

to regulate interstate commerce was so far-reaching that it could prohibit a farmer from growing a patch of wheat for his own bread. The limitations on the powers of the federal government suddenly seemed to evaporate.

A fourth constitution thus emerged when the Supreme Court by the end of the 1930s brushed aside the doctrine of enumerated powers, which had limited Congress by requiring reasonably clear grants of authority in the Constitution. The Court about the same time also renounced "due process" as a restriction on state or federal legislation. Then, having demolished all those barriers to regulation, the Court for the rest of the 20th century began erecting hurdles of a different kind by interpreting the Bill of Rights more expansively and reading the Fourteenth Amendment to limit the states in novel ways. It announced that the 1868 Fourteenth Amendment without saying so had stripped the states of virtually all the powers that the 1791 Bill of Rights had said were outside the charter of the federal government. It also held suddenly in 1964 that the Fourteenth Amendment had made unconstitutional all houses of state legislatures that, like the U.S. Senate, were not based on equal population. By the end of the century the Supreme Court had begun invoking "due process" again, but this time to invalidate laws it concluded unduly limited personal liberty.

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Most real political revolutions have left their lasting traces on the Constitution. The Republicans after the Civil War secured the three amendments that ultimately ended racial inequality under law, and turned out to do far more. The pre-World-War-I Progressives, while they were democratizing state governments, also switched control of the Senate to the people, gave the federal government the tax base to grow, and soon afterward helped secure the vote for women. The New Deal even brought new access to liquor while rewriting the Constitution by restaffing the Supreme Court.

The time will never be better to update a marvelous and rightly cherished document, perhaps to correct some mistakes in how it has been interpreted, but most important to readjust its balances to fit the needs of a new century. Its authors would have expected no less.●

AFFIRMATIVE ACTION

● Mr. SIMON. Mr. President, there is more and more discussion on affirmative action these days.

Most of those who question affirmative action are the same people who opposed the civil rights legislation.

But there is no question that, like any good thing, affirmative action can be abused.

I ask that an excellent Los Angeles Times editorial titled, "Glass Ceiling? It's More Like a Steel Cage" be printed in the RECORD, as well as a tongue-in-cheek column by Robert Scheer, "Who Needs Affirmative Action?" and a column that I wrote for the newspapers in Illinois discussing this subject.

The material follows:

[From the Los Angeles Times, Mar. 20, 1995]
GLASS CEILING? IT'S MORE LIKE A STEEL CAGE—BUSH PANEL FINDS LITTLE ROOM AT TOP FOR WOMEN OR NONWHITES

In the heated debate over affirmative action, some who want to abolish all such programs suggest that lots of white males are being unfairly shunted aside in favor of lots

of African Americans, Latinos, Asians and white women. However, there simply are no facts to support this. Indeed, according to a bipartisan commission appointed by then-President George Bush, the senior ranks are still populated almost exclusively by white males.

The findings by the Glass Ceiling Commission, a panel of business executives and legislators, are important and especially timely. It is expected that an initiative calling for a blanket rejection of policies that allow race, ethnicity and gender to be taken into account in hiring, promotion and college admissions will make it onto the California state ballot.

In Washington, President Clinton, mindful of the evident exodus of angry white men from the Democratic Party, for starters has ordered an evaluation of federal affirmative-action programs. That's defensible and could prove useful. But too many in Congress are rushing to jump on the anti-affirmative-action bandwagon, including Senate Majority Leader Bob Dole. Ironically, long before Dole made his presidential ambitions public, he sponsored the very bill that created the federal panel to study the situation of minority men and all women in American industry. And it is that panel, in reporting its findings last week, that turned up so little evidence of progress.

The facts are simple. White male managers dominate the senior levels at the top 1,000 U.S. industrial firms. They also dominate the top 500 business firms. In the top echelon of U.S. commerce, no less than 97% of the positions at the level of vice president and above are held by whites, the panel found. Between 95% and 97% of these senior executives are male. They have a lock on most of the top jobs, while most minority men and women and most white women struggle to crash the glass ceiling.

The commission said that one case of the paucity of promotions was the fear and prejudice of white men. Of course that is only part of the problem. More minorities and women must be given access early on to educational and social opportunities that lead to business success. But even education does not always level the playing field. Asian Americans are nearly twice as likely to hold college degrees as the general population, yet they remain much less likely to become executives and managers. Do racial stereotypes block their promotion?

Black men with professional degrees earn 79% of the pay of their white male counterparts. Black women with professional degrees earn even less; they earn, on average, only 60% of what white males do. Latinos, who are less likely to have the advanced degrees that foster advancement in companies, are "relatively invisible in corporate decision-making positions," the report says. Their visibility should increase as their qualifications and numbers increase. Latinos are also hampered by pernicious stereotypes, including the misperception that most Latino workers are foreign-born, the panel maintains.

The Glass Ceiling Commission based its findings on hard information, not unsubstantiated fears. Facts, and nothing but, should inform the intense debate over affirmative action—and the decisions that will determine how this nation can fairly handle the moral obligation of opening the doors of opportunity to all who knock.

[From the Los Angeles Times, Mar. 20, 1995]

WHO NEEDS AFFIRMATIVE ACTION?

(By Robert Scheer)

Forget affirmative action. Maybe it once was a necessary tactic but its time is clearly gone. True, there used to be slavery and segregation and women didn't have the vote but

that's all ancient history. C'mon, blacks and women have all the power now. Just look at the O.J. trial.

Try getting a decent job if you're a white man. You don't see my name on the masthead of this paper. What kind of meritocracy is this if my merit isn't rewarded the way I think it ought to be?

I'm not making this up, folks. The census stats back me up. Minorities and women now hold 5% of senior management positions, and those used to be white-guy jobs. Even among Fortune 1,000 companies, women now have 3% of the top slots, according to last week's report by the bipartisan federal Glass Ceiling Commission. So far, black men don't have any of the top jobs, but if affirmative action isn't stopped, who knows what could happen?

Don't try to paint me like some kind of racist for saying this, like I've got something against black men. Our beef is more with women than with black men, who are going nowhere fast. Even though almost 800,000 black students a year graduate from college, many of them business majors, they don't have what it takes to get to the top. Most of them still don't play golf. That's what a lot of white executives told the federal commission, which, incidentally, was created by the Bush Administration, so its results are reliable. One white manager told the truth: that, in hiring, "What's important is comfort, chemistry, relationships and collaborations." That's why black, college-educated professional men earn only 71% of their white counterparts on the bell curve: The comfort level is too low.

The real threat is from women, with whom white men have a longer history of relationships. I hesitate to bring it up because they vote and it's better to have white women believe that affirmative action is a black thing. But take what's called "middle management." Black men account for only 4% of those positions, but almost 40% of middle managers are women. Unless you marry one of them, you're out of luck, and what does that tell you about who wears the pants?

The big problem up the road is that you'll have to get along with those women, what they call networking, just to get a job. What does that say about traditional values when a man has to worry about what a woman thinks of his performance? Meritocracy, in the wrong hands, can be a killer. No wonder the federal commission concluded that "Many middle- and upper-level managers view the inclusion of minorities and women in management as a direct threat to their own chances for advancement." They'd be stupid not to.

But we don't have a chance a turning back the tide unless we eliminate the discrimination against white males in the universities. On the nine campuses of the University of California, white men were 40% of the student body in 1980, and now they're a miserable 24%, less than half the number of women. Girls were always better at the school stuff but you could count on them to drop out along the way. Another threat is the 12% who are Latino, but Proposition 187 should scare them off. Same for the Asians, who outnumber white males at UC. I know that Asians are not covered by affirmative action, but even with round-the-clock tutoring, we can't keep up with them. And none of this would have happened if the blacks hadn't stated all this. You don't see blacks endangered at UC—they went up a full two-tenths of a percent in the past 15 years, from 3.8% to 4%. They're taking over.

Don't get me wrong, I'm not against a level playing field, and I know that a lot of blacks come from disadvantaged backgrounds due to poverty. After all, census data show that almost half of black children

live in poverty, which shows that they have lost the spirit of individual responsibility. We have got to stop coddling them. The answer is to end poverty by eliminating food stamps, school lunches and infant nutrition programs that provide such an irresistible incentive for people to raise their kids in lousy neighborhoods. If poor people want a good job, they should get it the way the rest of us do. Call an uncle or a business associate of your father. Invest your inheritance. Get active in a prestigious church or a good golf club. Blacks are going to make it when they learn to act and look like everyone else.

I am for social policies that are colorblind, just as the founders of our nation were.

For me, all I want is my country back. You know what I mean: a return to traditional values where the white man is king, even if his woman has to work.

THE PROPER ROLE FOR AFFIRMATIVE ACTION

"Affirmative action" is not-so-suddenly becoming a major topic of discussion.

Affirmative action is like religion or education: A good thing, but it can be abused.

Affirmative action means opportunity and fairness. It does not mean quotas. It does not mean hiring unqualified people.

Some believe that affirmative action hurts minorities and women and those with disabilities, because when people secure jobs there will be some who say, "He (or she) only got that because of being a minority." Or a woman or being disabled. They believe that it is demeaning for people of ability.

The distinguished African American writer Shelby Steele properly suggests that we are troubled by "race fatigue" and "racial anxiety." He oppose affirmative action and wrongly—in my opinion—calls the opportunities that result "entitlements."

No one is entitled to a job or an opportunity because of race or gender or ethnic background.

I accept the idea that diversity in our society needs encouragement and is good for us.

If, for example, someone employs 500 people—and they all happen to be white males—it still may not be possible to prove discrimination. One answer for that situation is to go through the lengthy legal process of proving discrimination.

A better answer is affirmative action, where that employer understands that his business should not compromise quality, but opportunity should be given to those who don't fall into the usual personnel pattern.

Employing people on the basis of ability is just good business, and affirmative action encourages good business.

My office is an example. If I were to hire everyone from Chicago or from Southern Illinois, the people of Illinois would regard that as strange. I look for diversity in geography, and it does not compromise quality. I don't lower my standards when I choose to hire someone from central Illinois.

In the same way, I have consciously made sure that in my employ there are African Americans, Latinos, Asian Americans and people with disabilities. Anyone who knows my office operation knows that we have not compromised quality to do this.

Has this harmed the people of Illinois? To the contrary, it has helped them and it has helped me.

To move away from affirmative action, back to a situation where discrimination has to be proven to bring about change, invites clogging the courts with endless litigation, and denying opportunity to many.

A federal judge in Texas ruled that the University of Texas law school can set a general goal (not a rigid quota) of admitting 10 percent Mexican Americans and 5 percent African Americans, but if the school lowers it

standards to reach those goals, that is unconstitutional.

That strikes many legal scholars as sound. Interestingly, if that same school gives preference for admission to children of alumni—who are overwhelmingly white—no one objects to that. But if steps are taken to diversify the student body, some of the same alumni object.

Complicating all of this is the fact that many Americans are out of work. The opportunity for people of limited skills to have a job is declining, and will continue to decline.

The person in that situation rarely says, "I'm not working because I don't have the skills that are needed."

It is often easier to say, "I don't have a job because a black [or a woman or a white or someone else] got the job I should have."

And so tensions rise.

The answer is not to get rid of affirmative action, but to work on jobs programs for those of limited skills, expand education opportunities for all, and increase efforts to give training (including reading and writing) to those who are unemployed.

We should diversify opportunity, and at the same time see that everyone has the basic tools to function effectively.●

AFFIRMATIVE ACTION: AID IN DOING THE RIGHT THING

● Mr. SIMON. Mr. President, I have been inserting into the RECORD items on affirmative action from time to time because I am concerned that the distortion of affirmative action can result in loss of opportunity for many Americans.

Columnist William Raspberry had an op-ed piece in the Washington Post, and in other newspapers in which his column is circulated, on affirmative action.

It appeared during the days when Congress was in recess, and many of my colleagues may not have seen it.

It is simple common sense, and we seem to lack that so often.

I ask that the William Raspberry column be printed in the RECORD.

The column follows:

AFFIRMATIVE ACTION: AID IN DOING THE RIGHT THING

(By William Raspberry)

It was 1967, and I had just taken my new wife—a Washington native—on her first visit to my home state of Mississippi.

She had heard all the horror stories of racial mistreatment, and she was pleasantly surprised at the way white salesclerks seemed to be going out of their way to be nice. She was particularly intrigued by one middle-aged white clerk at the J.C. Penney's in Tupelo. For some reason, this woman, having learned that we were from "up north," wanted to talk—even after we'd paid for our purchases.

Just as we were about to make our final effort to leave, her face lit up. She caught the attention of a black woman across the store and beckoned her to come over.

"This," she said, introducing us, "is our new salesclerk."

I don't suppose I'll ever forget the humiliations, large and small, of growing up under the American apartheid that used to be the rule in the Deep South. But I'll also remember the pride this one white woman displayed in the fact that her boss had done the right thing. It was almost as if she herself had been somehow redeemed.

It's something I think of when I hear well-meaning people say that affirmative action

is ultimately demeaning to minorities and it would be better to just let merit be the rule. It's reasonable to punish discrimination, they say, but an artificially produced diversity comes close to the discredited practice of setting racial or sexual quotas; worse, it is tantamount to acknowledge that minorities and women are inferior.

It came back to me the other day when a colleague called my attention to Katha Pollitt's column in the March 13 issue of The Nation magazine. This liberal publication has been a staunch advocate of affirmative action and diversity and all the things that give minorities and women all those warm-fuzzy feelings. But listen to this one passage from Pollitt's piece:

"In the 13 years I've been associated with The Nation, we've had exactly one nonwhite person (briefly) on our editorial staff of 13, despite considerable turnover. And we're not alone: The Atlantic has zero nonwhites out of an editorial staff of 21; Harper's, zero out of 14; The New York Review of Books, zero out of nine; The Utne Reader, zero out of 12. A few do a little better, although nothing to cheer about: The Progressive, one out of six; Mother Jones, one out of seven; In These Times, one out of nine; The New Republic, two out of 22; The New Yorker, either three or six, depending on how you define 'editorial,' out of 100 plus, . . ."

It's a passage that could fuel right-wing radio talk shows for months. But that wasn't Pollitt's point. Her point, which seems unaccountably difficult to grasp, is that it's not necessarily bigots and hypocrites that stand in the way of the "diversity" so many of us favor; it's the fact that people tend not to pay attention to unpleasant facts that they can as easily ignore.

Atlantic editor William Whitworth told The Post's media critic, Howard Kurtz, that his magazine's statistics were "unfortunate" and "embarrassing." He went on to describe the publication's open-door policy, its desire to have black journalists and his bafflement that so few have applied. Whitworth at least answered Kurtz's queries, as some others did not. Still I found myself wondering what sort of shot the magazine might have taken at, say, an insurance company or police department that offered a similar defense.

It wouldn't surprise me to learn that the management of the Penney's store in Tupelo made just such an argument before some combination of legislation, court decree and affirmative action forced a change in the company's hiring policies.

And it wouldn't surprise me, sometime down the road, to hear Whitworth and his peers boasting of their success in hiring black writers and without any sacrifice in quality, either.

Why do opponents of affirmative action find it so difficult to understand that even good people need a nudge now and then, or to comprehend that anti-discrimination statutes are insufficient to overcome deeply entrenched racial attitudes? What black writer—unemployed or working elsewhere—could be certain that some white guy on one of these liberal publications has the job she should have had? How can anybody know?

In some jobs, discrimination is easy to spot; the 120-word-per-minute typist who loses out to a competitor whose top speed is 80 wpm has a discrimination claim. But what of the applicant for an editorial position, or a legal clerkship, or a securities brokerage?

Anti-discrimination laws won't do it and neither will affirmative action—although these things may help employers to focus on their behavior.

I keep hoping that the time will come when nearly all employers will react as