There is an increasing wave of concern that preferential treatment of minorities is 'discrimination in reverse.' Yet there is also reason to question whether equality can be achieved without it. By Harold Fleming.

The 'Affirmative Action' Debate:

In the view of the Constitution, in the eye of the law, there is in this country no superior, dominant ruling class of citizens. There is no caste system here. Our Constitution is color-blind, and neither knows nor tolerates classes among its citizens.

So wrote U.S. Supreme Court Justice John Marshall Harlan in his famous dissent from the Court's majority decision of 1896 that enshrined the "separate but equal" doctrine as the law of the land. Harlan's was a courageous and farsighted stand—so farsighted, in fact, that it remained a minority one until 1954, when the Supreme Court finally held that segregation violated the 14th Amendment to the Constitution. At the time of that decision, it was commonly assumed that the ethical principle undergirding equal treatment was legally established once and for all. What remained, it seemed, was the arduous but morally uncomplicated job of putting the principle into practice throughout the society.

In retrospect, however, this view seems innocent indeed. One can only wonder where John Harlan would stand today amid the controversies that are boiling up about "affirmative action," "preferential treatment," "benign quotas," and "racial balance." Color blindness vs. color consciousness is still the subject of the debate, but the terms of reference are reversed. The issues are whether the federal government should suspend payment of funds to a university because it refuses to conduct a racial census of its faculty, whether school systems may justifiably hire or retain nonwhites while laying off or suspending the employment of whites, whether government agencies can properly require racial identification of applicants for grants or other benefits—in each case, the declared objective being greater equity for disadvantaged minorities.

The very fact that such issues can be argued seriously is testimony to the volatility of our society. Affirmative action as a governmental concept is scarcely more than a decade old. It dates back to President Kennedy's Executive Order of 1961 requiring government contractors to practice equal employment opportunity. The thought that blacks or similarly disadvantaged minorities might be seen as favored at the expense of whites would have been laughable then. But today that charge is seriously made, at least in selected situations.

Those who are most articulate on the negative side of this debate are not the traditional defenders of segregation and the racial status quo. On the contrary, they include professors and educational administrators, representatives of white-collar unions and professional associations, spokesmen for various Jewish agencies, and assorted intellectuals—in short, the kind of individuals customarily identified with egalitarian values. This suggests, quite correctly, that there are issues here that should not be lightly brushed aside as the progeny of racism.

The case of the latter-day advocates of color blindness is essentially a meritocratic one: Solely individual ability and achievement, they argue, not group identity, must determine who receives what rewards in the society. They decry discrimination on grounds of race, creed, class, sex, religion, or ethnic origin. They recognize that past discriminations have resulted in existing inequities and imbalances that should be rectified. They maintain, however, that past injustices must not be remedied at the expense of individuals who happen to belong to favored (or less unfavored) groups. Hence it is acceptable, even obligatory, to provide extra education and training for one who has been denied such opportunities in the past because of group identity. But it is improper and unjust to give preference at the point of selection to such an individ-

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ual over a better qualified person from a more advantaged background.

Taking the dimensions of the problem is a difficult matter. As in the case of school busing, one hears a great deal about injustice and hardship inflicted on innocent individuals, but solid evidence in support of the complaint is exceedingly scarce. How many whites in what situations have in fact suffered from "discrimination in reverse"? Conversely, how many blacks have benefited from preferential treatment? How many institutions of higher learning have had their federal funds cut off because they refused to give statistical evidence of affirmative action? How many government contractors have been terminated or debarred for failure to give favored treatment to minority workers?

The likely answer to all of these questions is, Very few. Yet there have been enough instances of alleged discrimination in reverse, at least proposed if not actually carried out, to convince some commentators that the basic principle of equal treatment is in jeopardy. A recent article in Commentary magazine by Earl Raab describes in indignant detail a proposed plan of the San Francisco school board to "deselect" a number of administrators, but to exempt racial minorities from the process. (Raab's indignation was less telling than it might have been if the school board had not abandoned the plan in the face of severe criticism.)

In a similar though more polemical vein, political scientist Paul Seabury has denounced the policies and practices of "gimlet-eyed" HEW bureaucrats who demand that universities, as a condition of obtaining or retaining their federal contracts, establish hiring goals based on race and sex. Sociologist Nathan Glazer has also sounded a restrained but gloomy warning against the excesses of "specialists" who would lead us toward an ascriptive society that distributes benefits on the basis of group identity rather than personal achievement.

The essential thesis of these and like-minded essays has been crisply summarized by Benjamin R. Epstein, national director of the Anti-Defamation League of B'nai B'rith. Writing in the ADL Bulletin, he observes:

"Equal opportunity, justice, and fair treatment remain our goals—for Jews and for all other Americans. But the criterion of individual merit remains our creed and so we cannot be silent as we hear growing calls for preferential treatment and racial quotas, which we view as discrimination in reverse. It is precisely because we believe it is discriminatory to bar a man because of his religion, race, or national origin that we believe it is also discriminatory to select a man solely for those reasons.

"Yet there is example after example of the concept of affirmative action programs to end discrimination being turned into programs of racial quotas or preferential treatment. . . .

"The way to break the long habit of discrimination lies not in a revival of quota systems, this time issued under the false banner of 'equal opportunity,' but in providing real opportunity to compete equally through improved schools, special training, expansion of free higher education for the qualified but economically deprived, and the abolishment of discriminatory practices."

It should be pointed out in passing that the prominence of Jewish spokesmen in this debate is easily understood. In New York City, for example, Jews are heavily concentrated in the teaching profession—not from any monopolistic motives, but because in earlier years that profession was open to them when others were not. Black pressure for "community control" and a larger share of teaching and administrative positions has led to confrontations that awaken strong group feelings. Controversy over the location and scale of scatter-site housing, as in Forest Hills, N.Y., has exacerbated such feelings. It must be kept in mind, moreover, that all of this is occurring at a time of

shrinking rather than expanding job opportunities.

One's view of the arguments cited above depends heavily on what one takes to be the proper definition of "affirmative action." A U.S. Labor Department directive says: "An affirmative-action program is a set of specific and result-oriented procedures to which a contractor commits himself to apply every good-faith effort. . . . Procedures without effort to make them work are meaningless; and effort, undirected by specific and meaningful procedures, is inadequate."

In terms of recruitment, this means that an employer must actively and systematically seek to attract minority-group applicants. Such an effort is essential, not in order to favor one group over others, but in order to change a long-established pattern of discrimination to an egalitarian one. For generations, blacks were excluded from employment and higher education not only by outright discrimination, but by such indirect methods as word-of-mouth recruitment, announcements directed to a mainly white public, "culturally biased" testing, and a variety of signals intended to discourage black applicants or would-be applicants. This pattern can be changed only by a conscious effort to reverse the methods and their inequitable results until such time as the historical imbalance is redressed.

Seeking applicants is one thing; choosing among them is quite another. To select a nonwhite applicant over a better qualified white, it is argued, is as odious a form of discrimination as the reverse. But an insistence on pure meritocracy overlooks some important realities. For one thing, it assumes that there are precise methods of measuring and comparing the qualifications of applicants. As every experienced employer or admissions officer knows, this is not the case. In practice, the employer who is free to do so takes into account not only "objective" test results, but many intangible factors as well—his perception of the applicant's character, personality, motivation, family circumstances, ability to work harmoniously with others, and so on. In general, these factors have worked to the disadvantage of nonwhites, since the white selectors have tended to prefer the applicants who most resembled themselves in appearance, dress, speech, family, and community background. We have also come to realize that employment tests are not the impartial instruments they once were thought to be. Most of them still put an unwarranted emphasis on verbal facility, at the expense of other aptitudes and skills that undereducated nonwhites are more likely to have.

Under these circumstances, it is simplistic to argue that the applicants can be put into some indisputable rank order of qualification. In most cases, there is room for much legitimate flexibility of judgment in choosing among a group of applicants, all of whom may justifiably be regarded as "qualified." If an employer or admissions officer uses that flexibility to help remedy racial imbalance resulting from past exclusion, he is not necessarily guilty of discrimination in reverse. On the contrary, it can be strongly argued that he is fulfilling an ethical obligation to reexamine and modify selection criteria that are racist in effect, if not in intent.

The strictly meritocratic position also neglects the question of social benefit. A society such as ours aspires to be is in grave danger if a large part of its population is denied social and economic mobility. Rigid adherence to traditional standards of credentialing and formal testing will inevitably perpetuate that kind of stagnation of the have-nots.

Many years ago, the most prestigious Eastern universities recognized that the regional differentials in secondary education were such that few Southerners or other "provincials" could be expected to make it through their admissions screen. Consequently, they waived college-board examinations for the non-Easterners, substituting instead the criterion of the applicant's high school performance—a straightforward example of "preferential treatment" that no one was heard to complain of.

At that time, when the beneficiaries were overwhelmingly white, such affirmative efforts to achieve a pluralistic result were considered laudably democratic. The important point is that these universities recognized the value to themselves as institutions and to their students of pluralistic rather than elitist student bodies. And since education at one of the prestigious universities has a decidedly favorable influence on later career advancement, these institutions may be said to have had a "democratizing" effect on business and professional leadership and thus to have benefited the society as a whole. The importance of including racial minorities in this process would seem to justify a similarly affirmative approach.

Many persons who will go along with informal departures from standard selection criteria balk at the setting of numerical goals, which they regard as nothing more nor less than quotas. Can one, in fact, distinguish between a goal to be striven for and a quota that is an absolute requirement? The federal government, which requires "goals and timetables" in several of its equal opportunity programs, insists that there is such a

distinction and that it must be observed. The guidelines of the Office of Federal Contract Compliance declare that goals "may not be rigid and inflexible quotas that must be met." The line is a fine one and, in more than one instance, has been overstepped. Yet the fact that a policy is sometimes abused does not discredit the policy itself. Nor do such abuses as have occurred appear to justify the degree of alarm expressed in some quarters. The injured parties in such cases are far better equipped than blacks have been to get redress—through access to public opinion, administrative review, or, if need be, litigation.

The central question is not whether the goal-setting requirement is sometimes misapplied, but whether the requirement itself is necessary and defensible. Even a cursory review of the history of equal opportunity programs demonstrates that it is. Experience with nondiscrimination laws, state and federal, has invariably shown that little or nothing happens so long as the employer or institution is not held accountable for measurable results. The federal contract compliance program, for example, yielded more protestations of good faith than black employees until goals and timetables were introduced. Similarly, school desegregation in the South was mainly an exercise in tokenism until target figures were established for black pupils and faculty members. The old plaint, "We've tried but we just can't find any who are qualified," tends to prevail unless some specific standard of achievement is applied.

It follows from this that an effective equal opportunity program must include some method of measuring results. If the object is to achieve greater utilization of minority manpower and talent, how is progress to be judged without feedback on the effects of the effort? It is this logic that has led the federal government (and in a few cases state and local governments) to require racial censuses of public employees, of college faculty and administrative personnel, and of employees of government contractors.

The collection of racial and ethnic data rankles administrators and defenders of the meritocratic viewpoint. Many university officials and teachers see it as an intrusion on sacrosanct processes of professional selection and advancement, as well as on personnel records that are regarded as inviolate in academe. Many employers see it as a burdensome (and often embarrassing) imposition on management. Government officials themselves tend to be reluctant to the point of recalcitrance about inflicting the chore of data-gathering on their subordinates, grantees, and contractors.

The reasons for these negative attitudes toward data collection are several. One is the conviction that such censuses are inextricably related to the violation of merit standards and the imposition of quotas, overt or covert. Another is understandable resentment of time-consuming red tape that diverts energy and attention from the primary mission of the enterprise. Yet another is the surviving fear of civil rights adherents, white and black, that racial data will, in the end, inevitably be used to perpetuate rather than end discrimination.

Each of these objections is justified to some degree. Yet, when the alternative consequences are considered, it is difficult to sustain the argument against the collection and analysis of racial data, at least at this stage of history. No business can be run successfully without the self-evaluation made possible by the balance sheet; no university can examine its educative processes if it has no idea what becomes of its graduates. By the same token, if we are serious about finding and using the methods that will create equality in practice, we must have the means to measure the relative effectiveness or ineffectiveness of our efforts. That is what racial data collection is, or should be, all about.

A more complicated question is whether it is permissible to require racial or other group identity at the applicant stage. The arguments for this practice are that it will enable the employer or other selector to take minority-group status affirmatively into account and that it will provide a basis for gauging the effects of the selection process on screening minorities in or out. The contrary case is that it will institutionalize a system of compulsory self-labeling that can be readily abused for discriminatory purposes—if not today, then tomorrow.

There is no consensus as yet on this question in civil rights circles. The memory of past discrimination against individuals required to designate their origins is still vivid; the fear of new forms of quotas also runs strongly. There are those who feel that a compromise position is possible and desirable—for example, a provision for voluntary rather than compulsory racial designation by the applicant or a procedure that will keep the racial designation carefully separate from individual identity, thus making possible a personal, statistical analysis. Given the realities, a generally accepted solution may not be possible at the moment. But there is enough middle ground to justify continuing discussion and deliberation. Circumstances sometimes change for the better rather than the worse.

The controversy in which Justice Harlan raised his prophetic voice 76 years ago seems bound to continue—as perhaps it should. Meanwhile, it is worth reflecting on a speculative version of what the good Justice might say in the context of today's debate: "Our Constitution is color-blind. But until our society translates that ideal into everyday practice, the decision-maker who is color-blind is blind to injustice."