

# Quotas by Any Other Name

*Earl Raab*

**I**N March 1971, the San Francisco School Board decided to eliminate a number of administrative positions. This meant that the people occupying those positions would have to be "deselected," the delicate term used throughout for demotion. Only 71 jobs were involved, according to one published plan, but, for technical reasons, 125 administrators were actually notified that they were in line for demotion.

The school board formally established several criteria for deselection, including "the racial and ethnic needs" of students, "special sensitivity to unique problems," competence, experience, and previous service. But the superintendent of schools and his staff in fact adopted in its "affirmative action reorganization plan," a somewhat different procedure. Following guidelines handed down by the Department of Health, Education and Welfare, the San Francisco authorities used nine categories in making their determinations: Negro/Black, Chinese, Japanese, Korean, American Indian, Filipino, Other Non-White, Spanish-Speaking/Spanish Surname, and Other White. In the words of a State Hearing Officer: ". . . strict seniority would be followed in 'deselecting' administrators who have been classified as 'Other White,' and all those administrators in the other eight designated minority groups would be exempted from such deselection process." In short, and in plain English, only whites—except for Spanish surname/Spanish-speaking whites—would be demoted. And indeed, all 125 administrators put on notice were such "Other Whites."

Many of the underlying issues in a growing number of similar contretemps around the country came to the surface here. We all know the reasons behind affirmative-action programs—that is, programs which attempt to remedy disadvantages suffered by blacks and others because of

past inequities—but on what working principles are such programs to be implemented? How do these principles relate to or shift the system of American values? And, since by sociological accident Jews are so often caught in the middle of affirmative-action programs, how does the entire phenomenon affect the future of Jewish life in America?

AFFIRMATIVE ACTION became an official part of American social philosophy in the middle 1960's. The image of the shackled runner was widely used: Imagine a hundred-yard dash in which one of the two runners has his legs shackled together. He has progressed ten yards, while the unshackled runner has gone fifty yards. At that point the judges decide that the race is unfair. How do they rectify the situation? Do they merely remove the shackles and allow the race to proceed? Then they could say that "equal opportunity" now prevailed. But one of the runners would still be forty yards ahead of the other. Would it not be the better part of justice to allow the previously shackled runner to make up the forty-yard gap, or to start the race all over again? That would be affirmative action toward equality. In September 1965 President Johnson prescribed such action in employment in Executive Order 11246.

As it developed in the 1960's, affirmative action in employment took on a number of working definitions all designed to give members of historically disadvantaged groups an edge in the process of competition: (1) Seeking out qualified applicants among disadvantaged groups; (2) Giving "preferential treatment" to applicants from disadvantaged groups whose qualifications were roughly equal to those of other applicants (this is similar to the older principle of "veterans' preference," recompense for a competitive disability imposed by society in the past); (3) Eliminating cultural bias in determining the nature of relevant qualification; (4) Providing special training and apprenticeship for *qualifiable* applicants to bring them "up to the mark." There

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EARL RAAB, executive director of the Jewish Community Relations Council of San Francisco, is the author, with Seymour Martin Lipset, of *The Politics of Unreason*. Mr. Raab's article, "The Deadly Innocences of American Jews," appeared in our December 1970 number.

was, too, a deeper level of affirmative action involved in breaking the long-range chain of generational factors which had come to be seen as impeding the group's ability to compete—factors like family background and the conditions governing motivation in school. To affect these factors was the intent of the anti-poverty program, of the compensatory education programs, the Elementary and Secondary Education Act, and so forth.

In accord with the general principle of giving an edge to historically disadvantaged groups in the process of competition, the San Francisco school board, two years before the case of the deselected administrators broke out, had resolved, "to implement a program of faculty racial and ethnic balance which more closely approximates the racial and ethnic distribution of the total school population so long as such efforts maintain or improve quality of education." Thus there had been an active attempt to find qualified non-white or Hispanic personnel, and to give such personnel preferential treatment in hiring and promotion. There was also a special administrative training course for minority personnel within the district, so that they would be better prepared to compete whenever vacancies occurred. No trouble arose over these policies.

However, a subtle but critical line was crossed beyond affirmative action in the case of the deselected administrators. For here it was no longer a matter of giving members of a disadvantaged group an edge in the process of competition; here it became a matter of eliminating the concept of competition altogether. It was not a matter of affirmative action toward equal opportunity, but a matter of eliminating equal opportunity altogether.

ONE of the marks of the free society is the ascendance of performance over ancestry—or, to put it more comprehensively, the ascendance of achieved status over ascribed status. Aristocracies and racist societies confer status on the basis of heredity. A democratic society begins with the cutting of the ancestral cord. This by itself does not yet make a humanistic society or even a properly democratic one. There is, for example, the not inconsiderable question of distributive justice in rewarding performance. But achieved versus ascribed status is *one* inexorable dividing line between a democratic and an undemocratic society. This is the aspect of democracy which represents the primacy of the individual, and of individual freedom. It has to do with the belief that an individual exists not just to serve a social function, but to stretch his unique spirit and capacities for their own sake: "the right of every man not to have but to be his best." In that sense, it could be said that a principle of ascribed equality—a kind of perverse hereditary theory—would be as insidiously de-

structive of the individual and of individual freedom as a principle of ascribed inequality.

Of course the laws, the rules of the game, have to be roughly the same for everyone if the system is to work ideally. This has not been the case. Further, we have come to learn how heavy the subcultural load is which each individual carries at birth. At its best, a democratic society provides institutional "catch-up" aids for individual self-realization, such as free common schools. There already is the seed-principle of affirmative action. The free common schools have not necessarily or always served that purpose. But if they are flawed in practice, the remedy is to make them conform more closely to the system of values they are meant to serve. If on the other hand we want to scrap the system, we should be clear that this is what we are doing and we should be aware of the possible consequences.

The practical consequences for the administration of justice, for example, are clearly demonstrated in the case of the deselected administrators in San Francisco. At a formal hearing, there were these exchanges between the attorney for the deselected administrators, and the representative of the school superintendent. The attorney is asking the questions:

*Question:* Do you know that Armenians, as well as being a minority ethnic group, have had a history of persecution and disadvantage?

*Answer:* No, I never studied that.

*Question:* Did you ever hear of the persecution of the Armenians by the Turks?

*Answer:* Not as I recall.

*Question:* Did you ever hear of the disadvantage which Armenians in California suffered in Fresno and Bakersfield?

*Answer:* I am not aware of it.

*Question:* If the [demoted Armenian] respondent in this case says: "I am an Armenian and I want to be treated as a separate minority," what would you do with his case?

*Answer:* For the purposes of this, I would judge him to be "white" and put him in "white" because there is no specific Armenian classification. . . .

*Question:* Would you consider that the Jewish people were an ethnic group?

*Answer:* Yes.

*Question:* Do you believe that there is a history of persecution and disadvantage which the Jewish people have had?

*Answer:* I have some remote knowledge of this.

*Question:* Now suppose one of the respondents in this case came to you and said: I am a member of an ethnic minority, one of the Jewish people, and I believe that by reason of our historical disadvantage that we would like to be treated as a separate ethnic group, what would your reply be?

*Answer:* That we have no category for you as a Jew.

In short, *no* individual Armenian or Jew could be considered for retention in his job. In affirmative-action theory, the racial or ethnic group is used to identify those individuals who should, as a matter of historical justice, be given a compensatory edge in the competition. But the principle of historical justice is supposed to balance individual justice, not to replace it. It is one thing when the employees of a given company are white in massive disproportion and the black population in that community is massively underemployed. But if white Joe Smith and black Jim Jones are currently employed, and one must be fired, should Joe Smith be deprived of his job solely because his ancestors were white? The need for social remedy in the first situation must not be confused with the problem of individual justice in the second. Indeed, the life circumstances of Joe Smith, his parental circumstances, may have been more disadvantaged than those of Jim Jones—however large the statistical odds to the contrary.

Cardozo wrote that “. . . each case [of injustice] . . . implies two things: a wrong done and some assignable person who is wronged.” In this case, “historical injustice” means that a wrong committed in the ancestral past has affected some people in the present. Since society imposed that wrong in the past, it has accepted an obligation to undo it so far as possible in the present. But there is no way to measure the exact relationship between ancestral wrong and current damage for any given individual. Affirmative action, therefore, does not represent specific acts of remedial justice, but rather a political program of social betterment. If this program entails penalizing a specific individual who is not assignable—who, that is, cannot be picked out from among his fellows as one responsible for the historical wrong that is to be righted—then *he* is wronged in being penalized and an injustice has been committed. As a member of society, he certainly shares the remedial responsibility of the entire society in this case, but it is unjust to burden him with more than a proportional share.

**I**N San Francisco, the school board ended up not demoting *anyone* in the case of the deselected administrators. The direct assault on principles of individual justice was thus avoided. But the question of quotas remained. In the early 1960's, when the legislative battle for civil rights was being superseded by direct-action tactics, a demand for quota goals became part of confrontations on behalf of real advances in employment. There was good reason for this tactic, for it put the burden of proof on employers who would otherwise disclaim responsibility for the absence of blacks in their firms. This was especially true in certain unionized industries where the employer was saying, We'd like to do more, but the unions won't let us, and the unions

were saying, We're doing our best, but it's the employers' responsibility. Stating a quota goal was often an effective way of establishing responsibility for affirmative action, and measuring results. The quota, in the sense of a fixed number, was not taken literally.

Once it begins to be taken literally, however, another critical line is crossed. Thus the Superintendent of Schools in San Francisco has recently proposed a plan whereby no more than 20 per cent of Other Whites will be hired for or promoted to administrative positions in the first year, no more than 10 per cent in the second year, and *no* Other Whites at all in the ensuing years until ethnic and racial proportions among administrators equal the respective proportions in the school population.

Here we have a good example of the use of quotas not as a measure and instrument of affirmative action but as a way of replacing achievement with ascription by political fiat and without *any* reference to competitive performance. To say that the minority people to be hired will be “qualified” is to evade the issue. If they are indeed qualified or qualifiable, and affirmative action is taken, they will move at a certain pace into these positions anyway. But the inescapable assumption of the ascriptive approach, of the literal quota, is that minority people are *not* qualified or qualifiable, that they *cannot* compete even if given a competitive margin. The proposers of such a quota system are calling, then, for a social-welfare program, pure and simple, which indeed should not be performance-connected.

But should their assumption of the hopeless inferiority of minority workers be accepted? Is the minority population to believe that it is incapable of competition under any circumstances? Is the belief to be developed that performance should be abandoned on every level as a criterion, not only of accomplishment, but of a sense of accomplishment? This would involve not only a basic shift in our values as a society, but a cruel and destructive hoax on expectations.

The same shift is seen in another aspect of school life. The concept of “tracking”—of providing a special pace for those children who are academically talented or motivated—has traditionally had a built-in cultural bias. The tests used to determine talent were often skewed in favor of the white middle-class child, while talents which were not academic in the usual sense were downgraded. Affirmative action seemed indicated: abandonment of old tests, special efforts to identify talented non-white children, new attention to other talents. But there is now a distinct tendency to eliminate all tracking, all performance-grouping. The underlying premise was made clear by the demand of one NAACP chapter that all classes for the mentally retarded should reflect the racial balance of the general school population.

It should be very clear that these proposals are frustrated reactions to the fact that white school children are informally but effectively ascribed a superior status. But surely the remedy is to remove that ascription by affirmative action as swiftly as possible, not to move from ascribed inequality to ascribed equality. In either case, the individual is wiped out.

The point again is that human justice, as distinct from divine justice, must center around the treatment of assignable individuals. Divine justice has often taken the form of a class action, and Job wondered for all of us why it is not always connected to individual performance. He received no answer except that man cannot always understand the ways of God; and indeed our experience tells us that when any group of men try to impose a God-like style of political justice on human affairs, catastrophe ensues. This is why so many of us, in the continuing struggle to find a suitable human politics, are so stubborn about keeping individual performance and accountability rather than group ascription at the center of our system of values.

But do not the dangers implicit in the kind of ascriptive action taken in the case of the deselected administrators apply also to affirmative action? To the extent that affirmative action describes an active search for qualified applicants, or the bringing of tests for merit closer to occupational reality, or the training of qualifiable applicants, then the situation is not one of imposing competitive disadvantage, but of removing it. However, to the extent that affirmative action also includes the principle of "veterans' preference" for members of specified minority groups, then obviously there is created a competitive disadvantage for all individual members of "others" as a class. Whether it is a reasonable or unreasonable disadvantage will depend on the concrete circumstances of the given case and will under no circumstances be easy to determine.

So too with the issue of pace. It is impossible to say when affirmative action is moving "fast enough" or "too fast." Between 1968 and 1970, the proportion of defined minorities holding administrative jobs in the San Francisco school system increased from 11 per cent to 18 per cent. At that rate, the minorities made, in two years, about one-third of the progress needed for them to grow—and for whites to shrink—to proportions which parallel their proportions in the general population. (This, incidentally, was a large-city reflection of the kind of statistical progress that was being made by minorities during the latter part of the 1960's throughout the country. Between 1962 and 1967, for example, the increased proportion of blacks in white-collar jobs represented about one-fifth of the progress needed for blacks to grow—and for whites to shrink—to proportions

which parallel their respective representation in the total working force.\*)

Is that "satisfactory" progress? To ask that question is a bit like asking for a definition of "satisfactory taxes": the answer always lies in some shifting combination of what is needed, what is felt to be needed, and what the traffic will bear. It is that combination which will determine the shifting point at which some individual whites will be "unduly" disadvantaged, or at which blacks will be "unduly" locked into the status quo.

However satisfactory the progress made through affirmative action may or may not have been in the 1960's, it was made during a period of economic expansion. That is one key to the success of affirmative action. In a constricting economy, certain kinds of affirmative-action programs will present the risk of slipping over into ascriptive action, or of raising impossible dilemmas in balancing historical and individual justice. In some cases, certain programs may politically endanger progress that has already been made. All the theoretical talk about justice should not obscure the fact that affirmative action is a political as well as a moral exercise.

**I**N SHORT, there is no blueprint for determining the suitability of affirmative-action programs. But there are several strong guidelines. One is that such programs should be pushed as far as the traffic will bear at any given time. Another is that they should not do specific injustice to specific people. The third is that they should stay within a competitive, performance-related framework. Thus if the equivalent of "5 points" is given to one applicant for a job, that might be considered within the limits of a competitive edge; if the equivalent of "75 points" is given, that might be considered a means of eliminating competition altogether. Depending on the situation, if there are 100 promotions to be made, and 10 members of a disadvantaged group are chosen, that might well not be as much as the traffic will bear; if 100 are edged into promotion, it might well be more than the traffic will bear.

In the case of the deselected administrators there was a disproportionate number of Jews among those Other-White administrators who were to be demoted—because there is a disproportionate number of Jews among school administrators. Jews are *not* disproportionately

\* According to the figures used by the San Francisco School District in proposing its new "quota system" for administrators, the new 1971-72 administrative appointments, in part of a year, had increased the percentage of minority administrators by about 4 per cent. "At the present rate," said the District, if the quota system were not used, it would take "at least twelve more years" [sic] to reach the goal of having the percentage of minority administrators correspond to racial proportions in the school population.

represented, however, among the top administrators in private industry: around San Francisco, Jews occupy about one per cent of such positions. Only fifteen years ago, moreover, a California Department of Employment survey indicated that about a quarter of all California employers would not hire Jews for white-collar jobs, no matter how well qualified they were. If Jews are concentrated in the educational Establishment, one reason is that they have not been forcibly kept out of it by discrimination. If Jews should now be shut out of the educational Establishment, they would suffer as identifiable members of a historically disadvantaged group; and they would become other than Other-White.

Short of that, the sharpened competition provided by legitimate affirmative-action programs

which follow the reasonable guidelines suggested is a fact of life which Jews will have to sustain along with other Other-Whites. Such affirmative action is an obligation of this society, and a necessary ingredient of its health, in which the Jews also have a strong self-interest. It is obvious too that the Jews must have a special interest in an expansionist American economy, especially in those public-service fields in which collisions are most likely to take place. But it is also fundamental to the security of American Jews that the wavy line in each instance between affirmative action and ascriptive action be firmly drawn. For an ascriptive society is a spiritually and politically closed society; as such it is not the kind of society in which Jews can find justice or can easily or comfortably live.

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