**INTRODUCTION**

When Barbara Grutter, a white woman, was denied admission to the University of Michigan Law School, she sued the university and Lee Bollinger, president of the university at the time (*Grutter v. Bollinger*). Many companies took notice. Grutter claimed that the university’s affirmative action program had unfairly given preference to minority students with “similar credentials” to her own. Her case was heard in the winter of 2001 by the United States District Court for the Eastern District of Michigan. The District Court agreed with Barbara Grutter and ruled on March 27, 2001 that the University of Michigan had engaged in a form of racial discrimination by showing preference to minority students in violation of Grutter’s right to equal treatment. The University of Michigan appealed the District Court’s ruling to the Court of Appeals for the Sixth Circuit. In a split decision on May 14, 2002, the judges of the Court of Appeals overturned the earlier District Court’s ruling. The Court of Appeals held that the University of Michigan’s preferential program was both fair and constitutional to the extent that it sought “diversity”—i.e., a student population that possesses a diverse range of ages, ethnicities, genders, races, talents, experiences, and other significant human qualities. Barbara Grutter was not satisfied with this decision, so she took her case to the nation’s highest court, the Supreme Court. The Supreme Court, in a separate case (*Gratz v. Bollinger*), had ruled that an affirmative action program used by the University of Michigan in its *undergraduate* programs was unconstitutional because it was not “narrowly tailored” and so gave too much weight to race. Would the Supreme Court also reject the *law school’s* affirmative action program? On June 23, 2003, the Supreme Court reached its decision: It is fair and constitutional, the Supreme Court held, for a university to show preference to minorities in admissions if its goal is to achieve “diversity” in a way that is “narrowly tailored” to achieve this goal and the University of Michigan’s Law School program met these criteria.

Student body diversity is a compelling state interest that can justify using race in university admissions. … Major American businesses have made clear that the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints. … Moreover, because universities, and in particular, law schools, represent the training ground for a large number of the Nation’s leaders, the path to leadership must be visibly open to talented and qualified individuals of every race and ethnicity. Thus, the Law School has a compelling interest in attaining a diverse student body. The Law School’s admissions program bears the hallmarks of a narrowly tailored plan. … Universities cannot establish quotas for members of certain racial or ethnic groups or put them on separate admissions tracks. … The Law School’s admissions program, [however,] … is flexible enough to ensure that each applicant is evaluated as an individual and not in a way that makes race or ethnicity the defining feature of the application.1

Earlier, more than five dozen major American corporations had urged the courts to protect the University of Michigan’s goal of achieving diversity through its affirmative action program. In an “amicus” brief, the companies—including 3M, Intel, Microsoft, Hewlett-Packard, Nike, Coca-Cola, Shell, Ernst & Young, Kellogg, Procter & Gamble, General Motors, and over 50 others—argued:

In the experience of [these companies], individuals who have been educated in a diverse setting are more likely to succeed, because they can make valuable contributions to the workforce in several important and concrete ways. First, a diverse group of individuals educated in a cross-cultural environment has the ability to facilitate unique and creative approaches to problem-solving arising from the integration of different perspectives. Second, such individuals are better able to develop products and services that appeal to a variety of consumers and to market offerings in ways that appeal to those consumers. Third, a racially diverse group of managers with cross-cultural experience is better able to work with business partners, employees, and clientele in the United States and around the world. Fourth, individuals who have been educated in a diverse setting are likely to contribute to a positive work environment, by decreasing incidents of discrimination and stereotyping. Overall, an educational environment that ensures participation by diverse people, viewpoints and ideas will help produce the most talented workforce.2

While most of the judges of the Supreme Court agreed with these companies and their affirmation of the importance of diversity, their decision was not unanimous. Like the judges who had earlier disagreed over the Grutter case, the judges on the Supreme Court were also divided about the fairness of affirmative action programs and the legitimacy of pursuing diversity. Although five of the Supreme Court’s nine judges held that affirmative action was fair and not a form of unconstitutional “discrimination,” four of the judges, including Clarence Thomas, a Black man, were harshly critical of that opinion. Thomas asserted that showing preference to minorities was harmful “racial discrimination”:

I believe what lies beneath the Court’s decision today are the benighted notions that one can tell when racial discrimination benefits (rather than hurts) minority groups, and that racial discrimination is necessary to remedy general societal ills. … Clearly the majority still cannot commit to the principle that racial classifications are per se harmful and that almost no amount of benefit in the eye of the beholder can justify such classifications. … This discrimination engender[s] attitudes of superiority or, alternatively, provoke[s] resentment among those who believe that they have been wronged by the government’s use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are “entitled” to preferences.3

The decision of the Supreme Court did not end the controversy. After the Supreme Court’s decision was announced, the Michigan State legislature began a divisive and rancorous debate over whether to pass a law that would withhold state funds from public universities—including the University of Michigan—that used affirmative action programs. The debate over the issue was so heated and belligerent that a fistfight and scuffle broke out on the floor of the legislature between opponents and supporters of the measure. In the end, a deeply divided legislature passed the law. Even then the matter did not end. A group of Michigan residents began a drive in 2004 in support of a statewide vote on a measure that would make it illegal for universities and other public institutions in Michigan to use affirmative action programs. California had already passed such a law.

As the University of Michigan Law School case makes clear, our nation today remains bitterly divided over our legacy of discrimination and over the justice of dealing with the effects of past discrimination through affirmative action programs. Many businesses, like the Fortune 500 companies that supported the goal of diversity, believe that diversity is key to competing in a rapidly globalizing world because, as the Supreme Court stated, “the skills needed in today’s increasingly global marketplace can only be developed through exposure to widely diverse people, cultures, ideas, and viewpoints.” Many, however, believe that attempts to achieve diversity through affirmative action programs are themselves forms of unjust “reverse discrimination.”

The debates over equality, diversity, and discrimination have been prolonged and acrimonious. Controversy continues to swirl around the nature of the plight of racial minorities, the inequality of women, and the harm that whites, minorities, or males have suffered as a result of preference shown to women and minorities. These continuing debates over racial and sexual diversity have often focused on business and its needs. This is inevitable: Racial and sexual discrimination have had a long history in business, and diversity now promises to have significant benefits for business.

Perhaps more than any other contemporary social issue, public discussions of discrimination and diversity have clearly approached the subject in ethical terms: The words *justice*, *equality*, *racism*, *rights*, and *discrimination* inevitably find their way into the debate. This chapter analyzes the various sides of this ethical issue. The chapter begins by examining the nature and extent of discrimination. It then turns to discussing the ethical aspects of discriminatory behavior in employment and ends with a discussion of diversity and affirmative action programs.

**7.1**  **Job Discrimination: Its Nature**

A few years ago, the American Broadcasting Company (ABC) sent a male and female, Chris and Julie, on an “experiment” to apply in person for jobs several companies were advertising. Chris and Julie were both blonde, trim, neatly dressed college graduates in their 20s, with identical resumes indicating management experience. Unknown to the companies, however, both were secretly wired for sound and had hidden cameras. One company indicated in its help-wanted ad that it had several open positions. However, when the company recruiter spoke with Julie, the only job he brought up was a job answering phones. A few minutes later, the same recruiter spoke with Chris. He was offered a management job. When interviewed afterward by ABC, the company recruiter said he would never want a man answering his phone. Another company had advertised positions as territory managers for lawn-care services. The owner of the company gave Julie a typing test, discussed her fiance’s business with her, and then offered her a job as a receptionist at $6 an hour. When the owner interviewed Chris, however, he gave him an aptitude test, chatted with him about how he kept fit, and offered him a job as territory manager paying $300 to $500 a week. When the owner was later interviewed by ABC, he commented that women “do not do well as territory managers, which involves some physical labor.” According to the owner, he had also hired one other woman as a receptionist and had hired several other males as territory managers.4

The experience of young Chris and Julie suggests that sexual discrimination is alive and well. Similar experiments suggest that racial discrimination also continues to thrive. During the early 1990s, researchers at the Urban Institute published a study in which they paired several young Black men with similar young White men, matching them in openness, energy level, articulateness, physical characteristics, clothing, and job experience. Young Hispanic males fluent in English were likewise matched with young White males. Each member of each pair was trained and coached in mock interviews to act exactly like the other. Each member of each pair then applied in person for the same jobs, ranging from general laborer to management trainee in manufacturing, hotels, restaurants, retail sales, and office work. Despite the fact that all were equally qualified for the same jobs, Blacks and Hispanics were offered jobs 50 percent fewer times than the young White males. In another study published in 2003, White Students paired with Black students applied for low-wage, entry-level jobs in Milwaukee. While the White applicants told employers they had been in jail for 18 months, the Black applicants presented themselves with a clean record. Yet the White ex-cons were called back for interviews 17 percent of the time, while their crime-free Black equivalents were called back only 14 percent of the time. In short, a Black skin is almost equivalent to having an 18-month jail conviction. In a third study, also published in 2003, identical resumes were sent to random help-wanted ads in Boston and Chicago. Half of the resumes carried the “White-sounding” names “Emily” and “Greg” while the other half carried the “African-American–sounding” names “Lakisha” and “Jamal.” The White-sounding names got 50 percent more callbacks for interviews.5

The root meaning of the term ***discriminate*** is “to distinguish one object from another,” a morally neutral and not necessarily wrongful activity. However, in modern usage, the term is not morally neutral; it is usually intended to refer to the wrongful act of distinguishing illicitly among people not on the basis of individual merit, but on the basis of prejudice or some other *invidious* or morally reprehensible attitude.6 This morally charged notion of invidious discrimination, as it applies to employment, is what is at issue in this chapter. In this sense, to discriminate in employment is to make an adverse decision (or set of decisions) against employees (or prospective employees) who belong to a certain class because of morally unjustified prejudice toward members of that class. Thus, discrimination in employment must involve three basic elements. First, it is a decision against one or more employees (or prospective employees) that is not based on individual merit, such as the ability to perform a given job, seniority, or other morally legitimate qualifications. Second, the decision derives solely or in part from racial or sexual prejudice, false stereotypes, or some other kind of morally unjustified attitude against members of the class to which the employee belongs. Third, the decision (or set of decisions) has a harmful or negative impact on the interests of the employees, perhaps costing them jobs, promotions, or better pay.

**discrimination** The wrongful act of distinguishing illicitly among people not on the basis of individual merit, but on the basis of prejudice or some other *invidious* or morally reprehensible attitude.

Employment discrimination in the United States historically has been directed at a surprisingly large number of groups. These have included religious groups (such as Jews and Catholics), ethnic groups (such as Italians, Poles, and Irish), racial groups (such as Blacks, Asians, and Hispanics), and sexual groups (such as women and homosexuals). We have an embarrassingly rich history of discrimination.

**Forms of Discrimination: Intentional and Institutional Aspects**

A helpful framework for analyzing different forms of discrimination can be constructed by distinguishing the extent to which a discriminatory act is intentional and isolated (or noninstitutionalized) and the extent to which it is unintentional and institutionalized.7 First, a discriminatory act may be part of the isolated (noninstitutionalized) behavior of a single individual who intentionally and knowingly discriminates out of personal prejudice. In the ABC experiment, for example, the attitudes that the male interviewer is described as having may not be characteristic of other company interviewers: His behavior toward female job seekers may be an intentional but isolated instance of sexism in hiring. Second, a discriminatory act may be part of the routine behavior of an institutionalized group, which intentionally and knowingly discriminates out of the personal prejudices of its members. The Ku Klux Klan, for example, is an organization that historically has intentionally institutionalized discriminatory behavior. Third, an act of discrimination may be part of the isolated (noninstitutionalized) behavior of a single individual who unintentionally and unknowingly discriminates against someone because the individual unthinkingly adopts the traditional practices and stereotypes of the surrounding society. If the interviewer quoted in the ABC experiment, for example, acted unintentionally, then he would fall into this third category. Fourth, a discriminatory act may be part of the systematic routine of a corporate organization or group that unintentionally incorporates into its formal institutionalized procedures practices that discriminate against women or minorities. The two companies examined in the ABC experiment, for example, described organizations in which the best-paying jobs are routinely assigned to men and the worst-paying jobs are routinely assigned to women—on the stereotypical assumption that women are fit for some jobs and not for others. There may be no deliberate intent to discriminate, but the effect is the same: a racially or sexually based pattern of preference toward White males.

During the last century, an important shift in emphasis occurred—from seeing discrimination primarily as an intentional and individual matter to seeing it as a systematic and not necessarily intentional feature of institutionalized corporate behavior. During the early 1960s, employment discrimination was seen primarily as an intentional act performed by one individual on another. Title VII of the Civil Rights Act of 1964 (amended in 1972 and 1991), for example, seems to have had this notion of discrimination in mind when it stated:

It shall be an unlawful employment practice for an employer (1) to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment because of such individual’s race, color, religion, sex, or national origin; or (2) to limit, segregate, or classify his employees or applicants for employment in any way that would deprive or tend to deprive any individual of employment opportunities or otherwise adversely affect his status as an employee because of such individual’s race, color, sex, or national origin.8

***Quick Review 7.1***

**Discrimination and the Law**

• Civil Rights Act of 1964: made it illegal to make hiring, firing, or compensation decisions on the basis of race, color, religion, sex, or national origin

• Executive Order 11246: required companies doing business with the federal government to take steps to redress racial imbalance in workforce

• Equal Employment Opportunity Act of 1972: gave EEOC increased power to combat “underutilization” and to require affirmative action programs

However, in the late 1960s, the concept of discrimination was enlarged to include more than the traditionally recognized intentional forms of individual discrimination. Executive Order 11246, issued in 1965, required companies doing business with the federal government to not discriminate and to take steps to correct any racial imbalances in their workforce. By the early 1970s, the term *discrimination* was being used regularly to include disparities of minority representation within the ranks of a firm regardless of whether the disparity had been intentionally created. An organization was engaged in discrimination if minority group representation within its ranks was not proportionate to the group’s local availability. The discrimination would be remedied when the proportions of minorities within the organization matched their proportions in the available workforce by the use of **“affirmative action” programs**. For example, a Department of Labor guidebook for employers issued in February 1970 stated:

**affirmative action program** A program designed to ensure the proportion of minorities within an organization matches their proportion in the available workforce.

An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor’s good faith efforts must be directed to correct the deficiencies and thus to increase materially the utilization of minorities and women at all levels and in all segments of his work force where deficiencies exist. … “Underutilization” is defined as having fewer minorities or women in a particular job classification than would reasonably be expected by their availability.9

The Equal Employment Opportunity Act of 1972 gave the Equal Employment Opportunity Commission increased power to combat these forms of discrimination and to require affirmative action programs to correct such deficiencies.

Some people, however, criticize the view that an institution is “discriminatory” if a minority group is underrepresented within its ranks. Discrimination is the act of individuals, these critics argued, and it is individual women and minorities whom it mistreats. Consequently, we should not say discrimination exists until we know that a specific individual was discriminated against in a specific instance. The problem with this criticism is that it is generally impossible to know whether a specific individual was discriminated against. People compete with each other for jobs and promotions; whether a person wins a specific job or promotion depends to a large extent on chance factors, such as who the competitors happened to be, what abilities the competitors happened to have, how interviewers happened to see the applicant, and how the applicant happened to perform at the crucial moments. Consequently, when a minority individual loses in this competitive process, there is generally no way of knowing whether that individual’s loss was the result of chance factors or systematic discrimination. The only way of knowing whether the process is systematically discriminating is by looking at what happens to minorities as a group: If minorities as a group regularly lose out in a competitive process in which their abilities as a group match those of nonminorities, then we may conclude that the process is discriminatory.10

Nevertheless, during the 1980s, government policy under the Reagan administration shifted toward the view that the focus of society should not be on discrimination in its institutionalized forms. Starting in about 1981, the federal government began to actively oppose affirmative action programs based on statistical analyses of systematic discrimination. The administration held that only individuals who could prove that they had been the victims of discrimination aimed specifically and intentionally at them should be eligible for special treatment in hiring or promotions. Although the Reagan administration was largely unsuccessful in its efforts to dismantle affirmative action programs altogether, it did succeed in naming a majority of Supreme Court justices who rendered decisions that tended to undermine some legal supports of affirmative action programs. These trends were reversed once again in the 1990s, when George H. W. Bush became president and pledged to “knock down the barriers left by past discrimination.” Moreover, Congress stepped in to propose legislation that would support affirmative action programs and that would reverse the Supreme Court rulings that had undermined them. However, when a Republican majority was elected to the House of Representatives in 1992, Congress instead began to discuss legislation that would prohibit affirmative action programs. The legislation was not passed, however, and, as we saw earlier, in 2003 the Supreme Court approved the use of “preferential treatment” programs to achieve diversity in educational institutions. Thus, our society has wavered and continues to waver on the question of whether discrimination should be seen only as an intentional and isolated act or also as an unintentional and institutionalized pattern revealed by statistics, and whether we should bend our efforts to combating only the former or also the latter.

For purposes of analysis, it is important to keep separate the ethical issues raised by policies that aim at preventing individuals from discriminating intentionally against other individuals from those raised by affirmative action policies that aim at achieving a proportional representation of minorities within our business institutions. We discuss each of these issues separately. First, however, we must examine the extent to which our business institutions today are discriminatory. It is a commonly held belief that, although business used to be discriminatory, this is no longer the case because of the great strides minorities and women have made during the last few years. If this belief is correct—and it is at least challenged by the experiments described earlier, in which matched pairs of male and female or White and minority people applied for the same job—then there is not much point in discussing the issue of discrimination. But is it correct?

**ON THE EDGE:**  ***Johnson Controls’ Fetal Protection Policy***

Johnson Controls, Inc. made batteries whose primary ingredient, lead, can harm a fetus. The company therefore required female employees to sign a statement which read: “that women exposed to lead have a higher rate of abortion … [is] not as clear as the relationship between cigarette smoking and cancer … but medically speaking, [it is] just good sense not to run that risk if you want children and do not want to expose your unborn child to risk, however small.”

During the 4 years this policy was in effect, eight employees became pregnant while maintaining blood lead levels in excess of the 30 micrograms per deciliter that OSHA categorizes as critical for pregnant women. The company then announced a new policy:

Women who are pregnant or who are capable of bearing children will not be placed into jobs involving lead exposure or which would expose them to lead through the exercise of job bidding, bumping, transfer or promotion rights. This policy defines women capable of bearing children as all women except those whose inability to bear children is medically documented.

Two years later, three Johnson Controls employees sued the company, claiming that the fetal protection policy was a form of sex discrimination because it applied to fertile women, but not fertile men. The three employees included Mary Craig, who claimed she had to have herself sterilized to avoid losing a job that involved lead exposure; Elsie Nason, a 50-year-old divorcee, who said she had experienced a wage decrease when she had to transfer out of a job in which she was exposed to lead; and Donald Penney, a man who said he was denied a leave of absence so that he could lower his lead level because he intended to become a father.

Johnson Controls stated that it had no intent to discriminate, but wanted to protect the health of unborn children and avoid the possibility of being sued by an employee for the injury or death of her fetus.

**1.** Is Johnson Controls’ new policy ethically justified?

**2.** Should discrimination issues ever be subordinated to other issues, such as risk to the unborn?

**7.2**  **Discrimination: Its Extent**

How do we estimate whether an institution or a set of institutions is practicing discrimination against a certain group? We do so by looking at statistical indicators of how the members of that group are distributed within the institution. A prima facie indication of discrimination exists when a disproportionate number of the members of a certain group hold the less desirable positions within the institutions despite their preferences and abilities.11 Three kinds of comparisons can provide evidence for such a distribution: (a) comparisons of the average benefits the institutions bestow on the discriminated group with the average benefits the institutions bestow on other groups, (b) comparisons of the proportion of the discriminated group found in the lowest levels of the institutions with the proportions of other groups found at those levels, and (c) comparisons of the proportions of that group that holds the more advantageous positions with the proportions of other groups that hold those same positions. If we look at American society in terms of these three kinds of comparisons, it becomes clear that some form of racial and sexual discrimination is present in American society as a whole. It is also clear that for some segments of the minority population (such as young, college-educated Black males) discrimination is not as intense as it once was.

**Table 7.1**  ***Average Family Incomes by Race and as Percent of White (In Current Dollars), Alternate Years***

**Year**

**White Family Income**

**Black Family Income**

**Hispanic Family Income**

**Black as % of White**

**Hispanic as % of White**

2001

$73,496

$43,938

$45,229

60

62

1999

 68,363

 42,793

 41,890

63

61

1997

 62,308

 36,504

 37,783

59

61

1995

 55,971

 34,011

 32,654

61

58

1993

 51,467

 30,036

 31,109

58

60

1991

 46,715

 27,571

 29,998

59

64

1989

 44,672

 26,415

 29,197

59

65

1987

 39,598

 23,772

 25,850

60

65

1985

 35,275

 21,359

 23,152

61

66

1983

 30,766

 18,317

 20,393

60

66

1981

 27,419

 16,696

 19,370

61

71

1979

 23,608

 14,508

 16,773

61

71

1977

 19,319

 11,962

 13,293

62

69

1975

 16,367

 10,401

 11,096

64

68

**Average Income Comparisons**

Income comparisons provide the most suggestive indicators of discrimination. If we compare the average incomes of non-White American families, for example, with the average incomes of White American families, we see that White family incomes are substantially above those of non-Whites, as Table 7.1 indicates.

Contrary to a commonly held belief, the income gap between Whites and minorities has not decreased. Since 1970, in fact, even during periods when the real incomes of Whites have gone up, real minority incomes have not kept up. In 1975, the average income for a Black family was 64 percent of a White family’s average income; in 2001, the average Black family’s income had declined to 60 percent of the average White family’s income.12

Income comparisons also reveal large inequalities based on sex. A comparison of average incomes for men and women shows that women receive only a portion of what men receive. One study found that firms employing mostly men paid their workers on average 40 percent more than those employing mostly women.13 As Table 7.2 shows, the earnings gap between men and women has narrowed. But in 2001, women earned only about 69 cents for every dollar that men earned (an improvement over the 59 cents of the male’s dollar that they earned in 1980). However, some of the improvement in the ratio of female and male earnings has come about not as a result of declining discrimination, but as a result of declines in the average earnings of men because of downsizing in manufacturing occupations traditionally occupied by men.14

The disparities in earnings between men and women begin as soon as men and women graduate from school, contrary to the optimistic belief held by each generation of graduating women that “my generation will be different.” An early study in 1976—10 years after “affirmative action” was instituted—found that the average starting salary offered to female college graduates majoring in marketing was $9,768, whereas male marketing graduates were offered average starting salaries of $10,236.15 A 1980 Census Bureau study of men and women ages 21 to 22 found that White women’s starting salaries were 83 percent of White men’s—an actual decline from 1970, when White women of that age earned 86 percent of what White men earned.16 The same study found that, between 1970 and 1980, White women had substantially increased their job qualifications relative to men. In 2002, as Table 7.3 indicates, a young woman aged 18 to 24 who has just finished college with a bachelor’s degree will have been given a job with a salary of $29,080, whereas her male counterpart will have been given a job with a salary of $32,902; a young woman aged 25 to 34 with a new master’s degree could expect to earn only $45,732, whereas her male classmate would be given a job earning $62,793. If she had a professional degree (as a lawyer or an MBA), she would be earning $63,470, whereas her male counterpart would be getting $102,882. As Table 7.4 shows, female college graduates over the course of their lives have on average lower earnings ($47,747) than male graduates ($69,964); in fact, on average a woman who has graduated with a master’s degree or a professional degree would earn less ($68,591) than a man with nothing more than an undergraduate bachelor’s degree ($69,964). A woman with a high school degree will not only earn much less ($27,184) than a man with a high school degree ($37,680), she will even earn less than a man who never graduated from high school at all ($29,608). Moreover, the earning disparities between men and women cut across all occupations, as Table 7.5 indicates. In every single occupational group, women’s weekly earnings are only a portion of men’s, ranging from sales occupations, where women earn only 60 percent of what men earn, to farming, forestry, and fishing, where the few women employed in those occupations earn only 85 percent of what men earn.

**Table 7.2**  ***Average Earnings of Men and Women (In Current Dollars), Alternate Years***

**Year**

**Male Earnings**

**Female Earnings**

**Female as % of Male**

2001

$51,535

$35,370

69

1999

 47,532

 31,116

65

1997

 43,678

 29,244

67

1995

 40,359

 26,531

66

1993

 38,027

 25,303

67

1991

 34,354

 22,949

67

1989

 33,010

 21,039

64

1987

 29,918

 18,856

63

1985

 27,414

 17,028

62

1983

 24,594

 15,157

62

1981

 22,196

 13,112

59

Source: Census Bureau, Historical Tables, Table P-39. Full-Time, Year-Round Workers (All Races) by Mean Earnings and Sex: 1967 to 2001, accessed August 6, 2004 at *http://www.census.gov/hhes/income/histinc/p39.html.*

**Table 7.3**  ***Average Earnings of Working Men and Women Recently Out of School, 2002***

**Average Earnings of 18- to 24-Year-Olds**

**Average Earnings of 25- to 34-Year-Olds**

**Education**

**Men**

**Women**

**Men**

**Women**

Elementary

$17,322

NA

$21,512

16,137

High School

  some, no diploma

 21,759

14,461

 25,862

19,361

  diploma

 23,942

19,279

 34,611

25,034

College

  some, no degree

 24,454

19,934

 39,148

28,019

  associate degree

 28,666

23,197

 40,726

30,327

  bachelor’s degree

 32,902

29,080

 53,354

44,030

  master’s degree

NA

NA

 62,793

45,732

  professional degree

NA

NA

102,882

63,470

Source: Census Bureau, Table PINC-04. “Educational Attainment—People 18 Years Old and Over, by Total Money Earnings in 2002, Age, Race, Hispanic Origin, and Sex,” accessed August 6, 2004 at *http://ferret.bls.census.gov/macro/032003/perinc/new04\_000.htm.*

**Table 7.4**  ***Average Annual Earnings of Year-Round Full-Time Workers, 18 Years Old and Over, by Education, 2002***

**Both Men and Women**

**Education**

**Men’s Average Earnings**

**Women’s Average Earnings**

**Whites’ Average Earnings**

**Blacks’ Average Earnings**

**Blacks’ Average Earnings**

Elementary

$24,134

$19,271

$28,919

$22,870

$21,390

High school

  some, no diploma

 29,608

 20,091

 28,362

 23,198

 25,356

  diploma

 37,680

 27,184

 35,168

 28,179

 28,984

College

  some, no degree

 46,252

 31,430

 42,041

 33,873

 33,843

  associate degree

 48,342

 33,902

 42,446

 35,956

 38,468

  bachelor’s degree

 69,964

 47,747

 63,609

 47,612

 47,714

  master’s degree

 80,329

 56,015

 70,521

 57,395

 64,049

  professional degree

151,035

 68,591

131,827

102,705

 96,055

  doctorate degree

108,632

 76,684

103,471

  NA

  NA

Source: Census Bureau, Table PINC-04. “Educational Attainment—People 18 Years Old and Over, by Total Money Earnings in 2002, Age, Race, Hispanic Origin, and Sex,” accessed August 6, 2004 at *http://ferret.bls.census.gov/macro/032003/perinc/new04\_000.htm.*

**Table 7.5**  ***Median Weekly Earnings of Men and Women by Major Occupational Group, 2000***

**Median Weekly Earnings**

**Occupational Group**

**Men**

**Women**

**Women’s as Percent of Men’s**

Executive, administrative, managerial

$981

$674

69

Professional specialty

 972

 725

75

Technicians and related support

 747

 524

70

Sales occupations

 679

 410

60

Administrative support, including clerical

 588

 443

75

Service occupations

 418

 317

76

Precision production, craft, repair

 623

 421

68

Machine operators, assemblers, inspectors

 495

 349

71

Transportation and material moving

 548

 399

73

Handlers, equipment cleaners, laborers

 395

 320

81

Farming, forestry, fishing

 329

 279

85

Source: U.S. Bureau of Labor Statistics, *Employment and Earnings*, April 2000, Table D-22.

Blacks do not fare much better than females. Although young Black male college graduates (between the ages of 22 and 27) now earn close to what young White male graduates of the same age earn, there is little improvement in the relative earnings of older Blacks.17 Overall, in 2004 Black unemployment (10.9 percent of Blacks were unemployed) was more than twice the White unemployment rate (4.8 percent of Whites were unemployed). In 2004, unemployment among Whites aged 16 to 19 was 14.9 percent, whereas unemployment among Blacks the same age was 37 percent.18 Thus, the disadvantaged situation of the vast majority of Blacks more than overshadows the advances made by the small percentage (11 percent) of young Blacks who now graduate from college.

**Lowest Income Group Comparisons**

The lowest income group in the United States consists of those people whose annual income falls below the poverty level. In 2003, the poverty level was set at $18,660 for a family of four with two children (by comparison, the average cost for one person to attend college during the 2003–2004 school year was about $29,541 at private colleges and about $13,833 at public colleges).19 As Table 7.6 shows, poverty began to increase in America during the late 1970s, particularly among Black, Hispanic, and Asian minorities, and continued to rise until 1994. As the table indicates, the poverty rate among minorities has consistently been 2 to 3 times higher than among Whites. This is not surprising, because minorities have lower average incomes.

In view of the lower average incomes of women, it also comes as no surprise that families headed by single women fall below the poverty level much more often than families headed by single men. As Table 7.7 indicates, families headed by women are almost 3 times more likely to be poor than families headed by men. Table 7.7 also shows that this pattern has endured for decades.

**Table 7.6**  ***Percent of Whites, Blacks, and Hispanics Living in Poverty, 1978–2002, Alternate Years***

**Year**

**% Whites in Poverty**

**% Blacks in Poverty**

**% Hispanics in Poverty**

2002

 8

24

22

2000

 7

23

22

1998

 8

26

26

1996

 9

28

29

1994

 9

31

31

1992

10

33

30

1990

 9

32

28

1988

 8

31

27

1986

 9

31

27

1984

10

34

28

1982

11

36

30

1980

 9

33

26

1978

 8

31

22

Source: U.S. Census Bureau, Historical Poverty Tables, Table 2. “Poverty Status of People by Family Relationship, Race, and Hispanic Origin: 1959 to 2002,” accessed August 5, 2003 at *http://www.census.gov/hhes/poverty/histpov/hstpov2.html.*

**Table 7.7**  ***Poverty Rate of Single-Parent Families by Sex of Head of Household, Alternate Years***

**Year**

**% of Male-Headed Families in Poverty**

**% of Female-Headed Families in Poverty**

2002

12

27

2000

11

25

1998

12

30

1996

14

33

1994

17

35

1992

16

35

1990

12

33

1988

12

33

1986

11

35

1984

13

35

1982

14

36

1980

11

33

1978

 9

31

Source: U.S. Census Bureau, Historical Poverty Tables, Table 4. “Poverty Status of Families, by Type of Family, Presence of Related Children, Race, and Hispanic Origin: 1959 to 2002,” accessed August 8, 2004 at *http://www.census.gov/hhes/poverty/histpov/hstpov4.html.*

The bottom income groups in the United States are statistically correlated with race and sex. In comparison with Whites and male-headed families, larger proportions of minorities and female-headed families are poor.

***Quick Review 7.2***

**Discrimination in the United States**

• The income gap between Whites and minorities has not decreased

• Large income inequalities based on sex exist

• Overall, Black unemployment is more than twice as high as White unemployment

• Minority poverty rate is 2–3 times White rate

• Poverty rate of families headed by women is 3 times that of male-headed families

• Most higher-paying jobs go to White males

**Desirable Occupation Comparisons**

The evidence of racial and sexual discrimination provided by the quantitative measures we have so far cited can be filled out qualitatively by examining the occupational distribution of racial and sexual minorities. As the figures in Table 7.8 suggest, in every major occupational group, larger percentages of White males move into the higher-paying occupations, while minorities and women end up in those that pay less and so are less desirable.

Just as the most desirable occupations are held by Whites while the less desirable are held by Blacks, so also the most well-paying occupations tend to be reserved for men and the remainder for women. As the occupations selected as illustrations in Table 7.9 indicate, the more women working in an occupation, the lower the pay for that occupation. Although there are a large number of exceptions, there is a close correlation between the proportion of men in an occupation and the salary level of that occupation. Moreover, studies indicate that, despite two decades of women entering the workforce in record numbers, women managers still are not being promoted from middle-management positions into senior or top-management posts, because they encounter an impenetrable **glass ceiling** through which they may look but not enter.20 Consequently, although many women have moved into middle-management positions in recent years, they have not yet been allowed into the top-paying executive positions.

**glass ceiling** An invisible, but impenetrable, barrier to further promotion sometimes encountered by women or minorities.

The fact that women and minorities earn less than White males is not wholly explainable in terms of the lower educational levels of minorities and women.21 In 2002, the average full-time, year-round working male who had some college but never graduated earned $46,252—only a little less than the $47,747 earned by a similar female who graduated from college (Table 7.4). The same year, a White, full-time, year-round worker who attended high school but never graduated made $28,362, whereas a Black, full-time, year-round worker who likewise attended high school but graduated made $28,179; and whereas a White worker with a bachelor’s degree made $63,609, a Black worker with both a bachelor’s and a master’s degree made only $57,395 (Table 7.4).

**Table 7.8**  ***Median Weekly Earnings of Men and Women in Major Occupational Groups, 2004***

**Occupational Group**

**Men**

**Women**

Managerial, professional, and related occupations

$1,073

$782

  Management, business, and financial operations occupations

1,134

 810

  Professional and related occupations

1,046

 768

Service occupations

  474

 369

Sales and office occupations

  664

 509

  Sales and related occupations

  753

 465

  Office and administrative support occupations

  585

 516

Natural resources, construction, and maintenance occupations

  623

 476

  Farming, fishing, and forestry occupations

  382

 330

  Construction and extraction occupations

  596

 509

  Installation, maintenance, and repair occupations

  711

 588

Production, transportation, and material moving occupations

  577

 405

  Production occupations

  590

 407

  Transportation and material moving occupations

  561

 402

Source: U.S. Department of Labor, *Usual Weekly Earnings of Wage and Salary Workers*, Table 3. “Median usual weekly earnings of full-time wage and salary workers by occupation and sex, quarterly averages, not seasonally adjusted,” accessed August 12, 2004 at *http://www.bls.gov/news.release/wkyeng.t03.htm.*

**Table 7.9**  ***Median Weekly Earnings of Selected Occupations and Percent of Men and Women in Those Occupations, 2002***

**Percent of Total in Occupation Who Are**

**Occupation**

**Weekly Earnings**

**Men**

**Women**

Child-care workers

$251

 1

99

Receptionists

 429

 3

97

Typists

 432

 5

95

Bookkeepers

 502

 8

92

Licensed practical nurses

 571

 7

93

Legal assistants

 642

18

82

Financial processing supervisors

 718

19

81

Clinical lab technicians

 664

25

75

Personnel managers

 970

35

65

Accountants

 799

40

60

Physicians’ assistants

1,031

42

58

Management analysts

1,077

54

46

College teachers

1,028

62

38

Marketing managers

1,115

64

36

Lawyers

1,492

66

34

Physicians

1,475

69

31

Computer systems analysts

1,125

73

27

Electrical engineers

1,222

89

11

Aerospace engineers

1,365

90

10

Airplane pilots

1,245

95

 5

Source: U.S. Bureau of Labor Statistics, Median Usual Weekly Earnings of Full-Time Wage and Salary Workers by Detailed Occupation and Sex, 2002 Annual Averages, accessed August 12, 2004 at *http://www.bls.gov/cps/wlf-tables15.pdf.*

Nor can the large disparities between White males and women or minorities be wholly accounted for by the preferences of the latter.22 It is sometimes suggested that women *voluntarily choose* to work in those jobs that have relatively low pay and low prestige. It is suggested sometimes, for example, that women believe only certain jobs (such as secretary or kindergarten teacher) are appropriate for women, many women choose courses of study that suit them only for such jobs, many women choose those jobs because they plan to raise children and these jobs are relatively easy to leave and reenter, many women choose these jobs because they have limited demands and allow them time to raise children, and many women defer to the demands of their husbands’ careers and choose to forgo developing their own careers. Although choice plays some role in pay differentials, however, researchers who have studied the differences in earnings between men and women have all concluded that wage differentials cannot be accounted for simply on the basis of such factors. One study found that only half of the earnings gap might be accounted for by women’s choices, whereas other studies have found it could account for a bit more or a bit less.23 All studies, however, have demonstrated that only a portion of the gap can be accounted for on the basis of male and female differences in education, work experience, work continuity, self-imposed work restrictions, and absenteeism.24 These studies show that, even after taking such differences into account, a gap between the earnings of men and women remains that can only be accounted for by discrimination in the labor market. A report of the National Academy of Sciences concluded that “about 35 to 40 percent of the disparity in average earnings is due to sex segregation because women are essentially steered into lower-paying ‘women’s jobs.’”25 Some studies have shown that perhaps only one-tenth of the wage differences between men and women can be accounted for by differences in their personalities and tastes.26 Similar studies have shown that half of the earning differences between White and minority workers cannot be accounted for by differences of work history, on-the-job training, absenteeism, or self-imposed restrictions on work hours and location.27

Several trends that emerged in the 1990s have increased the difficulties facing women and minorities in job markets. To begin with, most new workers now entering the labor force are not White males, but women and minorities. Although two decades ago White males held the largest share of the job market, between 1985 and 2000 White males comprised only 15 percent of all new workers entering the labor force. Their place has been taken by women and minorities. Three-fifths of all new entrants coming into business between 1985 and 2000 were women—a trend created by sheer economic necessity as well as cultural redefinitions of the role of women. Native minorities and immigrants now make up some 40 percent of all new workers.28

This large influx of women and minorities has encountered major difficulties in the job market. First, as we saw, a sizable proportion of women are still steered into traditionally female jobs that pay less than traditionally male jobs. Second, as women advance in their careers, they encounter barriers (the so-called *glass ceiling*) when attempting to advance into top-paying, top-management positions. Surveys have found that over 90 percent of newly promoted corporation chairmen, presidents, and vice presidents are men. In fact, some studies have suggested that the percentage of women being promoted to the vice-presidential level is declining. Less than 2 percent of all officers of Fortune 500 companies today are women. Third, married women who want children, unlike married men who want children, currently encounter major difficulties in their career advancement. One survey found that 52 percent of the few married women who were promoted to vice president remained childless, whereas only 7 percent of the married men had no children. Another survey found that during the 10 years following their graduation 54 percent of those women who had made significant advances up the corporate ladder had done so by remaining childless. Several studies have found that women with professional careers are 6 times more likely than their husbands to have to be the one who stays home with a sick child; even women at the level of corporate vice president report that they must carry a greater share of such burdens than their husbands.29

The large numbers of minorities entering the workforce also encounter significant disadvantages. As these large waves of minorities hit the labor market, they find that most of the good jobs awaiting them require levels of skill and education far higher than they have. Of all the new jobs that have been created during the past decade, more than half require some education beyond high school and almost a third require a college degree. Among the fastest-growing fields are professions with extremely high education requirements, such as technicians, engineers, social scientists, lawyers, mathematicians, scientists, and health professionals. In contrast, jobs that require relatively low levels of education and skills, such as machine tenders and operators, blue-collar supervisors, assemblers, hand workers, miners, and farmers, have actually been declining in number. Even jobs that require relatively low levels of skill now have tough requirements: Secretaries, clerks, and cashiers need the ability to read and write clearly, understand directions, and use computers; assembly-line workers are being required to learn statistical process control methods employing basic algebra and statistics. Thus, most good new jobs demand more education and higher levels of language, math, and reasoning skills.

Unfortunately, minorities are currently the least advantaged in terms of skill levels and education. Studies have shown that only about three-fifths of Whites, two-fifths of Hispanics, and one-fourth of Blacks could find information in a news article or almanac; only 25 percent of Whites, 7 percent of Hispanics, and 3 percent of Blacks could interpret a bus schedule; and only 44 percent of Whites, 20 percent of Hispanics, and 8 percent of Blacks could figure out the change they were owed from buying two items.30 Minorities are also much more disadvantaged in terms of education. In 2003, when 94 percent of young (25–29) White people graduated from high school, only 88 percent of young Blacks, and 62 percent of young Hispanics did.31 That same year, 34 percent of young (25–29) Whites graduated from college, but only 17 percent of young Blacks and 11 percent of young Hispanics did.32 Thus, although future new jobs will require steeply increasing levels of skills and education, minorities are falling behind in their educational attainment.

Moreover, recent years have brought to light an especially troublesome obstacle that working women face in the workplace. Forty-two percent of all women working for the federal government reported that they had experienced some form of uninvited and unwanted sexual attention, ranging from sexual remarks to attempted rape or assault. Women working as executives, prison guards, and even rabbis have reported being sexually harassed.33 Victims of verbal or physical forms of sexual harassment were most likely to be single or divorced, between the ages of 20 and 44, have some college education, and work in a predominantly male environment or for a male supervisor.34 An early study of sexual harassment in business found that 10 percent of 7,000 people surveyed reported that they had heard of or observed a situation in their organizations as extreme as: “Mr. X has asked me to have sex with him. I refused, but now I learn that he’s given me a poor evaluation. . . .”35 A federal court vividly described the injuries that sexual harassment can inflict on a person:

Cheryl Mathis’s relationship with Mr. Sanders began on terms she described as good, but it later became clear that Sanders sought some kind of personal relationship with her. Whenever Mathis was in his office he wanted the door to outside offices closed, and he began discussing very personal matters with her, such as the lack of a sexual relationship with his wife. He then began bombarding her with unwelcome invitations for drinks, lunch, dinner, breakfast, and asking himself to her house. Mathis made it clear that she was not interested in a personal relationship with her married boss. … Sanders also commented on Mathis’s appearance, making lewd references to parts of her body. As Mathis rejected Sanders’s advances, he would become belligerent. By the spring of 1983 Mathis began to suffer from severe bouts of trembling and crying which became progressively worse and eventually caused her to be hospitalized on two separate occasions, once for a week in June, 1983, and again in July for a few days. During this entire summer Mathis remained out on sick leave, not returning to work until September, 1983. … As soon as she returned to work, Sanders’s harassment resumed … and once again she was forced to seek medical help and did not work. … The harassment not only tormented … Mathis, it created hostility between her and other members of the department who apparently resented the plaintiff’s familiarity with Sanders.36

Every year thousands of complaints of sexual harassment are filed with the federal government’s **Equal Employment Opportunity Commission**, and thousands of other complaints are lodged with state civil rights commissions.

**Equal Employment Opportunity Commission** A federal agency that investigates claims of on-the-job sexual harassment and discrimination.

It is clear, then, that women and minorities, who now comprise the bulk of new workers entering the workforce, find themselves in highly disadvantaged positions. What are these disadvantages if not an additional form of systematic institutionalized discrimination?

***Quick Review 7.3***

**Increasing Problems for Women and Minorities**

• Women and minorities make up most new workers

• Women are steered into low-paying jobs and face a glass ceiling and sexual harassment

• Minorities need skills and education but lack these

The various statistical comparisons that we have examined, together with the extensive research showing that these differences are not due in any simple way to differences in the preferences or abilities of women and minorities, indicate that American business institutions incorporate some degree of systematic discrimination, much of it, perhaps, an unconscious relic of the past. Whether we compare average incomes, proportional representation in the highest economic positions, or proportional representation in the lowest economic positions, it turns out that women and minorities are not equal to White males, and the last 30 years have seen only relatively small narrowings of the racial and sexual gaps. Moreover, a number of ominous trends indicate that, unless we embark on some major changes, the situation for minorities and women will not improve.

Of course, finding that our economic institutions as a whole still embody a great deal of discrimination does not show that any particular business is discriminatory. To find out whether a particular firm is discriminatory, we would have to make the same sorts of comparisons among the various employment levels of the firm that we made earlier among the various economic and occupational levels of American society as a whole. To facilitate such comparisons within firms, employers today are required to report to the government the numbers of minorities and women their firm employs in each of nine categories: officials and managers, professionals, technicians, sales workers, office and clerical workers, skilled craftworkers, semiskilled operatives, unskilled laborers, and service workers.

**7.3**  **Discrimination: Utility, Rights, and Justice**

Given the statistics on the comparative incomes and low-status positions of minorities and women in the United States, the question we must ask ourselves is this: Are these inequalities wrong, and if so, how should they be changed? To be sure, these inequalities directly contradict the fundamental principles on which the United States was founded: “We hold these truths to be self-evident: that all men are created equal and endowed by their creator with certain inalienable rights.”37 However, historically we have often tolerated large discrepancies between these ideals and reality. The ancestors of most Black Americans living today, for example, were brought to this country as slaves, treated like cattle, and lived out their lives in bondage, despite our ideals of equality. As the personal property of a White owner, Blacks prior to the Civil War were not recognized as people and consequently had no legal powers, no claims on their bodies or their labors, and were regarded by the Supreme Court in one of its opinions as “beings of an inferior order … and so far inferior that they had no rights that the White man was bound to respect.”38 Women were treated comparably. Through much of the 19th century, women could not hold office, could not vote, could not serve on juries, nor bring suit in their own names; a married woman lost control over her property (which was acquired by her husband), she was considered incapable of making binding contracts, and, in a major opinion, she was declared by the Supreme Court to have “no legal existence, separate from her husband, who was regarded as her head and representative in the social state.”39 Why are these forms of inequality wrong? Why is it wrong to discriminate?

The arguments mustered against discrimination generally fall into three groups: (a) utilitarian arguments, which claim that discrimination leads to an inefficient use of human resources; (b) rights arguments, which claim that discrimination violates basic human rights; and (c) justice arguments, which claim that discrimination results in an unjust distribution of society’s benefits and burdens.

**Utility**

The standard utilitarian argument against racial and sexual discrimination is based on the idea that a society’s productivity will be optimized to the extent that jobs are awarded on the basis of competency (or “merit”).40 Different jobs, the argument goes, require different skills and personality traits if they are to be carried out in as productive a manner as possible. Furthermore, different people have different skills and personality traits. Consequently, to ensure that jobs are maximally productive, they must be assigned to those individuals whose skills and personality traits qualify them as the most competent for the job. Insofar as jobs are assigned to individuals on the basis of other criteria unrelated to competency, productivity must necessarily decline. Discriminating among job applicants on the basis of race, sex, religion, or other characteristics unrelated to job performance is necessarily inefficient and, therefore, contrary to utilitarian principles.41

Utilitarian arguments of this sort, however, have encountered two kinds of objections. First, if the argument is correct, then jobs should be assigned on the basis of jobrelated qualifications only so long as such assignments will advance the public welfare. If, in a certain situation, the public welfare would be advanced to a greater degree by assigning jobs on the basis of some factor not related to job performance, then the utilitarian would have to hold that in those situations jobs should not be assigned on the basis of job-related qualifications, but on the basis of that other factor. For example, if society’s welfare would be promoted more by assigning certain jobs on the basis of need (or sex or race) instead of on the basis of job qualifications, then the utilitarian would have to concede that need (or sex or race), and not job qualifications, is the proper basis for assigning those jobs.42

Second, the utilitarian argument must also answer the charge of opponents who hold that society as a whole may benefit from some forms of sexual discrimination. Opponents might claim, for example, that society will function most efficiently if one sex is socialized into acquiring the personality traits required for raising a family (nonaggressive, cooperative, caring, submissive, etc.) and the other sex is socialized into acquiring the personality traits required for earning a living (aggressive, competitive, assertive, independent).43 One might hold that one sex ends up with the traits suited for raising a family as a result of its inborn biological nature, whereas the other sex ends up with the traits suited for earning a living as a result of its own biology. In either case, whether sexual differences are acquired or natural, one might argue that jobs that call for one set of sexually based traits rather than another should be assigned on the basis of sex because placing people in jobs that suit their personality traits promotes society’s welfare.44

The utilitarian argument against discrimination has been attacked on several fronts. None of these attacks, however, seems to have defeated its proponents. Utilitarians have countered that using factors other than job-related qualifications never provides greater benefits than the use of job-related qualifications.45 Moreover, they claim, studies have demonstrated that there are few, or no, morally significant differences between the sexes.46

**Rights**

Nonutilitarian arguments against racial and sexual discrimination may take the approach that discrimination is wrong because it violates a person’s basic moral rights.47 Kantian theory, for example, holds that human beings should be treated as *ends* and never used merely as *means*. At a minimum, this principle means that each individual has a moral right to be treated as a free person equal to any other person and that all individuals have a correlative moral duty to treat each individual as a free and equal person. Discriminatory practices violate the principle in two ways. First, discrimination is based on the belief that one group is inferior to other groups, that Blacks, for example, are less competent or less worthy of respect than Whites or perhaps that women are less competent or worthy of respect than men.48 Racial and sexual discrimination, for instance, may be based on stereotypes that see minorities as “lazy” or “shiftless” and see women as “emotional” and “weak.” Such degrading stereotypes undermine the self-esteem of those groups against whom the stereotypes are directed and thereby violate their right to be treated as equals. Second, discrimination places the members of groups that are discriminated against in lower social and economic positions: Women and minorities have fewer job opportunities and are given lower salaries. Again, the right to be treated as a free and equal person is violated.49

A group of Kantian arguments, related to those mentioned, holds that discrimination is wrong because the person who discriminates would not want to see his or her behavior universalized.50 In particular, the person would not want to be discriminated against on the basis of characteristics that have nothing whatever to do with the person’s own ability to perform a given job. Because the person who discriminates would not want to see his or her own behavior universalized, according to Kant’s first categorical imperative, it is morally wrong for that person to discriminate against others.

**Justice**

A second group of nonutilitarian arguments against discrimination views it as a violation of the principles of justice. For example, John Rawls argued that among the principles of justice that the enlightened parties to the “original position” would choose for themselves is the principle of equal opportunity: “Social and economic inequalities are to be arranged so that they are attached to offices and positions open to all under conditions of fair equality of opportunity.”51 Discrimination violates this principle by arbitrarily closing off to minorities the more desirable offices and positions in an institution, thereby not giving them an opportunity equal to that of others. Arbitrarily giving some individuals less of an opportunity to compete for jobs than others is unjust, according to Rawls.

Another approach to the morality of discrimination that also views it as a form of injustice is based on the formal **principle of equality**: Individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally even if they are dissimilar in other, nonrelevant respects. To many people, as indicated in Chapter 2, this principle is the defining feature of justice.52 Discrimination in employment is wrong because it violates the basic principle of justice by differentiating between people on the basis of characteristics (race or sex) that are not relevant to the tasks they must perform. A major problem faced by this kind of argument against discrimination, however, is that of defining precisely what counts as a *relevant respect* for treating people differently and explaining why race and sex are not relevant, whereas something like intelligence or war service may be counted as relevant.

**principle of equality** Individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally even if they are dissimilar in other, nonrelevant respects.

***Quick Review 7.4***

**Arguments Against Discrimination**

• Utility: discrimination leads to inefficient use of human resources

• Rights: discrimination violates basic human rights

• Justice: discrimination results in unjust distributions of benefits and burdens

**Discriminatory Practices**

Regardless of the problems inherent in some of the arguments against discrimination, it is clear that there are strong reasons for holding that discrimination is wrong. It is consequently understandable that the law has gradually been changed to conform to these moral requirements and that there has been a growing recognition of the various ways in which discrimination in employment occurs. Among the practices now widely recognized as discriminatory are the following:53

**Recruitment Practices**

Firms that rely solely on the word-of-mouth referrals of present employees to recruit new workers tend to recruit only from those racial and sexual groups that are already represented in their labor force. When a firm’s labor force is composed of only White males, this recruitment policy will tend to discriminate against minorities and women. Also, when desirable job positions are only advertised in media (or by job-referral agencies) that are not used by minorities or women (such as in English newspapers not read by Spanish-speaking minorities) or are classified as *for men only*, recruitment will also tend to be discriminatory.

**Screening Practices**

Job qualifications are discriminatory when they are not relevant to the job to be performed (e.g., requiring a high school diploma or a credential for an essentially manual task in places where minorities statistically have had high secondary school dropout rates). Aptitude or intelligence tests used to screen applicants become discriminatory when they serve to disqualify members from minority cultures who are unfamiliar with the language, concepts, and social situations used in the tests but who are in fact fully qualified for the job. Job interviews are discriminatory if the interviewer routinely disqualifies women and minorities by relying on sexual or racial stereotypes. These stereotypes may include assumptions about the sort of occupations “proper” for women, the sort of work and time burdens that may fittingly be “imposed” on women, the ability of a woman or minority person to maintain “commitment” to a job, the propriety of putting women in “male” environments, the assumed effects women or minorities would have on employee morale or on customers, and the extent to which women or minorities are assumed to have personality and aptitude traits that make them unsuitable for a job. Such generalizations about women or minorities are not only discriminatory, they are also false.

**Promotion Practices**

Promotion, job progression, and transfer practices are discriminatory when employers place White males on job tracks separate from those open to women and minorities. Seniority systems will be discriminatory if past discrimination has eliminated minorities and women from the higher, more senior positions on the advancement ladder. To rectify the situation, individuals who have specifically suffered from discrimination in seniority systems should be given their rightful place in the seniority system and provided with whatever training is necessary for them. When promotions rely on the subjective recommendations of immediate supervisors, promotion policy will be discriminatory to the extent that supervisors rely on racial or sexual stereotypes.

**Conditions of Employment**

Wages and salaries are discriminatory to the extent that equal wages and salaries are not given to people who are doing essentially the same work. If past discrimination or present cultural traditions result in some job classifications being disproportionately filled with women or minorities (such as secretarial, clerical, or part-time positions), steps should be taken to make their compensation and benefits comparable to those of other classifications.

**Discharge**

Firing an employee on the basis of race or sex is a clear form of discrimination. Less blatant but still discriminatory are layoff policies that rely on a seniority system, in which women and minorities have the lowest seniority because of past discrimination.

**Sexual Harassment**

Women, as noted earlier, are victims of a particularly troublesome kind of discrimination that is both overt and coercive: They are subjected to **sexual harassment**. Although males are also subjected to some instances of sexual harassment, it is women who are by far the most frequent victims. For all its acknowledged frequency, sexual harassment still remains difficult to define and to police and prevent. In 1978, the Equal Employment Opportunity Commission published a set of “guidelines” defining sexual harassment and setting out what, in its view, was prohibited by the law. In their current form, the guidelines state:

**sexual harassment** Under certain conditions, unwelcome sexual advances, requests for sexual favors, and other verbal or physical contact of a sexual nature.

Unwelcome sexual advances, requests for sexual favors and other verbal or physical contact of a sexual nature constitute sexual harassment when (1) submission to such conduct is made either explicitly or implicitly a term or condition of an individual’s employment, (2) submission to or rejection of such conduct by an individual is used as the basis for employment decisions affecting such individual, or (3) such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creating an intimidating, hostile or offensive working environment.54

The guidelines state, further, that sexual harassment is prohibited and that an employer is responsible for all sexual harassment engaged in by employees, “regardless of whether the employer knew or should have known” the harassment was occurring and regardless of whether it was “forbidden by the employer.”

**ON THE EDGE:**  ***Wall Street: It’s a Man’s World***

Since 1996 several sexual discrimination suits have been brought against traditionally male-dominated Wall Street investment firms, including Merrill Lynch, Smith Barney, and Morgan Stanley. In 1998, Smith Barney was forced to pay $100 million to 23,000 female employees who claimed they had been propositioned, groped, and otherwise sexually harassed by male employees of the firm. A 1999 discrimination and harassment lawsuit that made similar allegations against Merrill Lynch resulted in a $100 million settlement. In 2004, the government settled a lawsuit against Morgan Stanley on behalf of Allison Schieffelin and 100 other women who accused the firm of sexual harassment, of being referred to in obscene terms, and of being unable to attend business meetings held in strip clubs or other places that women would not be inclined to enter, and thus being excluded from significant business activities. They also claimed that the firm maintained a “glass ceiling” that had barred Schieffelin—whose 1998 pay as a bond trader was more than $1 million—from advancing since 1996. She said that although men around her were promoted, she, though equally qualified, was unable to advance in the firm. Moreover, when she complained to Morgan Stanley’s president, her duties were reduced and in 2000 she was fired. Morgan Stanley settled her case for $54 million, of which $12 million went to Allison Schiefflin, $40 million to the other women in the suit, and $2 million to promote diversity within the firm. But the fines are small amounts to Wall Street firms that remain male bastions. Many of the women who filed claims against the companies found their careers ruined, while many of the men named in the suits continue to work for their old firms that still maintain a bawdy locker-room atmosphere that discourages full female participation.

Should companies with entrenched male cultures like the Wall Street firms be forced to change? How?



***Allison Schieffelin, a former Morgan Stanley bond seller, was at the center of a sex bias charge brought by U.S. employment regulators against investment bank Morgan Stanley that was settled out of court. Morgan Stanley settled the sex discrimination suit brought by the Equal Employment Opportunity Commission for $54 million.***



***Traders on the floor of the New York Stock Exchange shout orders while selling shares at a frantie pace.***



***Trading floors at the large Wall Street firms are still dominated by male traders.***



***Female executives have found success on Wall Street.***

In several major respects, the guidelines are clearly morally justified. They are intended to outlaw those situations in which an employee is coerced into giving in to another employee’s sexual demands by the threat of losing some significant job benefit, such as a promotion, raise, or even the job. This kind of degrading coercion exerted on employees who are vulnerable and defenseless inflicts great psychological harms on the employee, violates the employee’s most basic rights to freedom and dignity, and is an outrageously unjust misuse of the unequal power that an employer can exercise over the employee. It is thus a crude violation of the moral standards of utilitarianism, rights, justice, and care.

However, several aspects of these guidelines merit further discussion. First, the guidelines prohibit more than particular acts of harassment. In addition to prohibiting harassing acts, they also prohibit conduct that “creates” an “intimidating, hostile or offensive working environment.” That means that an employer is guilty of sexual harassment when the employer allows an environment that is hostile or offensive to women even in the absence of any particular incidents of sexual harassment. This raises some difficult questions. If the mechanics in a garage are accustomed to placing pin-ups in their place of work and are accustomed to recounting off-color jokes and using off-color language, are they guilty of creating an environment that is “hostile and offensive” to a female coworker? In a well-known case, for example, a federal court described the following real situation:

For seven years the [female] plaintiff worked at Osceola as the sole woman in a salaried management position. In common work areas [she] and other female employees were exposed daily to displays of nude or partially clad women belonging to a number of male employees at Osceola. One poster, which remained on the wall for eight years, showed a prone woman who had a gold ball on her breasts with a man standing over her, golf club in hand, yelling “Fore!” And one desk plaque declared “Even male chauvinist pigs need love. . . .” In addition, Computer Division Supervisor Dough Henry regularly spewed anti-female obscenity. Henry routinely referred to women as “whores,” “cunt,” “pussy,” and “tits. . . .” Of plaintiff, Henry specifically remarked, “All that bitch needs is a good lay” and called her “fat ass.”55

Should this kind of situation count as the kind of “intimidating, hostile or offensive working environment” that the guidelines prohibit as sexual harassment? The answer to this legal question is unclear, and different courts have taken different positions on the question. But a different question and one that is more relevant to our inquiry is this: Is it morally wrong to create or allow this kind of environment? The answer to this question seems in general to be “yes” because such an environment is degrading, it is usually imposed by more powerful male parties upon more vulnerable female employees, and it imposes heavy costs on women because such environments tend to belittle them and make it more difficult for them to compete with males as equals.

Nevertheless, some critics object that these kinds of environments were not created to intentionally degrade women, that they are part of the “social mores of [male] American workers,” that it is hopeless to try to change them, and that they do not unjustly harm women because women have the power to take care of themselves.56 A *Forbes* magazine article, for example, asked rhetorically, “Can women really think they have the right to a pristine work environment free of rude behavior?”57 Such sentiments are indicative of the uncertainties surrounding this issue.

A second important point to note is that the guidelines indicate that “verbal or physical contact of a sexual nature” constitutes sexual harassment when it has the “effect of unreasonably interfering with an individual’s work performance.” Many critics have argued that this means that what counts as sexual harassment depends on the purely subjective judgments of the victim. According to the guidelines, verbal contacts—presumably conversations—of a sexual nature count as prohibited sexual harassment when they “unreasonably” interfere with work performance. But sexual conversations that are “unreasonable” interferences to one person, critics claim, may be well within reasonable limits to another person because people’s tolerance, even enjoyment, of sexual conversations differs. What one person believes is innocent innuendo, flirting, or an enjoyable sexual joke may be taken by another as an offensive and debilitating “come-on.” The critics claim that a person who in all innocence makes a comment that is taken wrongly by another person may find himself the target of a sexual harassment complaint. However, supporters of the guidelines reply that our law courts are well experienced with defining what is *reasonable* in the more or less objective terms of what an average competent adult would feel to be reasonable, so this concept should present no major difficulties. Critics, however, have countered that this still leaves open the question of whether the guidelines should prohibit sexual conversations that the average woman would find unreasonable or that the average man would find unreasonable—two standards, they claim, that would have drastically different implications.

A more fundamental objection to the prohibition of “verbal conduct” that creates an “intimidating, hostile or offensive working environment” is that these kinds of prohibitions in effect violate people’s right to free speech. This objection is frequently made on university campuses, where prohibitions of speech that creates a hostile or offensive environment for women or minorities are not unusual and where such prohibitions are generally characterized as requiring “politically correct speech.” Students and faculty alike have objected that free speech must be preserved on university campuses because truth is found only through the free discussion and examination of all opinions, no matter how offensive, and truth is the objective of the university. Similar claims cannot usually be made about a business corporation, of course, because its objective is not the attainment of truth through the free discussion and examination of all opinions. Nevertheless, it can be argued that employees and employers have a right to free speech and that prohibitions of speech that create an environment that some feel to be offensive are wrong even in corporate contexts because such prohibitions violate this basic right. The reader will have to decide whether such arguments have much merit.

A third important feature of the guidelines to note is that an employer is guilty of sexual harassment even if the employer did not know and could not have been expected to know that it was going on and even if the employer had explicitly forbidden it. This violates the common moral norm that people cannot be held morally responsible for something of which they had no knowledge and which they had tried to prevent. Many people have suggested that the guidelines are deficient on this point. However, supporters reply that the guidelines are morally justified from a utilitarian point of view for two reasons. First, over the long run, they provide a strong incentive for employers to take steps that will guarantee that the harm of sexual harassment is eradicated from their companies, even in those areas of the company of which they usually have little knowledge. Moreover, the harms inflicted by sexual harassment are so devastating that any costs imposed by such steps will be balanced by the benefits. Second, the guidelines in effect ensure that the harms inflicted by sexual harassment are always transferred to the shoulders of the employer, thereby making such harms part of the costs of doing business that the employer will want to minimize to remain competitive with other businesses. Thus, the guidelines in effect internalize the costs of sexual harassment so that competitive market mechanisms can deal with them efficiently. The guidelines are also just, supporters claim, because the employer is usually better able to absorb the costs of sexual harassment than the innocent injured employee who would otherwise have to suffer the losses of harassment alone.

**Beyond Race and Sex: Other Groups**

Are there other groups that deserve protection from discrimination? The Age Discrimination in Employment Act of 1967 prohibited discriminating against older workers merely because of their age, until they reached age 65. This act was modified in 1978 to prohibit age discrimination until workers reach age 70.58 On October 17, 1986, new legislation was enacted prohibiting forced retirement at any specific age. Thus, in theory, older workers are protected against discrimination by federal laws. The disabled are also now protected by the **Americans with Disabilities Act of 1990**, which bars discrimination on the basis of disability and which requires that employers make reasonable accommodation for their disabled employees and customers. Nevertheless, because of widespread stereotypes about the abilities and capacities of older workers and the disabled, subtle and overt discrimination against these groups continues to pervade America.59

**Americans with Disabilities Act of 1990** Bars discrimination on the basis of disability and requires that employers make reasonable accommodation for their disabled employees and customers.

***Quick Review 7.5***

**Besides race and sex, discrimination can be based on**

• Age

• Sexual orientation

• Transsexual status

• Disability

• Obesity

Although older and disabled workers at least have some legal protections against discrimination, such protections are rare for workers with unusual sexual preferences. There are no federal laws that prohibit discrimination on the basis of sexual orientation, and only a few states and cities have laws prohibiting discrimination against gays or transsexuals. A court held, for example, that Liberty Mutual Insurance Company was not acting illegally when it refused to hire a male merely on the grounds that he was “effeminate,” and a court also cleared Budget Marketing, Inc., of acting illegally when that company fired a male who began to dress as a female prior to a sex-change operation.60

Although it is illegal to do so, many companies have found reasons to fire or cancel the health benefits of workers found to have the virus for acquired immune deficiency syndrome (AIDS).61 The Centers for Disease Control reports that in 2002 some 384,906 persons were living with AIDS in the United States and an additional 144,129 had been diagnosed with HIV that had not yet developed into AIDS.62 Only a portion of these were suffering symptoms or debilitation that affected their ability to perform well on the job. Several court decisions have held that AIDS qualifies as a “handicap” (under the federal Vocational Rehabilitation Act of 1973 and, more recently, under the Americans with Disabilities Act), and federal law prohibits federal contractors, subcontractors, or employers who participate in federally funded programs from firing such handicapped persons, so long as they can perform their jobs if some “reasonable” accommodation is made. Some states and cities have enacted local laws to prevent discrimination against AIDS victims, but many employers are not monitored, and some continue to discriminate against the victims of this terrible disease.

Many companies also have policies against hiring overweight persons—a class of people that the laws of most states do not protect. For example, Philadelphia Electric Company refused to hire Joyce English solely on the grounds that she weighed 300 pounds and not because she was unable to perform the duties of the position for which she applied.63 Should any of these groups—gays, transsexuals, obese persons—be protected against job discrimination? Some have argued that they should be protected on the same grounds that women and ethnic minorities are currently protected.64 At the present time, these groups remain as vulnerable as women, minorities, and older workers once were.

**ON THE EDGE:**  ***Peter Oiler and Winn-Dixie Stores***

Winn-Dixie Stores fired Peter Oiler, a truck driver who worked for the Louisiana supermarket chain for 21 years. Oiler loaded groceries from the company’s warehouse and drove them to Winn-Dixie stores in Louisiana and Mississippi. A good worker, he received above-average performance ratings and was promoted three times. Oiler had been married to his wife, Shirley, for 23 years.

Two years before he was fired, Oiler asked his supervisor, Greg Miles, to squelch a company rumor that he was gay. A year later, Miles met with Oiler and asked him if the rumor still bothered him. Oiler said it did because he was not gay, but a “transgender,” a person whose anatomical sex is sometimes inconsistent with their feelings about their gender. Oiler said he had no intention of changing his sex or of “transitioning” to live full-time as a woman.

A month later, Miles again met with Oiler. Miles said a supervisor had seen Oiler off-duty dressed as a woman. Oiler responded he sometimes dressed as a woman but never on company time. Miles replied he might harm the company image, and so he should resign and look for another job. Oiler said he was happy at Winn-Dixie and did not want another job. When consulted, Michael Istre, president of Winn-Dixie, agreed with firing Oiler because “I was concerned about my business and what kind of impact and effect that this type of behavior would have on my business and my customer base if my customers saw him.”

Over the next 3 months, Oiler met 5 times with Winn-Dixie managers and was told repeatedly to look for another job because he was to be fired. Although his job performance was fine, they said, his off-work dressing as a woman could harm the company’s image with the public. At the final meeting Oiler was terminated while continuing to protest that he adhered to company policy for at-work dress. Said Oiler: “To be fired after 21 years with the company felt like a knife in my chest. I showed up for work on time, did a good job and followed all the rules, but I was fired because I cross-dress off-duty. We lost our health insurance, and nearly had our home foreclosed. The unbearable stress took, and still takes, a toll on our health and continues to affect our 24-year marriage.” Although Oiler sued, a U.S. district judge decided federal laws against discrimination do not apply to transgendered people.

**1.** Was it wrong for Winn-Dixie to fire Oiler?

**2.** Should discrimination laws apply to transgendered people?

**7.4**  **Affirmative Action**

All of the equal opportunity policies discussed are ways of making employment decisions blind with respect to sex and race. These policies are all negative: They aim to prevent any further discrimination. Therefore, they ignore the fact that as a result of past discrimination, women and minorities do not now have the same skills as their White male counterparts; because of past discrimination, women and minorities are now underrepresented in the more prestigious and desirable job positions. The policies discussed so far do not call for any positive steps to eliminate these effects of past discrimination.

To rectify the effects of past discrimination, many employers have instituted affirmative action programs designed to achieve a more representative distribution of minorities and women within the firm by giving preference to women and minorities. Affirmative action programs, in fact, are now legally required of all firms that hold a government contract. What does an affirmative action program involve? The heart of an affirmative action program is a detailed study (a “utilization analysis”) of all the major job classifications in the firm.65 The purpose of the study is to determine whether there are fewer minorities or women in a particular job classification than could be reasonably expected by their availability in the area from which the firm recruits. The utilization analysis will compare the percentage of women and minorities in each job classification with the percentage of those minority and female workers available in the area from which the firm recruits who have the requisite skills or who are capable of acquiring the requisite skills with training the firm could reasonably supply. If the utilization analysis shows that women or minorities are underutilized in certain job classifications, the firm must then establish recruiting goals and timetables for correcting these deficiencies. Although the goals and timetables must not be rigid and inflexible quotas, they must nonetheless be specific, measurable, and designed in good faith to correct the deficiencies uncovered by the utilization analysis within a reasonable length of time. The firm appoints an officer to coordinate and administer the affirmative action program, and it undertakes special efforts and programs to increase the recruitment of women and minorities so as to meet the goals and timetables it has established for itself.

Supreme Court decisions have not been clear about the legality of affirmative action programs. A large number of federal court decisions have agreed that the use of affirmative action programs to redress imbalances that are the result of previous discriminatory hiring practices is legitimate. Moreover, in 1979, the U.S. Supreme Court ruled that companies legally can use affirmative action programs to remedy a “manifest racial imbalance” regardless of whether the imbalance resulted from past discriminatory job practices.66 In June 1984, however, the Court ruled that companies may not set aside the seniority of White workers during layoffs in favor of women and minority workers hired under affirmative action plans so long as the seniority system was adopted without a discriminatory motive. Thus, although affirmative action programs that give preferences to women or minorities as a group were not declared illegal, their effects could disappear during hard times because *the last hired, first-fired* rule of seniority would hit strongest at women and minorities recently hired through the programs.67 The 1984 Supreme Court decision also included a nonbinding advisory statement that

If individual members of a … class demonstrate that they have been actual victims of the discriminatory practice, they may be awarded competitive seniority and given their rightful place on the seniority roster. However, … mere membership in the disadvantaged class is insufficient to warrant a seniority award; each individual must prove that the discriminatory practice had an impact on him.68

To many this seemed to imply that affirmative action programs that awarded jobs on the basis of membership in a disadvantaged class were not completely legal. However, others interpreted the “advisory” more narrowly to mean merely that awarding seniority could not be based on mere membership in a disadvantaged class.69 This latter interpretation seemed to be supported by another Supreme Court ruling on May 19, 1986, which held that, although layoffs based on race were unconstitutional, racial hiring goals were a legally allowable means to remedy past discrimination. The 1986 Supreme Court majority opinion stated that layoffs based on race “impose the entire burden of achieving racial equality on particular (White) individuals, often resulting in serious disruption of their lives. … On the other hand, racial preferences in hiring merely deny a future employment opportunity, not the loss of an existing job, and may be used to cure the effects of past discrimination.”70

In 1989, the Supreme Court issued several decisions that interpreted previous civil rights laws in a manner that substantially weakened the ability of minorities and women to seek redress against discrimination, particularly through affirmative action programs. In 1991, however, Congress passed the Civil Rights Act of 1991, which stated explicitly how those laws should be interpreted and in effect overruled the Supreme Court decisions of 1989. One important decision was left standing, however. In January 1989, in *City of Richmond v. J. A. Croson Co*., the Court ruled that the affirmative action plan of a state or local government that operates by setting aside a certain percentage of its public monies for minority contractors is unconstitutional. Such set-aside programs, the Court ruled, could be used by public bodies only as “a last resort” in an “extreme case” and only if there was hard and specific proof of previous racial bias by that governmental body. *Adarand Construction, Inc. v. Pena*, a case the Supreme Court heard in 1995, reinforced this decision when it ruled that the federal government is also bound by its ruling in *City of Richmond v. J. A. Croson Co*. As we noted in the introduction to this chapter, in *Grutter v. Bollinger* the Supreme Court held that universities may use affirmative action programs to achieve the goal of diversity.

Thus, the Supreme Court has vacillated on the constitutionality of affirmative action programs. Depending on the period in question, the issue at stake, and the current makeup of the Court, it has tended to support and sometimes undermine affirmative action programs. Like the public, which remains deeply divided on the issue, the Supreme Court has had trouble making up its mind whether to support or attack these programs.71

Affirmative action programs have been attacked mainly on the grounds that, in attempting to correct the effects of past discrimination, these programs have become racially or sexually discriminatory.72 By showing preference to minorities or women, the programs institute a form of reverse discrimination against White males.73 A 45-year-old electrical worker at a Westinghouse plant, for example, is quoted as saying:

What does bother me is the colored getting the preference because they’re black. This I am against. I say, I don’t care what his color is. If he has the ability to do the job, he should get the job—not because of his color. They shouldn’t hire 20 percent just because they’re black. This is discrimination in reverse as far as I’m concerned. … If they want it, they can earn it like I did. I am not saying deprive them of something—not at all.74

Affirmative action programs are said to discriminate against White males by using a nonrelevant characteristic—race or sex—to make employment decisions, and this violates justice by violating the principles of equality and equal opportunity.

The arguments used to justify affirmative action programs in the face of these objections tend to fall into two main groups.75 One group of arguments interprets the preferential treatment accorded to women and minorities as a form of compensation for past injuries they have suffered. A second set of arguments interprets preferential treatment as an instrument for achieving certain social goals. Whereas compensation arguments for affirmative action are backward looking insofar as they focus on the wrongness of past acts, the instrumentalist arguments are forward looking insofar as they focus on the goodness of a future state (and the wrongness of what happened in the past is irrelevant).76 We begin by examining the compensation arguments and then turn to the instrumentalist arguments.

**Affirmative Action as Compensation**

Arguments that defend affirmative action as a form of compensation are based on the concept of compensatory justice.77 Compensatory justice, as noted in Chapter 2, implies that people have an obligation to compensate those whom they have intentionally and unjustly wronged. Affirmative action programs are then interpreted as a form of reparation by which White male majorities now compensate women and minorities for unjustly injuring them by discriminating against them in the past. One version of this argument holds, for example, that Blacks were wronged in the past by American Whites and that consequently the former should now receive compensation from Whites.78 Programs of preferential treatment provide that compensation.

***Quick Review 7.6***

**Compensation Argument for Affirmative Action**

• Claims affirmative action compensates groups for past discrimination

• Criticized as unfair because those who benefit were not harmed and those who pay did not injure

The difficulty with arguments that defend affirmative action on the basis of the principle of compensation is that the principle requires that compensation should come only from those specific individuals who intentionally inflicted a wrong, and it requires them to compensate only those specific individuals whom they wronged. For example, if five red-haired persons wrongfully injure five black-haired persons, then compensatory justice obligates only the five red-haired persons to give to only the five black-haired persons whatever the black-haired persons would have had if the five red-heads had not injured them. Compensatory justice, however, does not require that compensation should come from all the members of a group that contains some wrongdoers, nor does it require that compensation should go to all the members of a group that contains some injured parties. In this example, although justice requires that the five red-haired persons must compensate the five black-haired persons, it does not require that all red-haired persons should compensate all black-haired persons. By analogy, only the specific individuals who discriminated against minorities or women in the past should now be forced to make reparation of some sort, and they should make reparation only to those specific individuals against whom they discriminated.79

Although affirmative action programs usually benefit all the members of a racial or sexual group, regardless of whether they specifically were discriminated against in the past, and because these programs hinder every White male regardless of whether he specifically discriminated against someone in the past, it follows that such preferential programs cannot be justified on the basis of compensatory justice.80 In short, affirmative action programs are unfair because the beneficiaries of affirmative action are not the same individuals who were injured by past discrimination, and the people who must pay for their injuries are usually not the ones who inflicted those injuries.81

Various authors have tried to counter this objection to the “affirmative action as compensation” argument by claiming that actually *every* Black person (or every woman) living today has been injured by discrimination and that *every* White person (or every male) has benefited from those injuries. For example, Judith Jarvis Thomson wrote:

But it is absurd to suppose that the young blacks and women now of an age to apply for jobs have not been wronged. … Even young blacks and women have lived through downgrading for being black or female. … And even those who were not themselves downgraded for being black or female have suffered the consequences of the downgrading of other blacks and women: lack of self-confidence and lack of self-respect.82

Martin Redish wrote:

It might also be argued that, whether or not the [White males] of this country have themselves participated in acts of discrimination, they have been the beneficiaries—conscious or unconscious—of a fundamentally racist society. They thus may be held independently “liable” to suppressed minorities for a form of unjust enrichment.83

It is unclear whether these arguments succeed in justifying affirmative action programs that benefit groups (all Blacks and all women) instead of specific injured individuals and that penalize groups (White males) instead of specific wrongdoers.84 Has every minority and woman really been injured, as Thomson claims, and are all White males really beneficiaries of discrimination as Redish implies? Even if a White male happens (through no fault of his own) to benefit from someone else’s injury, does this make him “liable” for that injury?

**Affirmative Action as an Instrument for Achieving Utilitarian Goals and Equal Justice**

A second set of justifications advanced in support of affirmative action programs is based on the idea that these programs are morally legitimate instruments for achieving morally legitimate ends. For example, utilitarians have claimed that affirmative action programs are justified because they promote the public welfare.85 They have argued that past discrimination has produced a high degree of correlation between race and poverty.86 As racial minorities were systematically excluded from better-paying and more prestigious jobs, their members have become impoverished. The kinds of statistics cited earlier in this chapter provide evidence of this inequality. Impoverishment in turn has led to unmet needs, lack of self-respect, resentment, social discontent, and crime. Therefore, the public welfare is promoted if the position of these impoverished persons is improved by giving them special educational and employment opportunities. If opponents object that such affirmative action programs are unjust because they distribute benefits on the basis of an irrelevant criterion such as race, the utilitarian can answer that *need*, not race, is the criterion by which affirmative action programs distribute benefits. Race provides an inexpensive *indicator* of need because past discrimination has created a high correlation between race and need. Need, of course, is a just criterion of distribution.87 Appealing to the reduction of need is consistent with utilitarian principles because reducing need will increase total utility.

***Quick Review 7.7***

**Utilitarian Argument for Affirmative Action**

• Claims affirmative action reduces need and so increases utility

• Criticized on grounds that costs outweigh benefits and that other ways of reducing need will produce greater utility

The major difficulties encountered by these utilitarian justifications of affirmative action have concerned, first, the question of whether the social costs of affirmative action programs (such as the frustrations felt by White males) outweigh their obvious benefits.88 The utilitarian defender of affirmative action, of course, will reply that the benefits far outweigh the costs. Second, and more important, opponents of these utilitarian justifications of affirmative action have questioned the assumption that race is an appropriate indicator of need. It may be inconvenient and expensive to identify the needy directly, critics argue, but the costs might be small compared to the gains that would result from having a more accurate way to identify the needy.89 Utilitarians answer this criticism by arguing that all minorities (and women) have been impoverished and psychologically harmed by past discrimination. Consequently, race (and sex) provide accurate indicators of need.

Although utilitarian arguments in favor of affirmative action programs are quite convincing, the most elaborate and persuasive array of arguments advanced in support of affirmative action have proceeded in two steps. First, they argue that the end envisioned by affirmative action programs is equal justice. Second, they argue that affirmative action programs are morally legitimate means for achieving this end.

***Quick Review 7.8***

**Equal Justice Argument for Affirmative Action**

• Claims affirmative action will secure equal opportunity

• Claims affirmative action is a morally legitimate means

The end that affirmative action programs are supposed to achieve is phrased in various ways. In our present society, it is argued, jobs are not distributed justly because they are not distributed according to the relevant criteria of ability, effort, contribution, or need.90 Statistics show that jobs are in fact still distributed according to race and sex. One end of affirmative action is to bring about a distribution of society’s benefits and burdens that is consistent with the principles of distributive justice and that eliminates the important position race and sex currently have in the assignment of jobs.91 In our present society, women and minorities do not have the equal opportunities that White males have and that justice demands. Statistics prove this. This lack of equal opportunity is because of subtle racist and sexist attitudes that bias the judgments of those (usually White males) who evaluate job applicants and that are so deeply entrenched that they are virtually ineradicable by good-faith measures in any reasonable period of time.92 A second end of affirmative action programs is to neutralize such conscious and unconscious bias to ensure equal opportunity to women and minorities. The lack of equal opportunity under which women and minorities currently labor has also been attributed to the privations they suffered as children. Economic privation hindered minorities from acquiring the skills, experience, training, and education they needed to compete equally with White males.93 Furthermore, because women and minorities have not been represented in society’s prestigious positions, young men and women have had no role models to motivate them to compete for such positions as young White males have. Few Black youths, for example, are motivated to enter the legal profession:

Negro youth in the north, as well as the south, have been denied an inspiring image of the Negro lawyer, at least until recent years. On the contrary, they have been made sharply aware of the lack of respect and dignity accorded the Negro lawyer … Negro youth also know in what lack of regard the Negro, if employed in law enforcement at all, is held. … Such knowledge does little to inspire Negroes to do anything but avoid involvement with the law whatever its form.94

A third end of affirmative action programs is to neutralize these competitive disadvantages with which women and minorities are currently burdened when they compete with White males and thereby bring women and minorities to the same starting point in their competitive race with others. The aim is to ensure an equal ability to compete with White males.95

The basic end that affirmative action programs seek is a more just society—a society in which an individual’s opportunities are not limited by race or sex. This goal is morally legitimate insofar as it is morally legitimate to strive for a society with greater equality of opportunity. The means by which affirmative action programs attempt to achieve a just society is giving qualified minorities and females preference over qualified White males in hiring and promotion and instituting special training programs for minorities and females that will qualify them for better jobs. By these means, it is hoped, the more just society outlined will eventually be born. Without some form of affirmative action, it is argued, this end could not be achieved.96 But is preferential treatment a morally legitimate means for attaining this end? Three reasons have been advanced to show that it is not.

First, it is often claimed that affirmative action programs “discriminate” against White males.97 Supporters of affirmative action programs, however, have pointed out that there are crucial differences between the treatment accorded to Whites by preferential treatment programs and immoral discriminatory behavior.98 To discriminate, as we indicated earlier, is to make an adverse decision against the member of a group because members of that group are considered inferior or less worthy of respect. Preferential treatment programs, however, are not based on invidious contempt for White males. On the contrary, they are based on the judgment that White males are currently in an advantaged position and that others should have an equal opportunity to achieve the same advantages. Moreover, racist or sexist discrimination is aimed at destroying equal opportunity. Preferential treatment programs are aimed at restoring equal opportunity where it is absent. Thus, preferential treatment programs cannot accurately be described as “discriminatory” in the same immoral sense that racist or sexist behavior is discriminatory.

Second, it is sometimes claimed that preferential treatment violates the principle of equality (“Individuals who are equal in all respects relevant to the kind of treatment in question should be treated equally”) by allowing a nonrelevant characteristic (race and sex) to determine employment decisions.99 Defenders of affirmative action programs have replied that sexual and racial differences are now relevant to making employment decisions. These differences are relevant because when society distributes a scarce resource (such as jobs), it may legitimately choose to allocate it to those groups that will best advance its legitimate ends. In our present society, allocating scarce jobs to women and minorities will best achieve equality of opportunity, thus race and sex are now relevant characteristics to use for this purpose. Moreover, as we have seen, the reason that we hold that jobs should be allocated on the basis of job-related qualifications is that such an allocation will achieve a socially desirable (utilitarian) end: maximum productivity. When this end (productivity) conflicts with another socially desirable end (a just society), it is legitimate to pursue the second end even if doing so means that the first end will not be as fully achieved.

Third, some critics have objected that affirmative action programs actually harm women and minorities because such programs imply that women and minorities are so inferior to White males that they need special help to compete.100 This attribution of inferiority, critics claim, is debilitating to minorities and women and ultimately inflicts harms that are so great they far outweigh the benefits provided by such programs. In a widely read and much-acclaimed book, for example, the Black author Shelby Steele criticized affirmative action programs in business and education:

[I]n theory, affirmative action certainly has all the moral symmetry that fairness requires—the injustice of historical and even contemporary White advantage is offset with black advantage; preference replaces prejudice, inclusion answers exclusion. It is reformist and corrective, even repentant and redemptive. … But after twenty years of implementation, I think affirmative action has shown itself to be more bad than good and that blacks … now stand to lose more from it than they gain. … I think that one of the most troubling effects of racial preferences for blacks is a kind of demoralization, or put another way, an enlargement of self-doubt. Under affirmative action the quality that earns us preferential treatment is an implied inferiority. However, this inferiority is explained—and it is easily enough explained by the myriad deprivations that grew out of our oppression—it is still inferiority.... Even when the black sees no implication of inferiority in racial preferences, he knows that Whites do, so that—consciously or unconsciously—the result is virtually the same. The effect of preferential treatment—the lowering of normal standards to increase black representation—puts blacks at war with an expanded realm of debilitating doubt, so that the doubt itself becomes an unrecognized preoccupation that undermines their ability to perform, especially in integrated situations.101

Steele’s eloquently expressed view is one that many other minorities have come to hold.102

***Quick Review 7.9***

**Arguments Made Against Equal Justice Argument for Affirmative Action**

• Affirmative action programs “discriminate” against White men

• Preferential treatment violates the principle of equality

• Affirmative action programs harm women and minorities

This third objection to affirmative action programs has been met in several ways. First, although many minorities concede that affirmative action carries some costs for minorities, they also hold that the benefits of such programs still outweigh the costs. For example, a Black worker who won several jobs through affirmative action is reported as saying, “I had to deal with the grief it brought, but it was well worth it.”103

Second, proponents of affirmative action programs also argue that these programs are based not on an assumption of minority or female inferiority, but on a recognition of the fact that White males, consciously or unconsciously, will bias their decisions in favor of other White males. The only remedy for this, they argue, is some kind of affirmative action program that will force White males to counter this bias by requiring them to accept that proportion of minority applicants that research shows are qualified and willing to work. As studies repeatedly show, even when women and minorities are more qualified, White males are still granted higher salaries and positions by their White male counterparts. Moreover, they claim, the unjustified attributions of inferiority that many minorities experience are the result of lingering racism on the part of coworkers and employees, and such racism is precisely what affirmative action programs are meant to eradicate.

A third response that supporters of affirmative action make is that although a portion of minorities may be made to feel inferior by current affirmative action programs, nevertheless many more minorities were made to feel much more devastatingly inferior by the overt and covert racism that affirmative action is gradually eroding. The overt and covert racism that pervaded the workplace prior to the implementation of affirmative action programs systematically disadvantaged, shamed, and undermined the self-esteem of all minorities to a much higher degree than is currently the case.

Finally, proponents argue that it is simply false that showing preference toward a group makes members of that group feel inferior: For centuries, White males have been the beneficiaries of racial and sexual discrimination without apparent loss of their self-esteem. If minority beneficiaries of affirmative action programs are made to feel inferior, it is because of lingering racism, not because of the preference extended to them and their fellows.

Strong arguments can be made in support of affirmative action programs, and strong objections can be lodged against them. Because there are such powerful arguments on both sides of the issue, the debate over the legitimacy of affirmative action programs continues to rage without resolution. However, the review of the arguments seems to suggest that affirmative action programs are at least a morally permissible means for achieving just ends, even if they may not show that they are a morally required means for achieving those ends.

**Implementing Affirmative Action and Managing Diversity**

Opponents of affirmative action programs have argued that other criteria besides race and sex have to be weighed when making job decisions in an affirmative action program. First, if sex and race are the only criteria used, this will result in the hiring of unqualified personnel and a consequent decline in productivity.104 Second, many jobs have significant impacts on the lives of others. Consequently, if a job has significant impact on, say, the safety of others (such as the job of flight controller or surgeon), then criteria other than race or sex should have a prominent place and should override affirmative action.105 Third, opponents have argued that affirmative action programs, if continued, will turn us into a more racially and sexually conscious nation.106 Consequently, the programs should cease as soon as the defects they are meant to remedy are corrected.

The following guidelines have been suggested as a way to fold these sorts of considerations into an affirmative action program when minorities are underrepresented in a firm:107

1. Both minorities and nonminorities should be hired or promoted only if they reach certain minimum levels of competency or are capable of reaching such levels in a reasonable time.

2. If the qualifications of the minority candidate are only slightly less (or equal to or higher) than those of the nonminority, then the minority should be given preference.

3. If both the minority and nonminority candidates are adequately qualified for a position but the nonminority candidate is much more qualified, then:

a. if performance in the job directly affects the lives and safety of people (such as a surgeon or an airline pilot) or if performance on the job has a substantial and critical effect on the entire firm’s efficiency (such as head comptroller), then the more qualified nonminority should be given preference; but

b. if the position (like most positions in a firm) does not directly involve safety factors and does not have a substantial and highly critical effect on a firm’s efficiency, then the minority person should be given preference.

4. Preference should be extended to minority candidates only so long as their representation throughout the various levels of the firm is not proportional to their availability.

The success or failure of an affirmative action program also depends in part on the accommodations a company makes to the special needs of a racially and sexually diverse workforce. Both women and minorities encounter special workplace problems, and companies need to devise innovative means for addressing these needs. The major problems faced by women relate to the fact that a large number of married couples have children, and it is women who physically bear children and who in our culture carry most of the burden of raising and caring for them. Some people have suggested that companies respond by creating two career tracks for women: one track for women who indicate that they plan to have and actively participate in raising their own children while pursuing their careers, and the other track for women who either plan not to have children or plan to have others (husbands or child-care providers) raise their children while they devote themselves to pursuing their careers by putting in extra hours, making sacrifices in their personal lives, traveling, transferring, and relocating to advance their careers, and taking every opportunity for professional development.108

This approach, however, has been criticized as unjust because it may force women, unlike men, to choose between their careers and their families, and it may result in a lower status cohort of *mommies* who are discriminated against in favor of a high-status cohort of *career females*. Others have suggested that so long as our culture continues to put child-care tasks primarily on women, companies should help women by providing more generous family leave policies (IBM provides up to 8 weeks of paid maternity leave, up to an additional year of unpaid leave for a new parent with the option of part-time work during that year and a guarantee of their jobs when they return, and pays a portion of the employee’s adoption expenses); more flexible work schedules (allowing parents to schedule their arrival and departure times to fit the needs of their children’s schedules or work four 10-hour days in a week instead of five 8-hour days, allowing mothers of school-age children to work full-time during the school year and either rely on temporary replacements during vacations or allow mothers to only work part-time); sick leave for parents whose children are sick (or for nonparents who have special needs); special job arrangements for parents (letting new parents spend several years working part-time while their children are growing up and guaranteeing their jobs when they return, or letting two parents share the same job); and child-care support (setting up a child-care facility at or near the workplace, reimbursing employees for child-care expenses, setting up a child-care referral service, providing special day-care personnel who can care for employees’ sick children, or providing an onsite clinic that can care for sick children while parents work).109

The special needs of minorities differ from those of women. Minorities are much more economically and educationally disadvantaged than nonminorities, with fewer work skills, fewer years of formal education, poor-quality educations, and poor or nonexistent English language skills. To meet their needs, companies have to begin providing on-the-job education in work skills, basic reading, writing, and computational skills, and English language skills. Newark, New Jersey’s Prudential Insurance, for example, provides computer-assisted training in reading and math for entry-level applicants. Northeast Utilities in Hartford, Connecticut, provides 5 weeks of training in vocational skills and English language skills for its Hispanic recruits. Amtek Systems in Arlington, Virginia, provides similar programs for Asians. Minorities often have cultural values and beliefs that can give rise to misunderstandings, conflicts, and poor work performance. To deal with this issue, companies have to train their managers to manage a culturally diverse workforce by educating them on those minority cultures represented in their workforce and helping managers learn to become more aware of, to listen to, communicate with, and understand people from diverse backgrounds.110

The controversy over the moral propriety of affirmative action programs has not yet died. The Supreme Court has ruled that such programs do not violate the Civil Rights Act of 1964. It does not follow that these programs do not violate any moral principles. If the arguments examined are correct, however, then affirmative action programs are at least consistent with moral principles. However, the arguments continue to be the subject of intense debate.

**Comparable Pay for Jobs of Comparable Worth**

During the 1990s, some groups advanced a proposal to deal with sexual discrimination that is much more radical and far-reaching than affirmative action programs. Affirmative action programs attempt to increase the proportions of women in positions where they are underrepresented, but they leave untouched the wages and salaries that attach to the positions women already tend to hold. That is, affirmative action programs do not address the problem posed by the fact that jobs women historically have filled tend to pay low wages and salaries and merely ensure that more women are hired into those jobs with higher wages and salaries. In contrast to this, the new so-called ***comparable worth programs*** that many groups have advocated to deal with sexually biased earnings attempt to alter the low wages and salaries that market mechanisms tend to assign to jobs held by women. Unlike affirmative action programs, a comparable worth program does not attempt to place more women into those positions that have higher salaries. Instead, it attempts to place higher salaries on those positions that most women already hold.

**comparable worth program** A program designed to ensure that jobs of equal value to an organization are paid the same salary regardless of whether external labor markets pay the same rates for those jobs.

Comparable worth programs proceed by measuring the value of each job to an organization (in terms of skill requirements, educational requirements, tasks involved, level of responsibility, and any other features of the job that the employer thinks deserve compensation) and ensuring that jobs of equal value are paid the same salary regardless of whether external labor markets pay the same rates for those jobs.111 For example, studies have shown that legal secretaries and instrument repair technicians hold jobs that have the same relative value for a firm in terms of problem solving, know-how, and accountability.112 Nevertheless, legal secretaries, who are virtually all female, command $9,432 less on the job market than instrument repair technicians, who are predominantly male. A comparable worth program in a firm would adjust the salaries of these two occupations so that they are paid approximately the same.

Thus, in a comparable worth program, each job is assigned a certain number of points for difficulty, skill requirements, experience, accountability, work hazards, knowledge requirements, responsibility, working conditions, and any other factors that are deemed worthy of compensation. Jobs are then assumed to deserve equal pay if they score equal points and higher (or lower) pay if they have higher (or lower) scores. Job market considerations are used to determine the actual salary to be paid for jobs with a given number of points. However, when jobs have the same scores, they are paid the same salaries. For example, because the job market pays instrument repair technicians $9,432 more than legal secretaries (although these jobs have approximately equal values), a comparable pay program might raise the salaries of the secretaries by $9,432 or perhaps lower the salaries of technicians by the same amount, or it might raise the salaries of secretaries by half that amount and lower that of technicians by the same amount. Thus, job market considerations play a small role in setting comparable worth salaries, but they do not determine the salary of one job relative to another.

***Quick Review 7.10***

**Comparable Worth Programs**

• Equalize pay for jobs requiring equal responsibilities and equal skills and of equal value to an organization.

• Based on idea that equals should be treated as equals

The fundamental argument in favor of comparable worth programs is one based on justice: Justice requires that equals should be treated as equals.113 Proponents of comparable worth programs argue that, at present, jobs filled by women are paid less by job markets than jobs filled by men even when the jobs involve equal responsibilities and require equal abilities. Once jobs are objectively evaluated, they claim, it is clear that many women’s jobs are equivalent to men’s jobs and, in justice, should be paid the same even if discriminatory job markets place them on different wage scales. That certain jobs involve equal responsibilities and abilities is evident, proponents claim, from an examination of the jobs.

The main arguments against comparable worth programs focus on the appropriateness of markets as determinants of salaries.114 Opponents of comparable worth argue that there is no “objective” way to evaluate whether one job is “equivalent” to another than by appealing to labor markets that register the combined evaluations of hundreds of buyers and sellers.115 Only the market forces of supply and demand can determine the “true” worth of a job, and only market forces can achieve an approximate capitalist justice by ensuring that each laborer receives a price for labor that exactly equals the value both the laborer and the buyer place on it. Assigning salaries by assigning “points” to a job is much more arbitrary and less objective than doing so by relying on market forces. Moreover, opponents argue, if the job market pays those who enter a certain occupation a low salary, this is because there is a large supply of workers who want that occupation relative to the demand for that occupation. So-called *women’s jobs* have low salaries because there are too many women bidding for those jobs and they thereby drive those salaries down. The solution is not to distort markets by assigning higher “comparable worth” salaries for jobs that are already overcrowded. It is much better to allow the low salaries to stand so they can channel women into other areas of the economy where supply is lower as indicated by the existence of higher salaries. Finally, opponents say, the higher-paying “male jobs” are as open to women as to men. If women choose to enter the lower-paying jobs instead of the higher-paying ones, this is because they derive some utility from (i.e., get some benefits from) the lower-paying jobs that they do not get from the higher-paying ones: Perhaps the lower-paying jobs are “cleaner,” more personally rewarding, or less arduous. Thus, women do receive some compensation from the jobs they continue to select even though this might not be in the form of a salary.

Defenders of comparable worth programs answer these criticisms by replying that job markets are not “objective.” Women’s jobs are paid less, proponents claim, because current job markets are discriminatory: They arbitrarily assign lower salaries to “women’s” jobs precisely because they are filled by women. As proof that job markets assign lower salaries to some jobs precisely because they are filled with women, proponents of comparable worth programs point to figures that show there is a consistent relationship between the percentage of women in an occupation and that occupation’s salary: The more an occupation is dominated by women, the less it pays. A pattern this consistent indicates that the low wages of women’s jobs are not a matter of chance overcrowding of women into this or that occupation. Instead, it is an indication that women are consistently perceived by those in the labor markets as being less capable, skilled, or committed than men. Because of these subjective and discriminatory biases, buyers in job markets systematically underprice the talents of women. As a result, job markets undervalue the jobs women take. Consequently, job markets are not adequate indicators of appropriate wage scales for women’s jobs.

Like affirmative action, comparable worth continues to be a highly controversial issue.

**Conclusions**

Earlier sections examined several future trends that will affect the future status of women and minorities in the workforce. Of particular significance is the fact that only a small proportion of new workers will be White males. Most new workers will be women and minorities. Unless major changes are made to accommodate their needs and special characteristics, they will not be incorporated smoothly into the workplace.

We have reviewed a number of programs that provide special assistance to women and minorities on moral grounds. However, it should be clear, in view of the future demographic trends, that enlightened self-interest should also prompt business to give women and minorities a special hand. The costs of not assisting the coming influx of women and minorities with their special needs will not be borne entirely by women and minorities. Unfortunately, if businesses do not accommodate themselves to these new workers, American businesses will not be able to find the workers they need and they will suffer recurrent and crippling shortages over the next decade. The pool of traditional White male workers simply will be so small that businesses will not be able to rely on them to fill all their requirements for skilled and managerial positions.

Many businesses, aware of these trends, have undertaken programs to prepare themselves now to respond to the special needs of women and minorities. To respond to women’s needs, for example, many companies have instituted day-care services and flexible working hours that allow women with children to care for their children’s needs. Other companies have instituted aggressive affirmative action programs aimed at integrating large groups of minorities into their firms where they are provided with education, job training, skills, counseling, and other assistance designed to enable them to assimilate into the workforce. The belief of such companies is that if they act now to recruit women and minorities, they will be familiar with their special needs and will have a large cadre of women and minorities capable of bringing other women and minorities along. James R. Houghton, chairman of Corning Glass Works, is quoted as saying:

Valuing and managing a diverse work force is more than ethically and morally correct. It’s also a business necessity. Work force demographics for the next decade make it absolutely clear that companies which fail to do an excellent job of recruiting, retaining, developing and promoting women and minorities simply will be unable to meet their staffing needs.116

**Questions for Review and Discussion**

1. Define the following concepts: job discrimination, institutionalized/isolated discrimination, intentional/nonintentional discrimination, statistical indicators of discrimination, utilitarian argument against discrimination, Kantian arguments against discrimination, formal principle of “equality,” discriminatory practices, affirmative action program, utilization analysis, “reverse discrimination,” compensation argument for preferential treatment, instrumental argument for preferential treatment, utilitarian argument for preferential treatment, the end goals of affirmative action programs, invidious contempt, comparable pay.

2. In your judgment, was the historical shift in emphasis from intentional/isolated discrimination to nonintentional/institutionalized discrimination good or bad? Justify your judgment.

3. Research your library or the Internet (e.g., the Census Bureau puts its statistics on the World Wide Web at *http://www.census.gov*) for statistics published during the last year that tend to support or refute the statistical picture of racism and sexism developed in Section 7.2 of the text. In view of your research and the materials in the text, do you agree or disagree with the statement, “There is no longer evidence that discrimination is widely practiced in the United States”? Explain your position fully.

4. Compare and contrast the three main kinds of arguments against racial and sexual job discrimination. Which of these seem to you to be the strongest? The weakest? Can you think of different kinds of arguments not discussed in the text? Are there important differences between racial discrimination and sexual discrimination?

5. Compare and contrast the main arguments used to support affirmative action programs. Do you agree or disagree with these arguments? If you disagree with an argument, state clearly which part of the argument you think is wrong, and explain why it is wrong. (It is not enough to say, “I just don’t think it is right.”)

6. “If employers only want to hire the best-qualified young White males, then they have a right to do so without interference, because these are their businesses.” Comment on this statement.

**Web Resources**

Readers interested in researching the topic of discrimination might want to begin by accessing the web page of the U.S. Census Bureau for current detailed statistics on income, earnings, poverty, and other topics (*http://www.census.gov*) or the Bureau of Labor Statistics (*http://www.bls.gov*) or the Equal Employment Opportunity Commission (*http://www.eeoc.gov*). The legal aspects of discrimination can be researched by searching the civil rights section of Hieros Gamos website (*http://www.hg.org/civilrgt.html*) or the American Bar Association (*http://www.abanet.org/home.cfm*). Patrick McCarthy’s Review of Court Decisions on Workplace Discrimination provides useful summaries and links to key Supreme Court cases on job discrimination (*http://www.mtsu.edu/~pmccarth/eeocourt.htm*); EEO News provides ongoing summaries and links to key stories on discrimination cases and developments (*http://www.eeonews.com*); the Oyez directory on civil rights and discrimination provides useful summaries and links on current and previous Supreme Court cases on discrimination (*http://www.oyez.org/oyez/portlet/directory/200/222*).

(Velasquez. *Business Ethics, 6th Edition*. Pearson Learning Solutions pp. 304 - 341).

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