westen, "The Concept of Equal Opportunity," 840-41; Joyce Gelb, "The Equal Employment Opportunity Law: A Decade of Change for Japanese Women?," *Law & Policy* 22, no. 3-4 (2000): 385-407.

<sup>9</sup> See Westen, "The Concept of Equal Opportunity," 842.

## OBSTACLES

I will argue that there are some obstacles that stand between women (and not men) and their goals, and thus women lack equality of opportunity in competitions where they face these obstacles.

## SEX DISCRIMINATION

There is evidence that women are still discriminated against in employment.<sup>10</sup> There is still “a significant gender wage inequality.”<sup>11</sup> Some might

<sup>10</sup> See Faye J. Crosby, *Affirmative Action Is Dead: Long Live Affirmative Action* (New Haven: Yale University Press, 2004); James J. Heckman, “Detecting Discrimination,” *The Journal of Economic Perspectives* 12, no. 2 (1998): 101-16; Harry Holzer and David Neumark, “Assessing Affirmative Action,” *Journal of Economic Literature* 38, no. 3 (2000): 493; William A. Darity Jr and Patrick L. Mason, “Evidence on Discrimination in Employment: Codes of Color, Codes of Gender,” in *African American Urban Experience: Perspectives from the Colonial Period to the Present*, ed. Joe W. Trotter, Earl Lewis, and Tera W. Hunter (New York: Palgrave Macmillan, 2004), 156-86; Virginia E. Schlein, “Women in Management: Reflections and Projections,” *Women in Management Review* 22, no. 1 (2007): 6-18; *The Glass Ceiling in the 21st Century: Understanding Barriers to Gender Equality*, ed. Manuela Barreto, Michelle K. Ryan, and Michael T. Schmitt, (Washington D.C.: American Psychological Association, 2009); Alice H. Eagly and Linda L. Carli, “Women and the Labyrinth of Leadership,” *Harvard Business Review* 85, no. 9 (2007): 62; Donna Bobbitt-Zeher, “Gender Discrimination at Work Connecting Gender Stereotypes, Institutional Policies, and Gender Composition of Workplace,” *Gender & Society* 25, no. 6 (2011): 764-86; Jeanette N. Cleveland, Theresa K. Veschio, and Janet L. Barnes-Farrell, “Gender Discrimination in Organizations,” in *Discrimination at Work: The Psychological and Organizational Bases*, ed. Robert L. Dipboye and Adrienne Colella (New York: Psychology Press, 2013), 149-76; Madeline E. Heilman, “Gender Stereotypes and Workplace Bias,” *Research in Organizational Behavior* 32 (2012): 113-35; Robert S. Taylor, “Rawlsian Affirmative Action,” *Ethics* 119, no. 3 (2009): 476-506.

This is not meant to be an exhaustive list of evidence for discrimination, there is not room for this here. Rather, the point is to show that there is some evidence of continuing discrimination against women.

<sup>11</sup> Stephen B. Jarell and Tom D. Stanley, “Declining Bias and Gender Wage Discrimination? A Meta-Regression Analysis,” *Journal of Human Resources* 39, no. 3 (2004): 828. See also Hilary M. Lips, “The Gender Pay Gap: Challenging the Rationalizations. Perceived Equity, Discrimination, and the Limits of Human Capital Models,” *Sex Roles* 68, no. 3-4 (2013): 169-85; Ariane Hegewisch et al., “Separate and Not Equal? Gender Segregation in the Labor Market and the Gender Wage Gap,” *Institute for Women’s Policy Research Briefing Paper* 377 (2010); Juan D. Borón and Deborah A. Cobb-Clark, “Occupational Segregation and the Gender Wage Gap in Private – and Public – Sector Employment: A Distributional Analysis,” *Economic Record* 86, no. 273 (2010): 227-46; Judith K. Hellerstein, David Neumark, and Kenneth R. Troske, “Market Forces and Sex Discrimination,” *The Journal of Human Resources* 37, no. 2 (1997): 353-80; Emily Hoffnar and Michael Greene, “Gender Discrimination in the Public and Private Sectors: A Sample Selectivity Approach,” *The Journal of Socio-Economics* 25, no. 1 (1996): 105-14.

object that a difference in wages is not necessarily a result of discrimination. However, there is some evidence that suggests that the gap can be explained, at least in part, by discrimination.<sup>12</sup> There is also evidence of more subtle discrimination, there is “evidence of sex discrimination on several intangible margins and in terms of overall job satisfaction.”<sup>13</sup> Discrimination does not necessarily involve antipathy to women.<sup>14</sup> It can happen without people even realising it. For instance, many jobs are not advertised by the press but are advertised by word of mouth and this means only those who are part of the existing structure can have a chance of getting the job.<sup>15</sup> Similarly, the way jobs are advertised (the wording used) can favour men.<sup>16</sup>

Discrimination can also take the form of institutional sexism.<sup>17</sup> Institutional sexism is a barrier to women. Institutional sexism can be overt, but it need not be.<sup>18</sup> For example, suppose a woman wants to pursue a career in the army. Those who are responsible for her promotion need not be against women soldiers or think them incapable. However, they may still think that there would be no point in promoting them. They may believe that they will not progress any further because other women have not done and others in positions of power are unlikely to promote women any further. This reinforces the idea that women are not fit to be soldiers. Thus, women may be discriminated against even where there is no positive desire to stop them from achieving their goals. There may be other obstacles.

<sup>12</sup> “Women Scientists Face Pay Discrimination, Finds Survey,” *Guardian*, September 5 2006; Francine D. Bla u, *Gender, Inequality, and Wages*, (Oxford: Oxford University Press, 2012); Morris T r i v e n t i, “The Gender Wage Gap and Its Institutional Context: A Comparative Analysis of European Graduates,” *Work, Employment & Society* 27, no. 4 (2013): 563-80; Carlos G r a d í n, Coral d e l R í o, and Olga C a n t ó, “Gender Wage Discrimination and Poverty in the EU,” *Feminist Economics* 16, no. 2 (2010): 73-109.

<sup>13</sup> David N. L a b a n d and Bernard F. L e n t z, “Is There Sex Discrimination in the Legal Profession? Further Evidence on Tangible and Intangible Margins,” *Journal of Human Resources* 28, no. 2 (1993): 230.

<sup>14</sup> See Luke Charles H a r r i s and Uma N a r a y a n, “Affirmative Action as Equalising Opportunity: Challenging the Myth of Preferential Treatment,” in *Ethics in Practice*, ed. Hugh LaFollette (Oxford: Blackwell, 1997), 456.

<sup>15</sup> Similarly, some jobs are advertised only a week or so before the deadline, giving internal applicants who are already aware of the position a distinct advantage. See *ibid.*, 455.

<sup>16</sup> See Danielle G a u c h e r, Justin F r i e s e n, and Aaron C. K a y, “Evidence That Gendered Wording in Job Advertisements Exists and Sustains Gender Inequality,” *Journal of Personality and Social Psychology* 101, no. 1 (2011): 109.

<sup>17</sup> See Alison B l o d o r n, Laurie T. O’B r i e n, and Justin K o r d y s, “Responding to Sex-Based Discrimination: Gender Differences in Perceived Discrimination and Implications for Legal Decision Making,” *Group Processes & Intergroup Relations* 15, no. 3 (2012): 409-24.

<sup>18</sup> Walter Feinberg says something similar about institutional racism. See Walter F e i n b e r g, “Affirmative Action,” in *The Oxford Handbook of Practical Ethics*, ed. Hugh LaFollette (Oxford: Oxford University Press, 2003), 293.

## ECONOMIC PRESSURES

Economic pressures are those concerning financial matters. Antony Flew asks us to consider the example of a couple who would like their child to receive full time care from one of its parents. As is usually the case, they make the decision that it should be the mother. Flew claims that this is a “paradigm case of people co-operating as equals.”<sup>19</sup> It is arguable that it may often be an assumption rather than a decision. Nevertheless, even if one allows it is a decision, this analysis ignores other relevant factors. For example, even when women and men have equal qualifications men’s earning power is on average higher.<sup>20</sup> Thus, it makes economic sense for the man to go out to work if he will earn more and thus provide a better start for their child. Similarly, when a couple are deciding which parent should take time off work and look after their child for the first few months of its life they usually decide it should be the mother. In countries where women get much longer paid maternity leave, this fact has to be taken into account. Many couples cannot afford for the father to take three months unpaid leave (especially given all the expenses that accompany a baby). Thus, the economic obstacles women face are unequal and so the opportunities they have are likewise unequal. The longer a couple remains married the more economically dependent any woman who has the main burden of childcare becomes on her husband as she loses valuable work experience and the pay gap widens.<sup>21</sup>

It has been objected that the reason women have lower earning power than men is because they are less interested in a career or less able, and it is for these reasons that there is a pay gap.<sup>22</sup> However, innate ability has nothing to do with the paternity leave example, which turns purely on financial considerations. As far as the first example is concerned, it may be argued that the reason women

<sup>19</sup> Antony Flew, “A Response to Jean Hampton’s Feminism,” in *The Liberation Debate: Rights at Issue*, ed. Michael Leahy and Dan Cohn Sherbok (London: Routledge, 1996), 34.

<sup>20</sup> See Barbara Orser and Joanne Leck, “Gender Influences on Career Success Outcomes,” *Gender in Management: An International Journal* 25, no. 5 (2010): 386-407; Adela García-Aracil, “College Major and the Gender Earnings Gap: A Multi-Country Examination of Postgraduate Labour Market Outcomes,” *Research in Higher Education* 49, no. 8 (2008): 733-57; Heather Joshi, Gerry Makepeace, and Peter Doltón, “More or Less Unequal? Evidence on the Pay of Men and Women from the British Birth Cohort Studies,” *Gender, Work & Organization* 14, no. 1 (2007): 37-55; Donna Bobbitt-Zeher, “The Gender Income Gap and the Role of Education,” *Sociology of Education* 80, no. 1 (2007): 1-22.

<sup>21</sup> See Ann E. Cudd, “Oppression by Choice,” in *Ethics in Practice*, 388; Steven L. Nock, “Marriage as a Public Issue,” *The Future of Children* 15, no. 2 (2005): 13-32; Michelle Budig and Paula Englund, “The Wage Penalty for Motherhood,” *American Sociological Review* 66, no. 2 (2001): 204-25; Crosby, *Affirmative Action Is Dead*.

<sup>22</sup> See Michael Levin, “Affirmative Action,” in *Ethics in Practice*, 433.

are less interested or less able (if indeed they are)<sup>23</sup> is because of the differential social pressures they are under. For example, evidence suggests that it is easier for men to balance career and family.<sup>24</sup> Women tend to do more childcare and housework than men regardless of work commitments.<sup>25</sup> These kinds of social pressures offer an alternative explanation for why women appear less interested in jobs. There are two kinds of social pressure: direct and indirect.<sup>26</sup>

#### INDIRECT SOCIAL PRESSURES

Social pressures are harder to identify than economic pressures. It is inevitable that when anyone makes a choice they are influenced by their own and other people's beliefs.<sup>27</sup> It is also unavoidable that an individual's beliefs are influenced by their beliefs about particular groups (such as race, class, nationality, religion or sex) of which they are a member. Beliefs like these are a part of general knowledge and may incorporate things like an awareness of culture. While these beliefs do not necessarily entail prejudice, they do have a tendency to drive unusual members in the direction of the majority; these are indirect social pressures. They exist because you desire a certain goal or set of goals and it is necessary for you to take account of other people's desires or wants in order to attain them, it is not that anyone wants to force you to do anything. In order to enter any competition and have a real chance of succeeding you need certain characteristics. For example, to be a good tennis player you need to be fit. It is not that society is trying to make you fit. Rather, in order to achieve your goal you have to be as fit as possible. These sorts of indirect social pressures differ from other pressures insofar as they arise from an individual's preferences. Pressures like these are unavoidable. Indirect pressures will only

<sup>23</sup> And there is evidence to suggest that this is not the case. See *Why Aren't More Women in Science: Top Researchers Debate the Evidence*, ed. Stephen J. Ceci and Wendy M. Williams (Washington, D.C.: American Psychological Association, 2007).

<sup>24</sup> See Sabrina F. Askar et al., "Men Want Equality, but Women Don't Expect It: Young Adults' Expectations for Participation in Household and Child Care Chores," *Psychology of Women Quarterly* 34, no. 2 (2010): 243-52; Mary Blair-Loy, *Competing Devotions: Career and Family among Women Executives* (Cambridge, MA: Harvard University Press, 2009); Desirae M. Domencio and Karen H. Jones, "Career Aspirations of Women in the 20th Century," *Journal of Career and Technical Education* 22, no. 2 (2007): 18-25; Laura Sabbatini and Faye J. Crosby, "Ceilings and Walls: Work-Life and 'Family-Friendly' Policies," in *The Glass Ceiling in the 21st Century*, 201-23.

<sup>25</sup> See Sabbatini and Crosby, "Ceilings and Walls."

<sup>26</sup> Janet Radcliffe Richards gives an account of two different types of social pressures: direct and indirect. The explanation of social pressures given here draws largely on her account. See Janet Radcliffe Richards, *The Sceptical Feminist* (Middlesex: Penguin, 1982).

<sup>27</sup> See *ibid.*, 163.

stop if people stop having preferences.<sup>28</sup> If these sorts of indirect social pressure were the only social pressures it may be possible to accept that they are not real obstacles. However, there are other social pressures.

#### DIRECT SOCIAL PRESSURES

Another sort of social pressure arises when people have a positive desire to make you do one thing rather than another without regard to your desires. Pressure is direct if people try to influence your behaviour and preferences.<sup>29</sup> Direct pressures occur when someone has a positive desire for an individual to behave in a certain manner, and they range from disapproval to physical force. Thus, the distinction between direct and indirect pressures is the direction of the desire. Indirect pressures occur when you have a desire. Direct pressures occur when other people desire you to do something. Some direct pressures also seem inevitable but this does not mean that they should all be accepted. If there are direct pressures that put obstacles in the way of women but not of men, then those obstacles are unfair. Such obstacles should be removed if the principle of equality of opportunity is to be achieved.

#### Stereotypical gender roles

One form of direct pressure is stereotypical gender roles. Gender roles in the West are not nearly as strict as they once were. However, if certain activities are made more difficult for women than men (such that they have to overcome different obstacles), then women do not have equal opportunities. Michael Levin argues that “sex stereotypes are no more than reports of the inevitable manifestations of innate sex differences. Stereotypes are true and possess little independent power.”<sup>30</sup> However, this assertion is doubtful when you consider that some people disapprove or approve of actions because of the gender of the person performing them rather than because of the actions themselves.<sup>31</sup> The force of approbation and

<sup>28</sup> See *ibid.*, 168.

<sup>29</sup> See *ibid.*, 170.

<sup>30</sup> Levin, “Affirmative Action,” 437.

<sup>31</sup> See Janet Radcliffe Richards, “Separate Spheres,” in *Applied Ethics*, ed. Peter Singer (Oxford: Oxford University Press, 1986), 212; Christine Alkensis, Serge Desmarais, and James Curtis, “Workforce Segregation and the Gender Wage Gap: Is ‘Women’s’ Work Valued as Highly as ‘Men’s’?,” *Journal of Applied Social Psychology* 38, no. 6 (2008): 1416-41; Thomas E. Ford et al., “More Than ‘Just a Joke’: The Prejudice-Releasing Function of Sexist Humor,” *Personality and Social Psychology Bulletin* 34, no. 2 (2008): 159-70; Rosalind Gill, “Sexism

disapprobation can vary. However, where gender is linked to social approval and particular activities are made more or less difficult purely on the basis of an agent's gender (insofar as they may have to sacrifice social acceptability) then women and men are under different direct social pressures.<sup>32</sup> Thus, they have different obstacles in their way and so cannot be said to have equality of opportunity. The nature of an opportunity is related to the agent's ability to overcome the obstacles "if the costs of freely performing an action or acquiring a good are so high that a prudent agent might not willingly bear them, then there is an obstacle to opportunity."<sup>33</sup> For instance, where a woman expects to have to sacrifice social acceptance to pursue a particular career she might consider the price too high and choose a different career instead. Any rational agent might reasonably make this choice. If the cost of doing something is higher than the benefits it brings (job satisfaction or financial reward for instance), then it would be quite rational to choose a different goal.

Thus, the career choices that women make are not necessarily a reflection of their innate abilities or desires. Career choice for women may, in some cases, be like tactical voting. Suppose I want Party A to win and want to vote for them. However, I know that they are very unlikely to win. Party B is likely to win, but I do not want party B to win. So, I vote for party C because although I do not entirely agree with their policies I prefer them to Party B and they are more likely to win than party A. Similarly, in a situation where women do not have equality of opportunity many women might choose a career they think they can succeed in rather than the one they actually want. Where this is the case, women are under direct social pressures and such pressure is an unfair obstacle that robs women of equality of opportunity.

#### EXPECTATIONS

Another direct social pressure is the different expectations people have of men and women.<sup>34</sup> There is psychological evidence which suggests that expectation

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Reloaded, or, It's Time to Get Angry Again!," *Feminist Media Studies* 11, no. 01 (2011): 61-71; WorldPay Zinc, *Attitudes in the Workplace: A Study of Sexism and Discrimination in Britain*, 2013; Janet K. S w i m et al., "Everyday Sexism: Evidence for Its Incidence, Nature, and Psychological Impact from Three Daily Diary Studies," *Journal of Social Issues* 57, no. 1 (2001): 31-53; Madeline E. H e i l m a n, "Description and Prescription: How Gender Stereotypes Prevent Women's Ascent up the Organizational Ladder," *Journal of Social Issues* 57, no. 4 (2001): 657-74.

<sup>32</sup> See R a d c l i f f e R i c h a r d s, "Separate Spheres," 212.

<sup>33</sup> G r e e n, "Competitive Equality of Opportunity: A Defense": 11.

<sup>34</sup> See R a d c l i f f e R i c h a r d s, "Separate Spheres," 212.

affects performance.<sup>35</sup> There is also evidence that women's qualifications are undervalued (under appraised) and (or) rated differently from men's.<sup>36</sup> For example, studies show that women's CVs and (or) qualifications can be rated lower than men's even when they are identical, especially for traditionally male roles.<sup>37</sup> Even if one does not accept these findings it is often argued that the standards by which we measure performance or ability are culturally biased in men's favour.<sup>38</sup> For example, standardised tests (like SAT, PSAT/NMSQT and ACT) do not predict equally well for men and women.<sup>39</sup> Standardised tests can underpredict women's performance in a college setting.<sup>40</sup> Where they do underpredict women's performance, this gives a clear advantage to men. In those instances where women's achievements are systematically undervalued they are at a disadvantage; they do not have equality of opportunity. Those who accept the principle of opportunity must therefore look for ways to achieve it. One measure is, I will argue, affirmative action.

<sup>35</sup> See Terence R. Mitchell and Denise Daniels, "Motivation," in *Handbook of Psychology*, vol. 12, "Industrial and Organizational Psychology," ed. Walter C. Borman, Daniel R. Ilgen, and Richard J. Klimoski (Hoboken, NJ: John Wiley & Sons, 2003), 225-54.

<sup>36</sup> See Harris and Narayan, "Affirmative Action as Equalising Opportunity," 457; Carol Isaac, Barbara Lee, and Molly Carnes, "Interventions That Affect Gender Bias in Hiring: A Systematic Review," *Academic Medicine: Journal of the Association of American Medical Colleges* 84, no. 10 (2009): 1440; James M. Tyler and Jennifer Dancu, "Violating Prescriptive Stereotypes on Job Resumes: A Self-Presentational Perspective," *Management Communication Quarterly* 23, no. 2 (2009): 272-87.

<sup>37</sup> See Harris and Narayan, "Affirmative Action as Equalising Opportunity," 456; Naomi C. Chesler et al., "The Pipeline Still Leaks and More Than You Think: A Status Report on Gender Diversity in Biomedical Engineering," *Annals of Biomedical Engineering* 38, no. 5 (2010): 1928-35; Claudia Goldin and Cecilia Rouse, "Orchestrating Impartiality: The Impact of 'Blind' Auditions on Female Musicians," *The American Economic Review* 90, no. 4 (2000): 715-41; Mary Lou Santovec, "Women's Metaphor: From 'Glass Ceiling' to 'Labyrinth,'" *Women in Higher Education* 19, no. 12 (2010): 1-2; Molly Carnes and Carole Blaud, "Viewpoint: A Challenge to Academic Health Centers and the National Institutes of Health to Prevent Unintended Gender Bias in the Selection of Clinical and Translational Science Award Leaders," *Academic Medicine* 82, no. 2 (2007): 202-06.

<sup>38</sup> Bryan Nankervis, "Gender Inequity in the National Merit Scholarship Program," *Journal of College Admission* 219 (2013): 20-25; Dianne Reed et al., "Gender Equity in Testing and Assessment," in *Handbook for Achieving Gender Equity Through Education*, ed. Susan S. Klein et al. (New York: Routledge, 2007), 155-69; Claude M. Steele, "A Threat in the Air: How Stereotypes Shape Intellectual Identity and Performance," *American Psychologist* 52, no. 6 (1997): 613.

<sup>39</sup> See Harris and Narayan, "Affirmative Action as Equalising Opportunity," Michel Rosenfeld, *Affirmative Action and Justice: A Philosophical and Constitutional Inquiry* (New Haven: Yale University Press, 1991).

<sup>40</sup> See Nathan R. Kuncel and Sarah A. Hertz, "Standardized Tests Predict Graduate Students' Success," *Science* 315, no. 5815 (2007): 1080-81.

## AFFIRMATIVE ACTION

The goal of affirmative action is to help restore equality of opportunity. Opportunities that have been lost because individuals have been treated as inferiors because of certain attributes (such as sex or race).<sup>41</sup> The aim of this measure is to decrease discrimination against these individuals and increase the number of such individuals employed in occupations where discrimination has occurred. Affirmative action aims to restore employment opportunities that would have been lost as a result of discrimination.<sup>42</sup>

Affirmative action is often thought of as backward looking.<sup>43</sup> However, I see it as forward looking. It is only backward looking insofar as history informs us how equality of opportunity has been denied to some candidates. It is current rather than past inequalities affirmative action is meant to remedy. As such it is forward looking.

Affirmative action is often referred to by other terms, such as preferential hiring or reverse discrimination. I have chosen not to employ these phrases because of the implications they have. The first suggests that beneficiaries are in some way receiving preferential treatment. I will argue they are not. The term reverse discrimination suggests that what is now occurring is simply a reverse of the discrimination that occurred before.<sup>44</sup> I shall argue that this claim is equally unfounded. I shall instead favour the term affirmative action, which suggests an undertaking to right a present wrong.

In order to remove existing imbalances in equality of opportunity it is necessary to treat people differently. This may be done through measures like affirmative action, which means actively recruiting people from groups who are discriminated against. Affirmative action can include measures such as quotas, where a number of places are set aside for individuals from the relevant group. For example, in Germany firms that employ more than 20 people

<sup>41</sup> See F e i n b e r g, "Affirmative Action," 272.

<sup>42</sup> See O v a d i a E z r a, "Equality of Opportunity and Affirmative Action," *Philosophy in the Contemporary World* 14, no. 1 (2007): 22-37.

There is a debate over what the goals of affirmative action should be (see F e i n b e r g, "Affirmative Action," 273). Some think the number of disadvantaged individuals in any given occupation should be proportional to the population. Others that it is sufficient to remove unfair barriers and make selection procedures fairer. However, the definition I have given is broad enough that it can allow for these different goals.

<sup>43</sup> See G e o r g e H u l l, "Affirmative Action and the Choice of Amends," *Philosophia* 43, no. 1 (2015): 113-34.

<sup>44</sup> For instance under the heading "The Redirection of Sexist Discrimination" Antony Flew argues that "the drive to outlaw sexist discrimination has—thanks to ... the political pressure of New Wave Feminists—resulted in a similarly widespread extension of legally enforced sexist discrimination in favour of women." F l e w, "A Response to Jean Hampton's Feminism," 26.

have to employ at least 5% of their workforce from the registered disabled.<sup>45</sup> Another example of affirmative action may be to have short lists that are composed either entirely or in large part by members of disadvantaged groups. For example, in order to increase the number of women in the English Parliament the Labour Party continues to use all women short lists for some constituencies.<sup>46</sup> Affirmative action is meant as a temporary measure and can be discarded once discrimination is no longer a problem. The purpose of affirmative action is overcome a present injustice.

While quotas might be more appropriate where there is a specific history of prejudice being displayed there are other less stringent measures that might be used. Examples include advertising more widely, inviting applications from minorities, and challenging the methods of selection. One might initially set lower standards for women in areas where they have little or no experience. Additional experience gives men an unfair advantage in a test that does not demonstrate aptitude. Which method should be put in place will depend on the situation. Working environment may also be something that affirmative action can influence where that working environment prohibits an individual from performing to the best of their abilities and thus advancing their career. Increasing the number of female mechanics, for example, may help to remove a chauvinistic atmosphere (where one exists).

One of the benefits of affirmative action is that it creates role models and lets women know that they have more options.<sup>47</sup> In industries where women do not have role models they are less likely to attempt to get jobs. Having no role models is an obstacle insofar as women will think that if other women have not achieved success in a particular occupation, then there is little point in their trying. As Judith Jarvis Thomson argues, it is plainly true that women need role models because they “need concrete evidence that those of their ... sex can

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<sup>45</sup> See National Disability Authority, “Statutory Targets on Employment of People with Disabilities in the Public Sector,” [http://www.inis.gov.ie/website/nda/cntmgmtnew.nsf/0/84AA79B029E870-AE8025729D0046CAED/\\$File/people\\_with\\_disabilities\\_in\\_public\\_sector\\_04.htm](http://www.inis.gov.ie/website/nda/cntmgmtnew.nsf/0/84AA79B029E870-AE8025729D0046CAED/$File/people_with_disabilities_in_public_sector_04.htm).

<sup>46</sup> See Rosie Campbell, “All Women Shortlists Remain a Controversial but Effective Way to Improve Women’s Representation in Politics,” <http://parliamentarycandidates.org/news/all-women-shortlists-remain-a-controversial-but-effective-way-to-improve-womens-representation-in-politics/>.

<sup>47</sup> See Lori Beaman et al., “Female Leadership Raises Aspirations and Educational Attainment for Girls: A Policy Experiment in India,” *Science* 335, no. 6068 (2012): 582-86. Affirmative action can encourage women to enter competitions. See Loukas Balfoutas and Matthias Suter, “Affirmative Action Policies Promote Women and Do Not Harm Efficiency in the Laboratory,” *Science* 335, no. 6068 (2012): 579-82.

become accepted, successful, professionals—plainly, you won't try to become what you don't believe you can become."<sup>48</sup>

#### DOES AFFIRMATIVE ACTION WORK?

Affirmative action cannot be justified if it is not effective at increasing the number of women being employed; at stopping discrimination. There is, however, evidence that suggests that affirmative action can work under the right conditions.<sup>49</sup> The seminal work by Jonathan Leonard<sup>50</sup> provides evidence that affirmative action affects the employment and occupational status of women and minorities. This is backed up by others<sup>51</sup>:

Establishments using affirmative action generate greater flows of minority applicants, and more recent hires (or employees) who are minority or female. For the most part, though, the minority and female hires at these establishments do not have lower qualifications or current performance (as measured by supervisor ratings).<sup>52</sup>

Holzer and Neumark found that affirmative action “increases the number of recruitment and screening practices used by employers, raises employers’ willingness to hire stigmatised applicants, increases the number of ... female

<sup>48</sup> Judith J a r v i s T h o m s o n, “Preferential Hiring,” *Philosophy & Public Affairs* 2, no. 4 (1973): 368.

<sup>49</sup> See C a m p b e l l, “All Women Shortlists Remain a Controversial but Effective Way to Improve Women’s Representation in Politics,” Fletcher A. B l a n c h a r d and Faye C r o s b y, *Affirmative Action in Perspective* (New York: Springer Science & Business Media, 2012); Christopher M c C r u d d e n, Robert F o r d, and Anthony H e a t h, “Legal Regulation of Affirmative Action in Northern Ireland: An Empirical Assessment,” *Oxford Journal of Legal Studies* 24, no. 3 (2004): 363-415.

<sup>50</sup> See Jonathan L e o n a r d, “The Impact of Affirmative Action Regulation and Equal Employment Law on Black Employment,” *The Journal of Economic Perspectives* 4, no. 4 (1990): 47-64.

<sup>51</sup> Harry H o l z e r and David N e u m a r k, “Are Affirmative Action Hires Less Qualified? Evidence from Employer–Employee Data,” *Journal of Labor Economics* 17, no. 3 (1999): 534-69; Jonathan L e o n a r d, “What Promises Are Worth: The Impact of Affirmative Action Goals,” 20, no. 1 (1985): 3-20; William M. R o d g e r s and William E. S p r i g g s, “The Effect of Federal Contractor Status on Racial Differences in Establishment-Level Employment Shares: 1979-1992,” *The American Economic Review* 86, no. 2 (1996): 290-93; Harish C. J a i n et al., “Effectiveness of Canada’s Employment Equity Legislation for Women (1997-2004): Implications for Policy Makers,” *Relations Industrielles/Industrial Relations* 65, no. 2 (2010): 304-29; Raya M u t t a r a k et al., “Does Affirmative Action Work? Evidence from the Operation of Fair Employment Legislation in Northern Ireland,” *Sociology* 47, no. 3 (2013): 560-79.

<sup>52</sup> Harry J. H o l z e r and David N e u m a r k, “What Does Affirmative Action Do?,” *Industrial & Labor Relations Review* 53, no. 2 (2000): 269.

applicants as well as employees, and increases employers' tendencies to provide training and formally evaluate employees."<sup>53</sup>

Studies suggest that "the employment of ... males in ... affirmative action establishments is lower by roughly 10-15 percent, which is redistributed mostly to white females and black males."<sup>54</sup> The "data also indicate[s] that ... sex differences in wages are smaller in establishments using affirmative action, suggesting further relative wage gains of women ... stemming from affirmative action."<sup>55</sup> The evidence suggests that "affirmative action succeeds in boosting employment of women."<sup>56</sup> Having surveyed a significant body of evidence Holzer and Neumark conclude that affirmative action appears to have "major redistribute effects that operate in markets in which discrimination still exists."<sup>57</sup> Similarly, having surveyed the literature Crosby argues that properly implemented affirmative action is on the whole beneficial and necessary to overcome discrimination and prejudice.<sup>58</sup> She says that there is a lot of empirical evidence to suggest that the benefits of affirmative action outweigh the costs. Federal contractors, who are obliged to have affirmative action policies, tend to have an increase in the proportion of women and minorities.

## CRITICISMS OF AFFIRMATIVE ACTION

### AFFIRMATIVE ACTION

#### CONFUSES EQUALITY OF OPPORTUNITY WITH EQUALITY OF OUTCOME

It has been objected that affirmative action confuses equality of opportunity with equality of outcome.<sup>59</sup> Just as if one tosses a coin 100 times there is no guarantee that 50% of the tosses will result in heads and 50% in tails, it does not follow that jobs will be equally distributed between men and women.<sup>60</sup> However, those that argue for equality of opportunity do distinguish the two.<sup>61</sup>

<sup>53</sup> Ibid., 240.

<sup>54</sup> Harry Holzer and David Neumark, "Assessing Affirmative Action," *Journal of Economic Literature* 38, no. 3 (2000): 506.

<sup>55</sup> Ibid., 505.

<sup>56</sup> Ibid., 513-14. See also Muttarak et al., "Does Affirmative Action Work?"

<sup>57</sup> Holzer and Neumark, "Assessing Affirmative Action": 559.

<sup>58</sup> See Crosby, *Affirmative Action is Dead*, 22.

<sup>59</sup> See Levin, "Equality of Opportunity": 110.

<sup>60</sup> See *ibid.*, 113, 14.

<sup>61</sup> See Cathrine Seierstad and Tore Opsahl, "For the Few Not the Many? The Effects of Affirmative Action on Presence, Prominence, and Social Capital of Women Directors in Norway," *Scandinavian Journal of Management* 27, no. 1 (2011): 426; Meshelski, "Procedural Justice and Affirmative Action"; Taylor, "Rawlsian Affirmative Action."

Defenders of affirmative action are not arguing that disproportionate employment rates necessarily mean that there is inequality of opportunity. Rather, the disparity in outcomes can be seen as giving us a reason for investigating whether there are unfair obstacles in the way of a particular group. Equality of opportunity will not necessarily result in equality of outcome, and equality of outcome is not the goal of affirmative action.

However, it has been argued that differences in natural ability, environmental factors and effort make it all but impossible to calculate how much any individual has been disadvantaged and so we cannot know how much preferential treatment to give them to make up for a particular disadvantage.<sup>62</sup> Similarly, Levin argues that it cannot be assumed that abilities are equally distributed between men and women.<sup>63</sup> He claims that “men and women differ in kinds of motivation and cognitive style.”<sup>64</sup> He goes on to say that before attributing differences in competitive position to hypothetical injustices and adopting policies designed to rectify these postulated injustices one must empirically verify that it is injustice and not differences in natural abilities that account for differences in competitive position.<sup>65</sup> I pointed to some such evidence above. Levin believes that the differences between men’s and women’s competitive position are not a result of oppression but of innate difference.<sup>66</sup> Yet he fails to offer any convincing empirical evidence for this conclusion. He simply argues that the rules of a competition should be equal.<sup>67</sup>

However, as I argued above, part of the problem could be that the standards by which women are judged are biased and their performance may be underrated. Some individuals may be unaware that they are being discriminatory. Another way in which women may be denied opportunities, besides outright prejudice, is that they have been socialised to want different things and to lack confidence. Believing in one’s ability (self-efficacy) is essential for career aspirations and choices.<sup>68</sup> In addition, there is evidence to suggest that lacking such beliefs is an important factor in the difference between female and male aspirations.<sup>69</sup> Given these factors, it is nearly impossible for women to achieve

<sup>62</sup> See George S h e r, “Justifying Reverse Discrimination in Employment,” *Philosophy & Public Affairs* 14, no. 2 (1975): 166.

<sup>63</sup> See L e v i n, “Equality of Opportunity”: 124.

<sup>64</sup> *Ibid.*, 125.

<sup>65</sup> See *ibid.*

<sup>66</sup> See L e v i n, “Affirmative Action.”

<sup>67</sup> See L e v i n, “Equality of Opportunity”: 121.

<sup>68</sup> See B e a m a n et al., “Female Leadership”; Albert B a n d u r a et al., “Self-Efficacy Beliefs as Shapers of Children’s Aspirations and Career Trajectories,” *Child Development* 72, no. 1 (2001): 187-206.

<sup>69</sup> See B e a m a n et al., “Female Leadership”; Kay B u s s e y and Albert B a n d u r a, “Social Cognitive Theory of Gender Development and Differentiation,” *Psychological Review* 106, no. 4 (1999): 676.

equality of opportunity without measures like affirmative action. The objective of affirmative action is that where men have an unfair advantage that advantage should be removed so that women are free to compete on an equal basis.

#### AFFIRMATIVE ACTION IMPOSES AN UNFAIR BURDEN ON MEN

A common objection to affirmative action is that it is unfair because it imposes burdens on individuals who are not responsible for the injustice in question.<sup>70</sup> The objection is that the burdens of affirmative action are not distributed equally as it is individual men that have to pay the price by losing out on job opportunities. Levin argues that “if a thief steals your car, it would undoubtedly be a good thing if the state restored it or its value to you. But it cannot do so by taxing me, an innocent bystander.”<sup>71</sup> However, this example is misleading. This kind of redistribution is not what occurs in the case of affirmative action. A more pertinent example would be if a thief steals your car and I buy it from them without knowing it was stolen. In this case, most people would accept that justice requires the stolen car to be returned to its original owner, no matter how innocent I was in purchasing it. However, affirmative action does not require such sacrifices from individual men. It is not retrospective. It does not take jobs from those who gained them unfairly. Rather, affirmative action seeks to ensure that future jobs are distributed justly. When affirmative action is used as a measure to restore equality of opportunity, it does not take anything away from men; it merely denies them something they would otherwise have gained unfairly. Consider the following analogy. Had someone brought a stolen car at a low price they certainly would have benefited from the arrangement. However, the police intervening and returning the car to the rightful owner before the sale takes place does not wrong the would-be purchaser of the stolen car. Similarly, even though they have lost out on a benefit, individual men are not wronged by missing a benefit (a job) to which they were never entitled.

Similarly, it is objected that only those firms and individuals that have been guilty of discrimination should be subject to affirmative action policies.<sup>72</sup> To make those who have not been guilty of discrimination subject to affirmative action policies is unfair. However, this argument simplifies equality of opportunity. There are some opportunities that are denied by a general climate or culture of prejudice. There are many jobs that are traditionally male that women either might consider it pointless to apply for, as their male counterparts would be picked, or

<sup>70</sup> See Levin, “Affirmative Action.”

<sup>71</sup> Levin, “Equality of Opportunity”: 121.

<sup>72</sup> See Feinberg, “Affirmative Action,” 277.

where they expect the working environment to be misogynistic.<sup>73</sup> It is perfectly rational not to apply for these jobs. If women do not apply, then no individual or firm is guilty of discrimination.<sup>74</sup> However, the fact that no identifiable individual or group has discriminated against women does not mean that they have equal opportunities. Affirmative action measures, such as quotas where women are guaranteed to get some jobs (and be surrounded by some other women), may be the only way to overcome these problems. As argued above, people will usually only apply for jobs if they think they stand a reasonable chance of getting them and if they believe the working environment will be tolerable.

#### AFFIRMATIVE ACTION IS UNFAIR BECAUSE IT IS DISCRIMINATION

It may be argued that affirmative action is unfair because equality of opportunity usually means that any form of discrimination on non-relevant grounds is wrong. The only ground for treating applicants differently is that they have relevantly different abilities. The justification for affirmative action rests on the assumption that in most jobs, things like sex, sexual orientation, race or religion are not relevant. The objection is that affirmative action undermines equality of opportunity because it is a form of discrimination. Therefore, no matter how attractive the end result of affirmative action may be, it should be unacceptable to anyone committed to equality of opportunity. However, for affirmative action to be unfair it has to be assumed, first, that the criteria in admissions processes are neutral indicators of merit and, second, that such criteria are applied impartially.<sup>75</sup> I have pointed to some evidence above that suggests this is not the case.

Some consider affirmative action to be a contradiction in terms because it requires injustices in the name of justice.<sup>76</sup> All affirmative action does, it is argued, is change who is being discriminated against. However, this is a very simplistic understanding of equality. Treating people equally does not mean treating them the same.<sup>77</sup> To treat people the same may sometimes be to treat them unequally. For example, suppose you are responsible for feeding two

<sup>73</sup> See Seierstad and Opsahl, "For the Few Not the Many?"

<sup>74</sup> Feinberg makes a similar point about ethnic minorities. See Feinberg, "Affirmative Action," 277.

<sup>75</sup> See Harris and Narayan, "Affirmative Action as Equalising Opportunity," 455.

<sup>76</sup> See for instance Lisa H. Newton, "Reverse Discrimination as Unjustified," *Ethics* 83, no. 4 (1973): 310.

<sup>77</sup> See Crosby, *Affirmative Action Is Dead*; Susan Ainsworth, Angela Knox, and Janine O'Flynn, "A Blinding Lack of Progress: Management Rhetoric and Affirmative Action," *Gender, Work & Organization* 17, no. 6 (2010): 658-78; Roberta Guerrina, "Equality, Difference and Motherhood: The Case for a Feminist Analysis of Equal Rights and Maternity Legislation," *Journal of Gender Studies* 10, no. 1 (2001): 33-42.

children. One of them is mildly allergic to peanuts but likes cereal. The other is a fussy eater and will eat nothing but peanut butter on toast. The children both have the same need for nourishment. However, they have very different requirements for how their needs are to be met. It is unreasonable to suggest that to give one cereal and the other peanut butter on toast is to treat them unequally because they have been treated differently. They have been treated differently because they have been given different foods. However, they have also been treated equally because they have both had their nutritional needs met within their unique requirements. To have treated them equally (to give both peanut butter on toast or both cereal) would have been to harm at least one of them. If they both got cereal the fussy eater would have gone hungry. If they both got peanut butter the allergy sufferer would have suffered from an allergic reaction. Treating them the same in this case would be to treat one of them unfairly. The only way to treat the children equally, to ensure that they both got a breakfast that met their nutritional requirements and that they enjoyed, is to treat them differently by giving them different breakfasts. Thus, not only does equality sometimes justify different treatment, it sometimes requires it.

Similarly, it may be necessary to treat women and men differently in order to treat them equally. As I argued above, women and men seeking employment opportunities are not in the same situation. There is evidence that women are subject to discriminatory practices. When you take into account this evidence, it is unreasonable to argue that treating them the same is treating them equally. One way that these discriminatory practices can be overcome is to treat women differently through measures like affirmative action. Consider an analogy. Suppose that women and men have an equal right to health care. To offer both treatment for cervical cancer but neither treatment for prostate cancer would be to treat them the same. It would not, however, be to treat them equally. Treatment for cervical cancer is useless for men. In this case, equal treatment is different treatment. The same, I have argued, applies to women seeking employment where they face different obstacles to men; the only way to treat them fairly is to treat them differently.

#### THERE ARE ALTERNATIVES TO AFFIRMATIVE ACTION

It has been argued that there are alternatives to affirmative action. Instead of affirmative action Steel says “give my children fairness; give disadvantaged children a better shot at development—better elementary and secondary schools, job training, safer neighbourhoods, better financial assistance for college, and so on.”<sup>78</sup>

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<sup>78</sup> Shelby Steele, *The Content of Our Character: A New Vision of Race in America* (New York: St. Martin's Press, 1990), 124.

Another alternative is to make sure that selection processes are more impartial and inclusive.<sup>79</sup> This, it is argued, is the way to achieve equality of opportunity.<sup>80</sup> I will suppose for the sake of argument that these measures will help achieve equality of opportunity. However, even if they are necessary, they may not be sufficient. As argued above, making the selection processes impartial is difficult because people can harbour prejudices they are not even aware they have.<sup>81</sup> In these cases, the best way to ensure such unconscious prejudices do not adversely affect equality of opportunity is through strong affirmative action measures, such as quotas. If employers are forced to employ women candidates, unconscious prejudices cannot be responsible for treating female candidates unfairly.

AFFIRMATIVE ACTION WILL NOT OVERCOME  
SOCIAL AND ECONOMIC PRESSURES

It might be objected that social and economic pressures and family considerations are likely to be significant grounds for why there are fewer women in workplaces that demand a sizeable investment of time and energy. It is, the objection runs, unlikely that this problem can be overcome by affirmative action alone. However, I am not suggesting that affirmative action is an absolute remedy. Instead, it is one measure that will help bring about equality of opportunity. Another measure that may be necessary for equality of opportunity is equal maternity and paternity pay. This would remove one economic pressure on women because when deciding which parent should give up work to look after the baby, one financial incentive for choosing the woman would be removed.<sup>82</sup>

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<sup>79</sup> Although selection processes themselves can be made subject to soft forms of affirmative action, such as adding points to minority groups' applications. See for example Taylor, "Rawlsian Affirmative Action."

<sup>80</sup> Arguably these measures do come under the umbrella of affirmative action, but I will suppose, for the sake of argument, that they do not.

<sup>81</sup> See Harris and Narayan, "Affirmative Action as Equalising Opportunity," 456; Radcliffe Richards, "Separate Spheres," 212-3; Taylor, "Rawlsian Affirmative Action." One suggestion for overcoming this prejudice is to put ourselves behind a Rawlsian veil of ignorance. See for example Susan Hall and Minka Woremann, "From Inequality to Equality: Evaluating Normative Justifications for Affirmative Action as Racial Redress," *African Journal of Business Ethics* 8, no. 2 (2015): 59-73.

<sup>82</sup> It might be objected that employers cannot afford to give both parents the maternity leave women now get. However, they need not do so. There is a simple solution to ensure that the time taken in total by both parents would not be any longer than it currently is. Namely, legislation can be changed so that the parent who will be looking after the child gets the lion's share of the maternity

Even without such measures I think that there is a sense in which affirmative action can help overcome some of the economic and social pressures that women face (and men do not). Firstly, with regard to social pressures, if affirmative action measures are successfully put in place it will help to overcome some of the direct social pressures that women face. One such pressure is stereotypical gender roles. By ensuring there are women in roles they have not traditionally filled, it will help to break down the gender stereotypes (see above regarding role models). Such stereotyping cannot long continue if a significant number of women are seen to be doing “men’s work” and vice versa. Secondly, with regard to economic pressures, as indicated above, there is evidence of a pay gap between women and men. This gap may put pressure on some women to stay at home (where their partner is likely to earn more). If affirmative action succeeds in helping to break down stereotypical roles, as was suggested above, it might also help to break down the stereotype of the stay-at-home mother and make the stay-at-home father more acceptable. If women are seen to be both building careers *and* having families in the same way men have traditionally done it will make it easier for women to make the decision to remain at work and for their partners to decide to stay at home.<sup>83</sup>

#### WHEN WILL WE KNOW WHEN WE HAVE ACHIEVED EQUALITY OF OPPORTUNITY?

Another objection might be that it will be difficult to determine when quality of opportunity has been achieved. Arguably “we cannot know what a fair outcome would be, as a fair outcome is only guaranteed by a fair procedure.”<sup>84</sup> Gender role models, it might be objected, already exist. However, a few

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leave and that the parent who will not be staying at home with the child gets the smaller amount of leave currently allocated to the father. Employers would not lose out as no additional time or money is spent on maternity or paternity leave. However, more importantly couples are free to choose which parent stays at home and which goes to work – they have an equal opportunity to do both. This benefits both men and women as men are now in a better position to spend more time with their newborn baby if that is what they wish, and women are free to pursue their career if that is what they wish.

<sup>83</sup> Some parents may opt for neither parent to stay at home and send their children to nurseries but many parents will wish for their children to receive full-time care from one of their parents at least in their pre-school years. The hope is that affirmative action measures mean that either can choose to do so.

Of course, not all parents are heterosexual couples. But if affirmative action helps to break down stereotypical gender roles then this will make it easier for women in same sex relationships to go out to work and for men in same sex relationships to stay at home and care for their children.

<sup>84</sup> Susan Hall and Minka W o e r m a n n, “From Inequality to Equality: Evaluating Normative Justifications for Affirmative Action as Racial Redress,” *African Journal of Business Ethics* 8, no. 2 (2014): 69.

role models may not be sufficient to overcome the social pressures discussed above. Only if the number of women in non-traditional roles is increased to the extent that they are not exceptions will the need for affirmative action be obviated. Only at this point will the stereotypes with which women contend be removed. One of the goals of affirmative action is to remove stereotypes and make it possible for women (and men) to pursue any career they wish on an equal basis. One way of ensuring that it is a temporary measure is to start with strong measures (such as quotas) and once these quotas have been met to use less vigorous measures (such as fairer selection processes). Once selection pressures appear to be fair, trials could be instituted to remove affirmative action measures. If these trials prove successful then, in one respect at least, equality of opportunity will have been achieved.

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Equality of opportunity occurs when men and women are free from the same specified obstacles. First, I argued that there is evidence that women do not have equality of opportunity. Second, I argued that in some circumstances women and men face different obstacles; namely, different social and economic pressures. Third, I argued that where these obstacles exist, measures that overcome them are necessary. I argued that affirmative action is one such measure. Affirmative action is consistent with equality of opportunity. Although affirmative action ostensibly requires something inconsistent with the goals of equality of opportunity (discrimination), treating women differently is necessary for equality where unfair obstacles exist. Fourth, I considered some objections. I argued that affirmative action does not unfairly discriminate against men nor does it impose an unfair burden on them because it simply removes their unfairly gained competitive advantages. Affirmative action, therefore, remains an important ingredient in the struggle for equality of opportunity.