NBER WORKING PAPER SERIES

THE EFFECTIVENESS OF EQUAL EMPLOYMENT LAW AND AFFIRMATIVE ACTION REGULATION

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Working Paper No. 1745

NATIONAL BUREAU OF ECONOMIC RESEARCH
1050 Massachusetts Avenue
Cambridge, MA 02138
October 1985

The research reported here is part of the NBER's research program in Labor Studies. Any opinions expressed are those of the author and not those of the National Bureau of Economic Research.

NBER Working Paper #1745
November 1985

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ABSTRACT

This paper reviews some recent empirical analyses of the impact of affirmative action and anti-discrimination law on employment and productivity. The major findings are that:

1) Affirmative action has some success in improving employment opportunities for minorities and females, particularly for blacks. Results for white females are mixed.

2) Increases in black employment under affirmative action have taken place in both high-skilled and low-skilled occupations.

3) Compliance reviews have not been targeted against establishments with the lowest relative proportions of minority or female employment. Targetting seems more compatible with an earnings redistribution rather than an anti-discrimination program.

4) While many of the detailed enforcement steps and sanctions of the contract compliance process seem to have little effect individually, the compliance review process as a whole has been effective.

5) The system of goals and timetables have not been adhered to as rigidly as one might expect of quotas. The goals firms agree to are greatly inflated relative to their subsequent achievements, but they are not hollow promises.

6) Litigation under Title VII of the Civil Rights Act of 1964 has played a significant role in increasing black employment. In addition, as minority and female employment shares have increased, their relative productivity, while poorly measured, has not significantly declined.

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Affirmative action, mandated by Executive Order 11246 in 1965, is one of the most controversial government interventions in the labor market since abolition. In recent years, two major criticisms of affirmative action have been given prominent voice. The first is that affirmative action does not work; therefore, we should dispose of it. The second is that affirmative action does work; therefore, we should dispose of it. My chief concern here will be with the first of these criticisms. While much has been said concerning the propriety of affirmative action in theory, little is known about the impact of affirmative action in practice. If affirmative action has not changed the employment patterns of non-whites and females, then much of the discussion since 1965 of its philosophical merits amounts to shadow-boxing. The goal of affirmative action is to increase employment opportunities for females and minorities. Has affirmative action been successful in achieving this goal? In this paper, affirmative action will refer to the provisions related to race, color and sex of Executive Order 11246 as amended by Executive Order 11375 [3 C.F.R. 169 (1974)]. This is distinct from affirmative action required as a remedy by judicial decision, which shall not be discussed here.

The purpose and development of affirmative action cannot be fully understood outside of history, a history that includes most saliently the institution of slavery in the 18th and 19th centuries, and the Civil Rights movement of the mid 20th century. The genesis in discord and crisis of the first Executive Order by President Roosevelt is most instructive. To protest employment discrimination at the beginning of World War II, A. Philip Randolph, President of the Sleeping Car Porters Union, threatened to disrupt the defense effort by a mass demonstration of blacks in Washington, D.C. on July 1, 1941. Less than

one week before the planned rally, Executive Order 8802 was issued and the demonstration called off.(Goldstein, 1981, p. 10) In the words of the U.S. Commission on Civil Rights, "the Executive Order was prompted by the threat of a Negro March on Washington, which would have revealed to the world a divided country at a time when national unity was essential".(USCCR, 1961, p. 10) Accomodation was only reached under dire threat, and even then was of a limited nature.

The distance this country has come in terms of the growing import of affirmative action, expanding intervention by the federal government, and changing attitudes towards discrimination since 1941 can best be judged by considering the words of Mark Ethridge, first Chairman of the Fair Employment Practice Committee, established to supervise compliance with the executive order. In the following quote, Ethridge sharply limits the scope of anti-discrimination policy in a manner startling to modern eyes.

> Although he defended the granting of civil rights and equal opportunity to Negores, he also affirmed his personal support of segregation in the South. Stressing that 'the committee has taken no position on the question of segregation of industrial workers', he emphasized that 'Executive Order 8802 is a war order, and not a social document', that it did not require the elimination of segregation, and that had it done so, he would have considered it 'against the general peace and welfare . . . in the Nazi dictatorial pattern rather than in the slower, more painful, but sounder pattern of the democratic process.'(Ruchames, 1953, p. 28)

Of course, the delicate question of how to swiftly remedy the harm done by discrimination without distorting the democratic process is still with us, as is the question of whether the democratic process can function well outside an integrated society. Democratic society requires a consensus for change, but it depends upon the full participation of its members. The last forty years

have witnessed a slow and at times painful process of confrontation and accommodation, developing a consensus that provides the foundation for a lasting change in attitudes towards discrimination.

Prior to Executive Order 10925, issued March 6, 1961 by President Kennedy, the anti-discrimination program for federal contractors lacked any real teeth. In a detailed study of the presidential Fair Employment Practice Committees, Norgren and Hill (1964, p. 169, p. 171) state: "One can only conclude that the twenty years of intermittent activity by presidential committees has had little effect on traditional patterns of Negro employment.", and that "It is evident that the non-discrimination clause in government contracts was virtually unenforced by the contracting agencies during the years preceeding 1961." Compliance programs, such as Plans for Progress and its predecessors, were voluntary. Their history strikes at least a cautionary note about the effectiveness of programs that have no legal sanctions behind them. The 1961 Executive Order was the first to go beyond anti-discrimination and to require contractors to take affirmative action, and the first to establish specific sanctions including termination of contract and debarment. Coming on the heels of Title VII of the Civil Rights Act of 1964, Executive Order 11246, which made the Secretary of Labor rather than a presidential committee responsible for administering enforcement, was the first to be enforced stringently enough to provoke serious conflict and debate. On October 13, 1967, Executive Order 11375 amended 10246 to expand its coverage to women, although effective regulation against sex discrimination did not reach full stride until after the Equal Employment Act of 1972 was enacted.

The details of the affirmative action obligation began to be elaborated in a twisting history. Detailed regulations, including numerical goals, were in-

troduced in 1969, after the Comptroller General ruled that the affirmative action obligation was too vague to fulfill the requirement that minimum contract standards be made clear to prospective bidders. [48 Comp. Gen. 326 (1968)]. Numerical goals were first introduced in the manning tables embodied in the Cleveland and Philadelphia plans for construction contractors (see Jones), and later won the tacit approval of Congress and the courts.

Under Executive Order 11246, federal contractors agree "not to discriminate against any employee or applicant for employment because of race, color, religion, sex or national origin, and to take affirmative action to ensure that applicants are employed and employees are treated during employment without regard to their race, color, religion, sex or national origin."[3 C.F.R. 169 202(1)(1974)]. This language imposes two obligations: first, not to discriminate; second, whether or not there is any evidence of discrimination, to take affirmative action not to discriminate. It is a measure of this nation's progress that the first obligation is now largely beyond debate. The redundant sounding second obligation, however, is anything but. It has provoked continual controversy, and its meaning and effect are not well understood. In the heated political arguments over whether and what affirmative action should be, mythic visions have come to overwhelm any clear conception of what affirmative action actually is. To say that this second obligation as it has been developed in the regulations, has provoked a good deal of debate would be a considerable understatement.[See also Fiss (1971) and Glazer (1975)] In the words of one legal expert:

> The affirmative action obligations imposed by the Contract Compliance Program are separate and distinct from non-discrimination obligations and are not based on proof of individual acts of discrimination. At the logical extreme, affirmative action and non-discrimination obligations can be viewed as mutually exclusive and inconsistent . . . in

practice, the non-discrimination and affirmative action obligations may be incompatible when, for example, a less qualified, less senior female or black is granted a job preference that disadvantages a male or white solely on the basis of sex or race to achieve an affirmative action commitment.(Smith, p. 1028)

Reviewing the development of affirmative action into "quotas", Lawrence Silberman, former Undersecretary of Labor from 1970 to 1973, wrote:

"In practice, employers anxious to avoid inquiry from government officials concerned only with results (rather than merely with efforts) often earmarked jobs for minorities without regard to qualifications. . . . In hindsight, one can see this was predictable. We wished to create a generalized, firm, but gentle pressure to balance the residue of discrimination. Unfortunately, the pressure numerical standards generate cannot be generalized or gentle; it inevitably causes injustice. . . . Our use of numerical standards in pursuit of equal opportunity has led ineluctably to the very quotas, guaranteeing equal results, that we initially wished to avoid. . . . To be sure, we were not solely responsible. Federal courts already had begun to fashion orders in employment discrimination cases which went beyond relief for those specifically discriminated against. The orders required employers found guilty of discrimination to hire in accordance with a set ratio of whites to blacks, whether or not new black applicants had suffered discrimination. Thus was introduced a group rights concept antithetical to traditional American notions of individual merit and responsibility. It was on that developing legal authority that the Philadelphia Plan was defended when challenged. . . . "

This raises at least two issues. The first is that an affirmative action program without measurable results invites sham efforts and may also fail to meet the requirement of federal procurement law that prospective bidders be informed of the minimum standards for a contract. On the other hand, numerical standards in the quest for equal opportunity open the door to an emphasis on equal results. The second issue raised is whether discrimination and its remedy should be addressed in terms of groups or individuals. James E. Jones, Jr., former Associate Solicitor of Labor for Labor Relations and Civil Rights, and

an architect of the Revised Philadelphia Plan, takes (1977, p. 67) as his fundamental premise that:

> "the affirmative action obligation is a contractual undertaking imposed by the Executive Orders without concern for the guilt or innocence of the subject contractors and without concern for individual entitlement to the fruits of affirmative action efforts. Thus, an individual complaint oriented process of enforcement completely misperceives the function which should have been the major emphasis of the administrative process."

In the past the affirmative action obligation has been criticized as being vague and open-ended. In 1967, the Director of the OFCC, Edward Sylvester, stated: "There is no fixed and firm definition of affirmative action. I would say that in a general way, affirmative action is anything you have to do to get results. . . . Affirmative action is really designed to get employers to apply the same kind of imagination and ingenuity that they apply to other phases of their operation."(Report, 1967, p. 73-74)

To be vague concerning methods is the ideal decentralized approach, but this is also vague about the critical issue of ends. What is the goal against which results are judged: non-discrimination or increased minority and female employment? The distinct, practical question of whether the two can be distinguished in an operational sense is, of course, one of the important questions that will concern us here.

Past Studies

The literature on affirmative action can be divided into studies of the regulatory process that find it mortally flawed and studies of impact that find

it successful. The process studies by the U.S. Commission on Civil Rights (USCCR), the General Accounting Office (GAO), and the House and Senate Committees on Labor and Public Welfare all conclude that affirmative action has been ineffective and blame weak enforcement and a reluctance to apply sanctions. For example, in its 1975 appraisal of the contract compliance program, the GAO found (p. 30) that "The almost nonexistence of enforcement actions taken could imply to contractors that the compliance agencies do not intend to enforce the program." That this is not merely politics can be judged from the fact that the Department of Labor has been sued with some measure of success more than once for failure to enforce affirmative action properly. See, e.g., the case of Legal Aid Society of Alameda County v. Brennan, 608 R.2d 1319 (9th Cir. 1979), cert. denied 100 S. Ct. 3010 (1980). Debarment, the ultimate sanction, has been used only 26 times; debarment of the first nonconstruction contractor did not occur until 1974. The GAO and USCCR have found that other forms of regulatory pressure, such as pre-award reviews, delay of contract award, and withholding of progress payments, have not been forcefully and consistently pursued. However, as evidenced by the increased incidence of debarment and back-pay awards, enforcement did become more aggressive after 1973.

In the light of the unanimity of these process studies in finding the affirmative action regulatory mechanism seriously deficient, it is surprising that the few econometric studies of the impact of affirmative action in its first years (Burman 1973; Ashenfelter and Heckman 1976; Goldstein and Smith 1976; Heckman and Wolpin 1976), all based on a comparison of EEO-1 forms by contractor status, have generally found significant evidence that it has been effective for black males. These few studies of the initial years of affirmative action (1966-73) are not directly comparable because of different specifications, samples, and periods. They do find, nevertheless, that despite weak

enforcement in its early years, and despite the ineffectiveness of compliance reviews, affirmative action has been effective in increasing black male employment share in the contractor sector, but generally ineffective for other protected groups.(See Brown for a review) Of the four studies, Goldstein and Smith (1976) find the weakest effects. Their results indicate a .0004 yearly increase in black males' share of total employment and a decrease in the ratio of black to white males among nonreviewed contractors between 1970 and 1972. Heckman and Wolpin's (1976) results indicate an effect an order of magnitude greater, a .007 annual increase in black male's share of total employment between 1972 and 1973 comparing contractors and noncontractors. For comparison, Burman (1973) reports roughly a .003 annual increase in black males' share of male employment in the late sixties, and Ashenfelter and Heckman's (1976) results indicate a .0086 yearly increase in the ratio of black to white males between 1966 and 1970. These past studies are all based on data for a period that largely predates the beginning of substantial enforcement of regulations barring sex discrimination, the start of aggressive enforcement in the mid seventies, and the major reorganization of the contract compliance agencies into the OFCCP in 1978.

Despite weak enforcement in its early years, these studies generally conclude that affirmative action under the contract compliance program did lead to significant increases in black males' employment share in contractor firms. This econometric finding of a positive result is all the more notable in light of the consistently negative appraisal of the OFCCP's regulatory mechanism by Congress, the courts, the GAO, and the USCCR.

The Impact of Affirmative Action on Employment

Has affirmative action been effective in increasing the employment of minorities and women? Affirmative action under the Executive Order applies only to federal contractors. One method of judging the effect of affirmative action is then to compare the growth of minority and female employment at federal contractor establishments with their employment growths at similar establishments that do not bear the affirmative action obligation. With the cooperation of the U.S. Department of Labor, I performed such a comparison using EEO-1 data on employment demographics reported by 68,690 establishments in 1974 and 1980. This sample includes more than 16 million employees. The results summarized here are reported at length in Leonard (1983) and (1984a).

Table 1 [reproduced from Leonard (1984a)] compares the mean employment share of demographic groups in 1974 and 1980 across contractor and non-contractor establishments. Between 1974 and 1980 black male and female, and white female employment shares increased significantly faster in contractor establishments than in non-contractor establishments. The other side of this coin is that white males' employment share declined significantly more among contractors. Employment shares have increased for non-black minorities, but the differences across sectors in Table 1 are not always significant.

Affirmative action appears to have similar effects once other variables are controlled for. In other work I have estimated the impact of affirmative action after controlling for establishment size, growth region, industry, occupational and corporate structure. These additional controls help assure that differences between contractor and non-contractor establishments reflect the impact of affirmative action rather than other unobserved differences.

Table 2 [reproduced from Leonard (1984a)] shows a consistent pattern across demographic groups of effective affirmative action. Over a 6-year period the employment of members of protected groups grew significantly faster in contractor than in non-contractor establishments. The growth rate is 3.8% faster for black males, 7.9% for other minority males, 2.8% for white females, and 12.3% for black females. A summary measure, white male employment, grew 1.2% slower in the contractor sector. All of these effects are significant at the 99% confidence level or better, and the effects for blacks and for white males are robust across a number of specifications.

The demand shift for black males relative to white males estimated here for contractor status is similar to that previously estimated by Ashenfelter and Heckman (1976) and by Heckman and Wolpin (1976). The growth rate of black male employment over 6 years in the contractor sector is 3.8% greater than among noncontractors. Taking the sixth root yeilds an annual growth rate that is 0.62% greater in the contractor sector. For white males, the annual growth rate is 0.2% slower among contractors, so contract status appears to shift the demand for black males relative to white males by 0.82% per year. For comparison, using a different specification in a sample of integrated establishments for the earlier period 1966-70, Ashenfelter and Heckman report an annual shift corresponding to 0.86% per year.

Compliance reviews have played a significant role over and above that of contractor status, advancing black males by 7.9%, other minority males by 15.2%, and black females by 6.1% among reviewed establishments. Compliance reviews have retarded the employment growth of whites. The effect is significantly negative in the case of white females but small and insignificant in the case of white males--whom one would have expected to bear the brunt of the adjust-

ment. The anomalous result for white females is sensitive to specification. It is also difficult to reconcile with the positive impact of contractor status on white females, but may be influenced by a review process that asks for more than last year, rather than more than average, in a time of sharply increasing female labor supply. For black and other minority males, the impact of undergoing a compliance review is roughly twice that of being a contractor. With the exception of white females, compliance reviews have an additional positive impact on protected group employment beyond the contractor effect. Direct pressure does make a difference.

The estimate in equation (3) is that the growth rate of black males' employment increased 3.8% more in contractor establishments, not counting the direct effect of reviews: 6.8% of all contractor establishments, accounting for 17.4% of all contractor employment, were reviewed in subsequent years. In these establishments the black male growth rate was an additional 7.9% faster than in nonreviewed contractors, so 12% faster than noncontractors. The total impact of affirmative action among contractors is then the weighted average of the annual 0.62% shift among nonreviewed contractors and the 1.91% shift among reviewed contractors, or 0.84% per year. The demand shifts for other minority males, white females, and black females are 1.69%, 0.37%, and 2.13%, respectively. The shift is largest for black females, although the ranking of these effects is sensitive to specification.

Employment opportunities depend critically on growth. Table 2 also indicates that minorities and females experienced significantly greater increases in representation in establishments that were growing and so had many job openings. The elasticity of white male employment growth with respect to total employment growth is .976, significantly less than one. This indicates that members of

protected groups dominate the net incoming flows in both contractor and non-contractor establishments. The respective elasticities for black males, other males, white females, and black females are 1.22, 1.09, 1.02, and 1.19, all significantly greater than one. Particularly in the case of blacks, of whom the quantity supplied has not greatly increased, this suggests the importance of Title VII, which applies to all establishments in the sample, in expanding employment opportunities. Establishments that are not part of multiplant corporations have significantly lower growth rates of employment of members of protected groups. Corporate size is probably of greater consequence than establishment size, with larger corporations showing greater increases in minority and female employment. Establishment size itself has insignificant effects on white and black males, but other males and black females grow significantly faster at larger establishments, while white females grow significantly slower. It is also important to note that the tests here also control for the skill requirements of each establishment. Establishments that are nonclerical white-collar intensive exhibit faster employment growth for both male and female blacks and significantly slower growth for white males.

The efficacy of affirmative action depends critically on employment growth. The even-numbered equations in table 2 include interactions of contractor and review status with establishment size and growth rate. In every case, being a contractor or undergoing a compliance review have significantly greater effects if the establishment is growing. The evidence with respect to interactions of affirmative action with establishment size is mixed. To illustrate, equation (4) indicated that while black male employment grows 5.6% faster at contractor establishments than a noncontractor establishments with stable employment, it grows 6.7% faster at the mean total employment growth rate of 5.1%, and 7.4% faster if total employment grows by 15%. Affirmative action has been far more

successful at establishments that are growing and have room to accommodate federal pressure.

The tests presented here suggest that while generating tremendous public criticism and resistance and while undergoing frequent regulatory reorganization, affirmative action has actually been successful in promoting the employment of minorities and females, though less so in the case of white females. In the contractor sector over a six year period affirmative action has increased the demand relative to white males for black males by 6.5%, for nonblack minority males by 11.9%, and for white females by 3.5%. Among females, it has increased the demand for blacks relative to whites by 11.0%. For a program lacking public consensus and vigorous enforcement, this is a surprisingly strong showing. While the gains of white females are smaller than those of blacks, it is important to keep in mind that the employment of females and minorities has been increasing in both sectors. Indeed, if the OFCCP pressured establishments to hire more females and minorities relative to their own past records rather than to industry and region averages, the observed pattern is just what we would expect to see during a period when female labor supply had been growing. Females' share would increase at all establishments because of the supply shift, and contractor establishments would be under little pressure to employ more females than noncontractors. The relatively short history of affirmative action for females may also help explain the differential impact of affirmative action across protected groups.

This section has reviewed significant large-sample evidence with detailed controls at the establishment level. Members of protected groups have enjoyed improved employment opportunities at contractor establishments subject to affirmative action, and compliance reviews appear to have been an effective tool

in changing employment patterns. The evidence here is that a process that has been frequently criticized as largely an exercise in paper pushing has actually been of material importance in prompting companies to increase their employment of minorities and females.

Occupational Advance

One of the major affirmative action battlefields lies in the white-collar and craft occupations. It is in these skilled positions that employers are most sensitive to productivity differences and have complained the most about the burden of goals for minority and female employment. It is also in this region of relatively inelastic supply that the potential wage gains to members of protected groups are the greatest.

All four past studies of the impact of affirmative action on occupational advance have found that while affirmative action increases total black male employment among federal contractors, it does not increase their employment share in the skilled occupations. Burman (1973) found the employment impact of affirmative action to be largest in clerical and operative occupations, and negative, though insignificant, for managers between 1967 and 1970. He also found that affirmative action had an insignificant impact on an index of occupational status. Ashenfelter and Heckman (1976) extended these results, finding that affirmative action led to increases in black males' employment share, but that this was largest and most significant among operatives between 1966 and 1970. At the tops of occupational ladders, black males' share was estimated to fall relative to that of white males in the contractor sector, sometimes significantly. Overall, Ashenfelter and Heckman found no significant impact

of contractor status on the relative occupational position of black workers. Goldstein and Smith (1976) found similar results between 1970 and 1972. Heckman and Wolpin (1976) found that black male employment gains were concentrated in blue-collar occupations between 1972 and 1973. They also found that contractors utilized a greater proportion of white males, and fewer blacks and females than did non-contractors in some white-collar occupations.

These studies suggest that contractors have been able to fulfill their obligations by hiring into relatively unskilled positions. Before 1974, affirmative action appears to have been more effective in increasing employment than in promoting occupational advancement. Some might argue that such a result is only to be expected given a short supply of skilled minorities or females. The presumption behind affirmative action, however, is that trainable members of protected groups will be considered for skilled employment. Even in the case of a small fixed supply, in its initial years affirmative action should induce a reshuffling of skilled blacks and women from non-contractor to contractor firms, without any upgrading of individuals necessary. By the late 1970s affirmative action was no longer as ineffective as it may have been in its early years in increasing minority employment in skilled occupations, according to results summarized here from Leonard (1984b). This difference may reflect the increasing supply of highly educated blacks, as well as a more aggressive enforcement program, in particular the consolidation of enforcement activities into the Office of Federal Contract Compliance Programs (OFCCP) in 1978.

The full story of the impact of affirmative action requires an analysis of employment data within disaggregated occupations. To test this Leonard (1984b) regresses the change in employment share on contractor and review status, establishment size, corporate structure, industry, region, and growth of total

employment for the given demographic group, in samples of establishments reporting employment in nine occupations and two trainee positions. The evidence is most striking in the case of black males. In every occupation except laborers and white-collar trainees, black males' share of employment has increased faster in contractor than in non-contractor establishments, and except for operatives and professionals these differences are significant. This impact is found in both the proportionate change in black males' share of total employment, and in the proportionate change in the ratio of black male to white male share.

The marginal impact of a compliance review, conditional on contractor status, is also tested. The relative importance of being a contractor and of being a reviewed contractor is mixed across occupations, but in every case, except blue-collar trainees and clerks, reviewed establishments have increased black males' employment share more than non-reviewed contractors.

The total impact of the contract compliance program, the weighted sum of contractor and review effects, shows some evidence of a twist in demand toward more highly skilled black males. The contract compliance program has not reduced the demand for black males in low skilled occupations, except for laborers. It has raised the demand for black males more in the highly skill white-collar and craft jobs than in the blue-collar operative, laborer, and service occupations. While this may help explain why highly skilled black males have been better off than their less skilled brethren, it does not help explain why low skilled black males should be having greater difficulty over the years in finding and holding jobs.

Affirmative action has also helped non-black minority males, although to a lesser extent. There is evidence of a twist in demand toward Hispanic, Asian, and American Indian males in white-collar occupations, particularly in sales and clerical positions, and away from this group in operative and laborer positions. Compliance reviews have had a strong and significant additional impact in the professional, managerial, and craft occupations. The total impact of the contract compliance program on non-black minority males is positive in the white-collar, craft, and service occupations, and in training programs. Relative to white males, affirmative action has increased the occupational status of non-black minority males by 2%.

The evidence within occupations suggests that the contract compliance program has had a mixed, and often negative impact on white females. For technical, sales, clerical, craft, and trainee workers, contractor status is associated with a significant decline in white females' employment share. Compliance reviews have also often had a negative impact. While both contracts and reviews produce a significant 1% increase in white females' occupational status, this positive impact disappears when changes in white females' occupational status are compared to the relatively greater gains of white males.

In contrast to whites, black females in contractor establishments have increased their employment share in all occupations except technical, craft, and white-collar trainee. Compliance reviews have had a mixed effect across occupations. The positive impact of the contract compliance program is even more marked when the position of black females is compared with that of white females. Overall, black females' index of occupational status has increased 1% relative to that of white females under affirmative action.

The conclusion drawn from this detailed analysis of employment by occupation is that with the exception of white females, affirmative action appears to have contributed to the occupational advance of members of protected groups. In particular, for non-white males affirative action has increased demand relatively more in the more highly skilled occupations. In a useful and important paper, Smith and Welch (1984) show that part of this occupational upgrading may be overstated because of biased reporting on EEO-1 forms, in particular the upward reclassification of minority or female intensive occupations. The finding of occupational advance for non-white males in Leonard (1984b) is reinforced by evidence from CPS wage equations that affirmative action has narrowed the difference in earnings between the races by raising the occupational level of non-white males. These wage equations are reported at greater length in other work (Leonard, 1984d). To the extent that contractors may have selectively reclassified upwards black and female intensive detailed occupations at a faster rate than did non-contractors, this study and its predecessors will oversate the actual occupational advance due to affirmative action. Of course, pure reclassification would cause black losses in the lower occupations, which is generally not observed.

Affirmative action does not appear to have directly contributed to the economic bifurcation of the black community. As Leonard (1984d) shows, minority male wages increase relative to those of white males in cities and industries with a high proportion of employment in federal contractor establishments subject to affirmative action, although the effect is not always significant. Affirmative action appears to increase the demand for lowly educated minority males as well as for the highly educated.

If minorities and females do not share the skills and interests of white males, then perhaps the best one can expect from an affirmative action program is to increase their employment. But to the extent that minorities and females share the qualifications and interests of white males, an effective affirmative action program should improve their chances of sharing the same occupations too.

Just as no policy works in isolation, so none can be evaluated in isolation. The major finding reviewed in this section is that affirmative action has increased the demand for minorities in skilled jobs in the contractor sector. The relative demand shift has been greater for skilled than unskilled workers. The success of this program in skilled occupations after 1974, where none had been observed before, is probably due in part to the increasing supply of skilled minorities in many fields, as well as to the more aggressive use of sanctions after the early 1970's. The weaker results for white females must be considered in light of the massive increase in female labor supply that has led to increased frmale employment throughout the economy, and which may have obscured the contractor effect. We have also seen minorities and females enjoying the greatest gains at growing establishments, both contractor and noncontractor. The lesson drawn is that affirmative action programs work best when they are vigorously enforced, when they work with other policies that augment the skills of members of protected groups, and when they work with growing employers.

Goals or Quotas?

Have these employment advances been achieved through the use of rigid quotas? The goals and timetables for the employment of minorities and females drawn from

federal contractors under affirmative action stand accused of two mutually inconsistent charges. The first is that "goal" is really just an expedient and polite word for quota. Affirmative action has really imposed inflexible quotas for minority and female employment. The second is that these goals are worth less than the paper they are written on. Affirmative action is a game played for paper stakes and has never been enforced stringently enough to produce significant results.

Under Executive Order 11246, federal contractors are required to take affirmative action not to discriminate and to develop affirmative action plans (AAPs), including goals and timetables, for good-faith efforts to correct deficiencies in minority and female employment. The aim of this section, which summarizes Leonard (1985b), is to measure good faith, to determine what affirmative action promises are worth. Is negotiation over affirmative action goals an empty charade played with properly penciled forms, or does it in fact lead to more jobs for minorities and females in the contractor sector? If the latter is the case, are these goals so strictly adhered to as to constitute quotas? Since the reviews examined here have already been shown to be useful (Leonard (1984a)), the question here is not "Are reviews effective?" but rather "Do promises extracted during the review process contribute to the impact of reviews?"

It is not beyond reason to suppose that they do not. Neither the penalties for inflating promises to hasten the departure of federal inspectors nor the prospects of being apprehended seems great. The ultimate saction available to the government in the case of affirmative action is debarment, in which a firm is barred from holding federal contracts. The first debarment of a non-construction cntractor did not take place until 1974, and in total only 26 firms

have ever been debarred. If the Office of Federal Contract Compliance (OFCCP) finds the establishment's affirmative action plan unacceptable, it may issue a show-cause notice as a preliminary step to high sanctions. This step has been taken in only 1 to 4 percent of all reviews (USCCR, 1975, p. 297). Of these, one-third to one-half involve basic and blatant paperwork deficiencies such as the failure to prepare or update an AAP (US GAO, 1975, p. 26).

The other major sanction used by the OFCCP is back pay awarded as part of a conciliation agreement. In 1973 and 1974, $54 million was awarded in 91 settlements, averaging $63 per beneficiary (US GAO, 1975, p. 46). In 1980, in an even more skewed distribution, $9.2 million was awarded to 4336 employees in 743 conciliation agreements (USCCR, 1982, p. 47). These beneficiaries represented less than two-thirds of 1 percent of all protected-group employees at just the reviewed establishments. While these affirmative action sanctions have not been heavily employed, in many cases regulatory sanctions, like weapons of war, are judged most successful just when they are used the least. That does not seem to be the case here. The U.S. Civil Rights Commission, the General Accounting Office, committees of both Houses of Congress, and the courts have all concurred in the judgment that the contract compliance agencies have not made full and effective use of the sanctions at their disposal.

The low penalties if caught are compounded by the low probability of apprehension, although the Department of Defense (DOD), upon whose review this section concentrates, had one of the most vigorous programs. In 1976, DOD is reported to have reviewed 24 percent of its identified contractors, compared to an average for all compliance agencies of 11 percent [USCCR, 1977, p. 113]. In 1977, DOD had a ratio of 42 contractor facilities per staff member, and a total budget of $345 per contractor [USCCR, 1977, p. 107]. It is striking to

note that compliance reviews have not typically been targeted directly against the most blatant form of employment discrimination. An establishment's history of employment demographics has typically not played a role in the incidence of compliance reviews, for a reason as procedurally obvious as it is logically obscure: compliance officers have not generally looked at an establishment's past AAPs or EEO-1 forms in targeting reviews. Heckman and Wolpin (1976) report that reviews are essentially random with respect to the level or growth rates of an establishment's demographics. Leonard (1985a) finds evidence that establishments with more blacks and females are actually more likely to be subsequently reviewed. These two empirical studies agree that affirmative action compliance reviews have not been targeted with greater frequency at establishments with relatively few minorities or females.

In this light, the expected penalties for making promises to the government with little regard for the likelihood of fulfilling those promises do not seem overwhelming. In such circumstances, affirmative action promises may contain little, if any, information about the establishment's future employment. On the other hand, the OFCCP may use more subtle and less easily observed pressures. Firms may care about their reputations, not only with the OFCCP but also with their own employees and the public, and so strive to set reasonable goals. More importantly, firms may react to the threat of Title VII litigation, with its substantial legal costs and penalties, hanging over their heads while under affirmative action review.

The employment goals that firms agree to under affirmative action are not vacuous; neither are they adhered to as strictly as quotas. While affirmative action promises are inflated, they are not hollow. For a sample of establishments that experienced more than one compliance review during the 1970s, Leonard

(1985b) compares the goals with the employment actually achieved one year later, as in Table 3. The mode year for which projections are made is 1976. For an observation in the mode year then, this table shows actual employment in 1974 and 1975, a projection of employment for 1976 made in 1975, and actual subsequent employment in 1976. The first finding in Table 1 is that establishments on average overestimate the growth of total employment. They project 1 percent employment growth one year ahead, but employment subsequently falls by 3 percent.

The major finding in Table 3 is that neither absolute minority nor female employment increased, but that both minority and female employment shares did increase. This is because the contraction in employment that did occur was almost lily-white and predominantly male. Most of the average employment decline of 27 was accounted for by white males, whose employment fell by 21. Put another way, while white males averaged 57-63 percent of initial employment, they accounted for 78 percent of the employment decline. Since females and minorities typically have lower seniority, they are usually found to suffer disproportionately more during a downturn. In this perspective, the finding here that white males accounted for most of the employment decline is itself striking evidence of the impact of affirmative action.

These establishments are projecting swift and substantial increases in black male employment. If the one-year projections in Table 3 are extrapolated for ten years, then fully 14 percent of the workforce at these plants would be black males.

These projections and actualizations can also be expressed as shares of total employment. Over time, minority and female employment shares are indeed grow-

ing, but not nearly as fast as projected. The firms project growth in minority and female employment share far in excess of their own past history, and far in excess of what they will actually fulfill. Is there then any information at all in their projections, or is the entire procedure an exercise in futility?

The administrative records of completed compliance reviews include data on past and projected employment demographics, indications of deficiencies found in affirmative action plans, and an indicator for preaward compliance reviews in which case one might expect the government's leverage to be greater. These records also indicate successively higher levels of government pressure brought to bear: hours expended by review officers, progress reports required, conciliation process initiated, and, finally, show-cause notice issued. Each of these mileposts in the bargaining process reflects both the establishment's resistance to bureaucratic pressures and, at the same time, increasing levels of bureaucratic pressure itself. If establishment resistance can be controlled for, then these may be taken roughly as inputs into a regulatory production function. By assuming that corporate resistance is controlled for by past growth rates of protected group employment share, and by initial notification of deficiencies, we can then ask what the marginal impact is on factors of regulatory production such as conciliation agreements and show-cause notices. These identifying assumptions are open to question. Caution should be exercised in interpreting the following results since they may be biased toward finding ineffective enforcement if enforcement has been targeted against the most recalcitrant cases.

For all detailed regulation variables, the results are mixed and often insignificant. One might expect greater growth in protected group employment in the case of preaward compliance reviews--reviews mandated prior to the final

award of large federal contracts--supposedly because the carrot is dangling so close to the nose. On the other hand, few contracts have ultimately been lost in this process, and the courts have been loath to uphold this type of leverage. Twenty-nine percent of all the reviews studied Leonard (1985b) are preaward reviews, but only in the case of black females did they make a significant positive addition to protected-group employment share beyond that expected from a regular review.

One-third of the establishments were required to make interim progress reports. This marginally greater pressure had no significant impact on their subsequent demographics. One hundred twenty-two establishments, 3 percent of the total, signed conciliation agreements to remedy deficiencies in their AAPs. Perhaps their AAPs looked better, but their immediately subsequent demographics did not.

The ultimate enforcement tool at the Department of Labor's disposal is debarment, but none of the few actual uses of this deterrent shows up in our sample. The strongest pressure observed is a show-cause notice; 24 establishments received such notices offering them the opportunity to show cause why they should not be debarred. On average, they had not significantly altered their demographics a year later. On the whole, there is no compelling evidence here that these detailed components of the enforcement process have a significant impact on the employment of members of protected groups.

The major finding in Leonard (1985b) is that goals set in these costly negotiations do have a measurable and significant correlation with improvements in the employment of minorities and females at reviewed establishments. At the same time, these goals are not being fulfilled with the rigidity one would ex-

pect of quotas. While the projections of future employment of members of protected groups are inflated, the establishments that promise to employ more do actually employ more. The striking finding is that the affirmative action goal is the single best predictor of subsequent employment demographics. It is far better than the establishment's own past history, even controlling for the direct impact of detailed regulatory pressure.

This indicates that while establishments promise more than they deliver, the ones that promise more do deliver more, even conditioning on the past growth rate of employment share. There is significant information in the projection over and above what could have been predicted on the basis of past history. On the other hand, the projection falls far short of perfect information. For example, on average a projected 11 percentage point increase in the growth rate of black male employment share results in an actual increase of one percentage point, ceteris paribus.

Not only do establishments generally overpromise minority and female employment, they also overpromise white male employment. This reveals something of their strategy in formulating promises. They do not promise direct substitution of minority and female workers for white males; instead they promise more for all. More accurately, they promise to make room for more minority and female employees by increasing the size of the total employment pie. The first step in bringing these projections down to earth may simply be to ask the establishment whether the projected growth in total employment is reasonable.

We have a policy that appears to be effective in its whole and ineffective in its parts. The paperwork requirements of the AAP, the notification and resolution of AAP deficiencies, and even conciliation agreements and show-cause

notices appear to have no general significant impact on subsequent employment demographics. On the other hand, protected-group employment share does generally grow more rapidly at reviewed firms, and goals are strongly correlated with this growth. Do our results then indicate only the establishments' projections reflect variations in supply known to them rather than induced variations in demand? Alternatively, can we infer that extracting greater promises will result in greater achievement? The critical evidence is that there is an overall response to pressure. Within labor markets of the same industry and region, reviewed contractors do better than the nonreviewed, as other work shows. As we have reveiwed here, within a given SMSA the establishments that set higher goals achieve greater growth rates of protected-group employment. My reading of this evidence is that while much of the nit-picking over paperwork is ineffective, the system of affirmative action goals has played a significant role in improving employment opportunities for members of protected groups.

The Targeting of Compliance Reviews

Affirmative action can be broadly conceived of as pursuing either antidiscrimination or job and earnings redistribution goals. That is to say, it can either pursue equality or opportunity or equality of result. Given the historical record, progress toward one goal will often entail progress toward the other. In particular, discrimination seems to be a broad enough target that it can be hit even with inperfect aim. The central question in this section, drawn from Leonard (1985a), seeks to answer is: what are the actual goals of affirmative action? The approach taken here is to infer the ends of affirmative action policy from an analysis of the historical record of actual enforcement.

Assertions concerning the ends of affirmative action are surprisingly common, especially when one realizes that only once in the past has the actual pattern of enforcement been analyzed. This pathbreaking study of Heckman and Wolpin (1976) examined the incidence of compliance reviews at a sample of 1185 Chicago area establishments during 1972. These compliance reviews are the first, the most common, and usually the last step in the enforcement process. Heckman and Wolpin find that the probability of review is not affected by establishment size, minority employment, or change in minority employment. They discover "no evidence of a systematic government policy for reviewing contractor firms". In other words, they find an essentially random enforcement process. This first analysis of targeting studied a relatively small sample in one city during the early 1970s, before the contract compliance program reached full stride. Do these early findings hold true for the nation as a whole after affirmative action regulations and procedures matured? Just as importantly, how are such results to be interpreted?

Which establishments does the OFCCP actually choose to review? Can we judge its motives from its targeting policy, and do the goals so revealed conform to those mandated in the Executive Order? The OFCCP has had, on paper, formal targeting systems such as the Revised McKersie System or the later EISEN system. These systems generally target in a sensible fashion against discrimination by selecting for review those establishments with a low proportion of minorities or females relative to other establishments in the same area and industry. But interviews with OFCCP officials in Washington and in the field suggest that these formal targeting systems were never really used. Instead of targeting on the basis of an establishment's past demographic record, compliance officers claim they simply reviewed the firms with the most employees, and the growing firms. This section shows which types of establishments were actually reviewed

between 1974 and 1980, primarily by the Department of Defense. As such, the patterns shown here may not be indicative of current policies or practices of the OFCCP, nor of past practices of ther compliance agencies. In addition, part of the patterns observed here may reflect the requirements for pre-award compliance reviews.

The model of affirmative action as an earnings redistribution program has two testable implications. One can at best offer weak support for the hypothesis, while the second can provide somewhat stronger support. The first is that no particular pressure should be applied to firms with relatively few minorities or females. This is what we observe in Tables 4 and 5, reproduced from Leonard (1985a). While this strongly rejects the model of affirmative action as anti-discrimination in employment, it offers weak support for the alternative hypothesis of affirmative action as earnings redistribution because it is also compatible with other models of regulatory behavior. The second implication of the earnings redistribution model is that greater pressure should be brought to bear to shift demand curves where the supply of labor is relatively inelastic. In particular, this implies a higher incidence of compliance reviews at establishments with non-clerical white-collar intensive workforces. I find significant evidence that this is what the OFCCP has done.

If one thought of the OFCCP's primary concern as fighting the most blatant forms of prima facie employment discrimination directly in the workplace, one might then expect reviews to be concentrated at establishments with a relative small proportion of females and black males, controlling for size, industry and region. There is little consistent significant evidence of this in the past. In part, this may be explained by the requirement of pre-award compliance reviews. Establishments with the smallest proportion of minorities or females,

ceteris paribus, are not consistently more likely to be reviewed for compliance with Executive Order 11246. Reviews are significantly more likely to take place, ceteris paribus, in non-clerical white-collar intensive establishments. Reviews are also more likely to occur at both large and growing establishments, where any costs of white males are likely to be more diffused.

How can the lack of a consistent targeting pattern by race or sex be explained? The larger establishments often employ a greater proportion of minorities and females. In interviews, field officers of the OFCCP have stated that they do not generally look at an establishment's past demographic record in targeting reviews. Reviewing large non-clerical white-collar intensive establishments with little regard for their past record of minority or female employment is consistent with an affirmative action effort that in terms of compliance review targeting is primarily concerned not with attacking the grossest prima facie forms of current employment discrimination, but rather with redistributing jobs and earnings to minorities and women.

The Impact of Title VII of the Civil Rights Act of 1964

While the central focus of this analysis has been on affirmative action under the Executive Order, it should be understood that the Executive Order has functioned within the backdrop of Title VII's Congressional madate and substantial legal sanctions. The dominant policy has been established under Title VII. What impact then has Title VII had? Without attempting to review this question as thoroughly as I have affirmative action, I can sketch some results. For a more complete discussion, see Brown (1984), Freeman (1981), Butler and Heckman (1977), and Smith (1978).

The broadest perspective may be gained by considering what changes have occurred in the earnings, income, occupational positions, and employment of blacks relative to whites before and after passage of the Civil Rights Act of 1964. In reviewing this evidence, Richard B. Freeman (1982, p. 3) finds that "virtually every indicator of positions shows a marked improvement in the economic status of employed black workers with -- as has been widely noted by various analysts -- gains concentrated among women, highly educated or skilled men, and young men. Virtually every indicator of positions also shows a marked acceleration in the economic status of employed black workers after 1964, when the U.S. antibias effort intensified as a result of Title VII of the Civil Rights Act of that year." (emphasis added) While a substantial part of this improvement can be attributed to the improved education of blacks [see Smith (1978)]; Title VII appears to have also contributed substantially and directly to improving the economic position of employed blacks at a given level of education.

While employed blacks appear to have approached parity with whites more rapidly since 1964, proportionately fewer blacks pass the initial hurdle of becoming employed. As Freeman (1982, p. 10) notes "At the same time that there has been a marked movement toward equality of earnings between employed blacks and whites, however, there has been a distressing deterioration in the likelihood of blacks holding jobs, particularly among the young. In 1964 the black male civilian employment/population ratio stood at .73, in 1969 it was .73, and in 1979 it was .64. By contrast, for white males, the ratio went from .78 (1964) to .78 (1969) to .75 (1979). Equally striking, the youth joblessness problem of the decade was one of increasing relative worsening in the black youth positions, for reasons that no one has yet satisfactorily explained. The aggregate data thus tell two stories: improvement for the employed but a reduction in the overall employment rate, especially in the 1970s".

More recently, attempts have been made by Beller (1979) and Leonard (1984c) to measure the impact of Title VII more directly using cross-sectional data. Beller (1979) examines the impact of EEOC sex-discrimination enforcement (complaint investigations and the ratio of successful to attempted settlements) on female and male earnings from 1967 to 1974. She finds some evidence that EEOC efforts have reduced the gender wage gap.

Class action suits under Title VII of the Civil Rights Act of 1964 are likely to have been among the most powerful prods to increasing minority and female employment, as Leonard (1984c) argues. Others have argued that the passage of the Civil Rights Act of 1964 reflected a diminished level of discrimination on the part of the electorate that one would expect to see reflected in improved employment opportunities for minorities and women even if the act were never enforced. Moreover, this line of argument proceeds, only a small proportion of establishments have been directly involved in Title VII litigation, so large effects are unlikely. This rosy view ignores the near defeat of the Civil Rights Act of 1964 and the continuing stream of litigation since, some of which has established broad precedents. Moreover, the Kennedy Administration believed the 1964 act was too strong to pass. Title VII, and in particular the clause extending protection to females, was supported by some congressmen because they believed it would doom the entire bill. It was precisely the provisions for enforcement through the courts that distinguished Title VII from its toothless, but equally noble, forebears and gave it prospects for effected change.

Before 1972, the Justice Department was empowered to bring suit through the courts for enforcement of Title VII's provisions. The EEOC's powers were limited to conciliation and persuasion. Since 1972 the power of litigation has

been entrusted to the EEOC which, in turn, can pass it on to individual plaintiffs. By such recourse to the courts, the EEOC can sometimes accomplish in years what takes the OFCCP weeks. What it gives up in speed, though, it sometimes wins back in power through the setting of sweeping legal precedents. For example, the celebrated case of Griggs v. Duke Power did not simply aid Griggs or affect only Duke Power. By establishing the principle of disparate impact as prima facie evidence of discrimination, it placed a heavier burden on all employers to avoid the appearance of discrimination.

The major contribution of the EEOC, which oversees Title VII enforcement, has probably been in helping to establish far-reaching principles of Title VII law in the courts which can then be used by private litigants, rather than in directly providing relief from systematic discrimination through its own enforcement activity. A 1976 General Accounting Office review of direct EEOC enforcement activity concluded that it was generally ineffective. Most individual charges were closed administratively before a formal investigation. Charges took about two years to be resolved, and only 11 percent resulted in successful negotiated settlements. There was little EEOC followup to ensure compliance with conciliation agreements, and entering into a conciliation agreement caused no significant change in a firm's employment of blacks or females. Between 1973 and 1975, among 12,800 charges for which the EEOC found evidence of discrimination and was able to negotiate settlements, fewer than 1 percent had been brought to litigation resulting in favorable court decisions (U.S. GAO, 1976). Between fiscal years 1972 and 1976 the EEOC brought 462 cases to court (U.S. GAO, 1981). The much publicized charges brought by the EEOC against AT&T, GM, Ford, Sears, GE, and the International Brotherhood of Electrical Workers in the early seventies were largely anomalous. This major legal and public relations offensive was atypical of the Commission, which has

normally been a reactive body slowly working its way through a mountain of individual complaints, many of which it discards as lacking substance. [See Hill (1983) for a critique.]

Despite its official mandate, the EEOC claims not to place great weight on such individual complaints in targeting enforcement, considering them unreliable. Rather, in interviews it claims to target by using EEO-1 forms to screen out establishments whose entry-level employment of protected groups compares poorly with that prevalent in the SMSA and whose professional employment falls short of the national norm. But according to the 1976 General Accounting Office report, "... the use of such (EEO-1) information in sophisticated methodologies for selecting targets for systematic enforcement activities has been minimal". The EEOC also claims to take into account community reputation, past charges, and the size of the company. It avoids large companies, finding them too hard to digest. Yet this targeting system has produced relatively few systemic charges. There is little evidence to suggest that the EEOC has focused its attention on large firms that systematically discriminate. I argue, however, that litigation under Title VII by private parties and by the EEOC constituted the cutting edge of government antidiscrimination policy.

Between 1964 and 1981 more than 5000 cases of litigation under Title VII, many of which were private suits, were decided in the federal district courts. More than 1700 of these were class action suits. These are the tip of an iceberg consisting of cases settled out of court or decided in state courts, but these class action decisions are likely to generate the most publicity, result in the largest awards, and affect the most people. What has been the impact of this Title VII litigation?

The enforcement of Title VII through the courts has contributed to a significant improvement of the employment and occupational status of blacks. In regressions of the change in the percentage of workers in an occupation who are members of a protected group on number of Title VII class action suits per corporation, percentage of employment in an industry by state cell that is in federal contractor establishments under the affirmative action obligation, and a lagged dependent variable, Title VII leads to sometimes negative but generally insignificant changes for white females, but to a moderate and significant improvement in the employment of blacks. The demand shifts for females may simply be swamped by the ongoing massive increase in labor supply. In addition, many of the early Title VII cases focused on racial rather than gender discrimination. The apparent ineffectiveness of antidiscrimination policy in promoting female employment remains an interesting question for research. Table 6 [reproduced from Leonard (1984c)] summarizes the impact of Title VII litigation. In this table Title VII litigation plays a significant role in increasing blacks' employment share.

For example, between 1966 and 1978 the proportion of all workers in manufacturing who were black increased from .08 to .12. On average, a Title VII class action suit per corporation raises this proportion to .277. Since there was an average of .011 such suits per corporation in a state by industry cell, about 7 percent of the improvement in black employment share can be attributed directly to Title VII litigation. The impact is even more pronounced for black females. This counts only the direct effects of litigation on firms in the same industry and state. In particular, it does not count the spillover effects onto firms in other industries and states from establishing credible threats and wide-ranging legal precedents. In fact, the greater the spillover, the less the differential impact of Title VII estimated here.

The proportionate impact of Title VII litigation is summarized in Table 6. This litigation has had its strongest impact in the white-collar occupations. Black gains through Title VII have been most striking in professional and management positions, suggesting that Title VII litigation has created pressure for occupational advancement as well as employment. The analysis here treats litigation under Title VII as exogenous. If one believes that Title VII suits that reach a decision in the federal district courts are more prevalent in firms with growing black employment, then the estimate presented here will be biased upward. More plausibly, in my judgement, if discrimination leads to both stagnant levels of black employment and to litigation, then my estimate of the impact of Title VII will be biased downward and the positive results shown here are that much more notable.

In sum, these results suggest that Title VII litigation has played a significant role over and above that of affirmative action. This impact has been greated for blacks than for women, and greater for the skilled than for the unskilled.

Antidiscrimination or Reverse Discrimination?

We have seen that despite poor targeting, affirmative action has helped promote the employment of minorities and women, and that Title VII has likely played an even greater role. This raises the most important and the most controversial question: has this reduced discrimination, or has it gone behond and induced reverse discrimination against white males? This is also the question on which our evidence is least conclusive. The finding of decreased

evidence in this study is that affirmative action and Title VII have been successful in promoting the integration of blacks into the American workplace. Hopefully, evidence of the effectiveness of past affirmative action programs will be of some use as we prepare to enter the second generation of policy by troubled euphemism: non-preferential affirmative action.

References

Ashenfelter, Orley, and Heckman, James. "Measuring the Effect of an Antidiscrimination Program." In Evaluating the Labor Market Effects of Social Programs, editied by Orley Ashenfelter and James Blum. Princeton, N.J.: Princeton University, Industrial Relations Section, 1976.

Beller, Andrea H. "The Economics of Enforcement of an Antidiscrimination Law: Title VII of the Civil Rights Act of 1964." Journal of Law and Economics __ (1979): 359-380.

Brown, Charles. "The Federal Attack on Labor Market Discrimination: The Mouse that Roared?" in R. Ehrenburg, ed. Research in Labor Economics. New York: JAI Press, 1984.

_______. "Black/White Earnings Ratios since the Civil Rights Act of 1964: The Importance of Labor Market Dropouts." Quarterly Journal of Economics 99 (February 1984): 31-44.

Burman, George. The Economics of Discrimination: The Impact of Public Policy. Ph.D. dissertation, University of Chicago, 1973.

employment growth for white males is not sufficient to answer the question since it is consistent with both possibilities.

The integration of the American workforce, by race and gender, has been among the most far-reaching and controversial goals of domestic policy in the past two decades. Some have argued that integration can be achieved only at great cost in terms of reduced productivity and profits, that forced equity will entail reduced productivity. Opponents of affirmative action have argued that employers were discriminating on the basis of merit, not on the basis of race or gender. If their contention is correct, then government policies that favor the hiring and promotion of minorities and women should cause a decline in their relative productivity. Equal pay restrictions will compound the inefficiency. The hypothesis inherent in this argument is that the relative marginal productivities of minorities and females have declined as their employment has increased and have not moved toward equality with relative wages.

Using estimates of production functions relating output to inputs for the manufacturing sector, Leonard (1984c) finds that relative minority and female productivity increased between 1966 and 1977, a period coinciding with government antidiscrimination policy to increase employment opportunities for members of these groups. There is no significant evidence here to support the contention that this increase in employment equity has had marked efficiency costs. The relative marginal productivities of minorities and women have increased as they have progressed into the workforce, suggesting that discriminatory employment practices have been reduced.

If we had observed that relative minority or female productivity fell while relative minority or female wages increased, one might suspect that government

pressure under Title VII and Executive Order 11246 (affirmative action) had led to reverse discrimination. I find no significant evidence of reverse discrimination, nor of any signficant decline in the relative productivity of minorities or females. Direct tests of the impact of governmental antidiscrimination and affirmative action regulation on productivity find no significant evidence of a productivity decline. These results suggest that anti-discrimination and affirmative action efforts have helped to reduce discrimination without yet inducing significant and substantial reverse discrimination. However, the available evidence is not yet strong enough to be compelling on either side of this issue. Since the productivity estimates are not measured with great precision, strong policy conclusions based on this particular result should be resisted.

Conclusion

Based on my empirical work, and on that of other economists, I believe that the claims that affirmative action has been ineffective have been overstated. There have now been six establishment level studies that agree in finding that black male employment share has grown faster in federal contractor establishments subject to affirmative action than in non-contractor establishments.

The policy of affirmative action has had a short and turbulent history in this country. Of all the social programs that grew during the sixties, it has perhaps enjoyed the least measure of consensus. Its bureaucratic organization and body of regulations have undergone change at frequent intervals since its inception. While the targeting of enforcement could be improved, and while the impact of affirmative action on other groups is still subject to question, the

Burstein, P. "Equal Employment Opportunity Legislation and the Income of Women and Nonwhites." 1978.

Butler, Richard, and Heckman, James J. "The Government's Impact on the Labor Market Status of Black Americans: A Critical Review" in Equal Rights and Industrial Relations, edited by Leonard J. Hausman, et al. Madison: Industrial Relations Research Association, 1977, pp. 235-281.

Ferrand, Louis G., Jr. "Compilation of Lists of Back Pay Agreements Obtained by Compliance Agencies under Executive Order 11246." Affadavit of the Counsel for Civil Rights, U.S. Department of Labor, in the matter of Warner and Swasey Company and Defense Logistics Agency, September 14, 1978.

Fiss, Owen M. "A Theory of Fair Employment Laws," University of Chicago Law Review 39 (1977): 235-313.

Freeman, Richard B. "Changes in the Labor Market for Black Americans, 1948-1972." Brookings Papers on Economic Activity, no. 1 (1973): 67-120.

______. "Time-Series Evidence on Black Economic Progress: Shifts in Demand or in Supply." Unpublished paper. Cambridge, Mass.: Harvard University, Department of Economics, May 1978.

______. "Black Economic Progress After 1964: Who Has Gained and Why?" In Studies in Labor Markets, edited by Sherwin Rosen. Chicago: University of Chicago Press/NBER, 1981, pp. 247-294.

Glazer, Nathan. Affirmative Discrimination: Ethnic Inequality and Public Policy. New York: Basic Books, 1975.

Goldstein, Barry. "The Importance of the Contract Compliance Program: Historical Perspective," NAACP Legal Defense Fund, unpublished paper, May 1981.

Goldstein, Morris, and Smith, Robert S. "The Estimated Impact of the Antidiscrimination Program Aimed at Federal Contractors." Industrial and Labor Relations Review 29 (July 1976): 523-43.

Heckman, James J., and Wolpin, Kenneth I. "Does the Contract Compliance Program Work? An Analysis of Chicago Data." Industrial and Labor Relations Review 29 (July 1976): 544-64.

Hill, Herbert. "The Equal Employment Opportunity Commission: Twenty Years Later." The Journal of Intergroup Relations 11, no.4 (Winter 1973): 45-72.

Jones, James E., Jr. "The Bugaboo of Employment Quotas," Wisconsin Law Review, 2 (1970): 341-403.

_______. "Twenty-One Years of Affirmative Action: The Maturation of the Enforcement Process Under the Executive Order 11,246 as Amended." Chicago Kent Law Review 59 (1982): 67-122.

Leonard, Jonathan S. "The Impact of Affirmative Action," Department of Labor Report, July 1983.

_______. "The Impact of Affirmative Action on Employment," Journal of Labor Economics, 2, no.4 (October 1984a): 439-463.

_______. "Employment and Occupational Advance under Affirmative Action," Review of Economics and Statistics 66, no.3 (August 1984b): 377-385.

_______. "Anti-Discrimination or Reverse Discrimination: The Impact of Changing Demographics, Title VII and Affirmative Action on Productivity," Journal of Human Resources 19, no.2 (Spring 1984c): 145-174.

______. "Splitting Blacks? Affirmative Action and Earnings Inequality Within and Between Races," National Bureau of Economic Research, Working Paper No. 1327, April, 1984d.

______. "Affirmative Action as Earnings Redistribution: The Targeting of Compiance Reviews," Journal of Labor Economics 3, no.3 (July 1985a): 363-384.

______. "What Promises Are Worth: The Impact of Affirmative Action Goals," Journal of Human Resources 20, no.1 (Winter 1985b): 3-20.

______. "Unions and the Employment of Blacks, Hispanics, and Women," Industrial and Labor Relations Review, 39, no.1 (October, 1985).

Norgen, Paul and Hill, Samuel. Toward Fair Employment. New York: Columbia University Press, 1964.

Report of the 1967 Plans for Progress Fifth National Conference.

Ruchames, L. Race, Jobs and Politics - The Story of FEPC. New York: Columbia University Press, 1953.

Silberman, Lawrence H. "The Road to Racial Quotas." Wall Street Journal, August 11, 1977, p. 14.

Smith, Arthur B., Jr. Employment Discrimination Law. Indianapolis: Bobbs-Merrill, 1978.

Smith, James. "The Improving Economic Status of Black Americans." American Economic Review 68, no.2 (May 1979): 171-178.

Smith, James and Welch, Finis. "Affirmative Action and Labor Markets," Journal of Labor Economics, 2, no.2 (April 1984): 269-301.

U.S. Commission on Civil Rights. 1961 Report: Employment, Book 3. Washington: Government Printing Office, 1962.

U.S. Commission on Civil Rights. The Federal Civil Rights Enforcement Effort - 1974, Vol. 5, To Eliminate Employment Discrimination. Washington: U.S. Government Printing Office, July 1975.

U.S. Civil Rights Commission. The Federal Civil Rights Enforcement Effort -

1977, *To Eliminate Employment Discrimination: A Sequel*. Washington: U.S. Government Printing Office, December 1977.

_______. *The Federal Civil Rights Budget 1983*. Washington: U.S. Government Printing Office, 1982.

U.S. General Accounting Office. "The Equal Employment Opportunity Program for Federal Noncontruction Contractors Can be Improved." April 29, 1975, p. 30.

_______. "EEOC Has Made Limited Progress in Eliminating Employment Discrimination." 1976.

_______. "Further Improvements Needed in EEOC Enforcement Activities." April 19, 1981.

Vroman, Wayne. "Changes in the Labor Market Position of Black Men Since 1964." *Proceedings of the Twenty-Seventh Annual Winter Meeting* Industrial Relations Research Association, 1975, pp. 294-301.

Welch, Finis. "Affirmative Action and its Enforcement," *American Economic Review* 71, no.2 (May 1981): 127-133.

Table 1

Proportion of all Employees

Line	Demo-graphic Group	Con-tractor Status	1974 Mean	1974 σ	1980 Mean	1980 σ	MeanΔ	Mean%Δ
1	Black	N	.053	.10	.059	.10	.006	28
2	Males	Y	.058	.10	.067	.10	.008	33
3			(6.0)		(9.4)		(6.5)	(3.6)
4	Other	N	.034	.10	.046	.10	.012	52
5	Minority	Y	.035	.08	.048	.09	.013	58
6	Males		(1.6)		(2.1)		(1.2)	(2.1)
7	White	N	.448	.27	.413	.26	−.034	−2
8	Males	Y	.584	.26	.533	.25	−.047	−4
9			(66.7)		(66.5)		(16.4)	(2.0)
10	Black	N	.047	.10	.059	.11	.012	47
11	Females	Y	.030	.07	.045	.08	.015	77
12			(24.0)		(19.2)		(5.7)	(10.8)
13	Other	N	.024	.08	.036	.08	.012	65
14	Minority	Y	.016	.05	.028	.06	.012	77
15	Females		(14.8)		(13.0)		(1.1)	(3.2)
16	White	N	.394	.27	.400	.26	.006	17
17	Females	Y	.276	.23	.288	.23	.012	30
18			(59.7)		(57.8)		(7.8)	(11.9)
19	Total	N	186	286	209	341	23	17
20		Y	271	728	276	720	5	21
21			(21.2)		(16.2)		(10.7)	(3.3)

NOTE.—*T*-tests across means in parentheses, on every third line. In every case, *F*-tests reject equality of variances across contractors and noncontractors, with more than 99% confidence. The last col. is the mean of percentage changes, not the percentage of change in means. *N* = noncontractor in 1974 (27,432 establishments); *Y* = contractor in 1974 (41,258 establishments).

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Table 2

The Effect of Contractor and Review Status on Employment Growth by Demographic Group (N = 68,690)

	Equations									
	White Males		Black Males		Other Males		White Females		Black Females	
	(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8)	(9)	(10)
CONTRACT	−.012	−.032	.038	.056	.079	−.017	.028	.088	.123	.015
	(.003)	(.014)	(.011)	(.048)	(.014)	(.058)	(.006)	(.026)	(.013)	(.055)
REVIEW	−.00075	−.067	.079	−.189	.152	−.309	−.030	−.049	.061	.567
	(.004)	(.023)	(.015)	(.078)	(.018)	(.095)	(.008)	(.042)	(.017)	(.090)
ln *GROWTH*	.976	.982	1.223	1.117	1.087	.952	1.016	.970	1.190	1.067
	(.003)	(.005)	(.009)	(.018)	(.010)	(.022)	(.005)	(.010)	(.010)	(.021)
ln *SIZE*	.0018	−.0018	.0019	.0002	.050	.029	−.005	.003	.020	.013
	(.0011)	(.002)	(.0040)	(.007)	(.0040)	(.009)	(.002)	(.0049)	(.004)	(.008)
SINGLE	.028	.029	−.010	−.003	.064	.077	−.077	−.077	−.076	−.066
	(.004)	(.004)	(.013)	(.013)	(.016)	(.016)	(.007)	(.007)	(.015)	(.015)
PWC	−.076	−.066	.093	.087	−.006	−.016	−.029	−.034	.006	.003
	(.007)	(.007)	(.002)	(.022)	(.026)	(.027)	(.012)	(.012)	(.025)	(.025)
CXG	. . .	−.0009	. . .	.126	. . .	.153	. . .	.042	. . .	.113
		(.006)		(.021)		(.025)		(.011)		(.024)
CXS	. . .	.0037	. . .	−.002	. . .	.018	. . .	−.010	. . .	.018
		(.002)		(.008)		(.010)		(.004)		(.009)
RXG	. . .	−.043	. . .	.057	. . .	.124	. . .	.107	. . .	.294
		(.008)		(.027)		(.032)		(.014)		(.031)
RXS	. . .	.009	. . .	.038	. . .	.066	. . .	.004	. . .	−.067
		(.003)		(.011)		(.013)		(.006)		(.012)
R^2	.70	.70	.25	.25	.15	.15	.45	.45	.20	.20

NOTE.—Standard errors in parentheses. All equations include 27 industry and four region dichotomous variables. *CONTRACT* is a dichotomous variable set to one if the establishment was part of a federal contractor company in 1974. *REVIEW* is a dichotomous variable set to one if the establishment had a compliance review between 1975 and 1979. *SINGLE* is a dichotomous variable set to one if the establishment was not part of a multiestablishment company. *PWC* is the proportion of nonclerical white-collar employees in 1974. *SIZE* is total employment in 1974. *GROWTH* is total employment growth rate, 1974–80. *CXG* is the interaction of *CONTRACT* × ln *GROWTH*. *CXS* is the interaction of *CONTRACT* × ln *SIZE*. *RXG* is the interaction of *REVIEW* × ln *GROWTH*. *RXS* is the interaction of *REVIEW* × ln *SIZE*. The dependent variable is the logarithm of the growth rate of employment of the given group.

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Table 3

MEANS OF PROJECTED AND ACTUAL EMPLOYMENT LEVELS
BY DEMOGRAPHIC GROUP (N = 5240)

	Mode Year			
	1974 Lagged 2 Years	1975 Lagged 1 Year	1976 Projection	1976 Actualization
Black male	54	55	61	54
Minority nonblack male	38	40	42	40
White male	628	623	615	602
Total male	720	718	718	696
Black female	34	35	39	35
Minority nonblack female	20	21	23	22
White female	218	216	222	210
Total female	272	272	284	267
Total	992	990	1001	963

Note: The first column is the actual level of employment one year before the projection was made. The second column is the actual level of employment in the year the projection was formed. The third column is the projection. For the mode observation, this is a one-year-ahead projection made in 1975 for the level of employment expected to occur in 1976. The fourth column is the level of employment actually realized in the following year.

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Table 4

Proportion of Defense Contractor Establishments Reviewed from 1975 to 1979, by 1974 Black Male Employment Share (N = 7,968 Establishments)

Line	Black Male Employment Share, 1974	N	Proportion Reviewed
1	.00	1,773	.106
2	.01–.02	1,672	.226
3	.02–.04	1,260	.263
4	.04–.06	761	.254
5	.06–.08	490	.255
6	.08–.10	380	.279
7	.10–.20	911	.301
8	.20–.50	633	.273
9	.50–.70	72	.083
10	.70–1.00	16	.188

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Table 5

Proportion of Defense Contractor Establishments Reviewed from 1975 to 1979, by 1974 Female Employment Share (N = 7,968 Establishments)

Line	Female Employment Share	N	Proportion Reviewed
1	.00	74	.000
2	.00–.05	1,073	.161
3	.05–.15	2,072	.217
4	.15–.25	1,093	.233
5	.25–.30	397	.252
6	.30–.35	404	.277
7	.35–.40	404	.297
8	.40–.50	707	.270
9	.50–.70	980	.232
10	.70–1.00	764	.283

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Table 6

ESTIMATED EFFECT OF THE NUMBER OF TITLE VII CLASS ACTION SUITS DECIDED IN THE FEDERAL DISTRICT COURTS ON THE 1978 PROPORTION OF EMPLOYMENT BY OCCUPATION, 1966–1978

	Mean		%	% Change in	Change in Standard
	1966	1978	Change 1966–78	Proportion Due to a Change in Number of Cases per Firm	Deviation of Proportion Due to a Standard Deviation Change in Number of Cases
1. Black proportion of all employment	.081	.120	48	3.4**	.088
2. Black male proportion of male employment	.085	.112	32	2.9**	.083
3. Black female proportion of female employment	.056	.135	141	13.0**	.213
4. Black proportion of all white-collar employment	.011	.042	282	12.4**	.150
5. Black male proportion of male white-collar employment	.010	.034	240	11.0**	.148
6. Black female proportion of female white-collar employment	.012	.060	400	22.5**	.210
7. Black proportion of all profes. and managerial employment	.005	.029	480	31.6**	.246
8. Black male proportion of male profes. & managerial employment	.005	.026	420	28.8**	.238
9. Black female proportion of female profes. & managerial employment	.011	.048	336	28.6**	.258
10. Black proportion of all blue-collar employment	.104	.150	44	3.0**	.082
11. Black male proportion of male blue-collar employment	.109	.144	32	2.4**	.072
12. Black female proportion of female blue-collar employment	.082	.174	112	10.5**	.196

Note: Estimated from regressions for 555 state by industry cells in manufacturing, with 1966 proportions of blacks in relevant category, and cell proportion of employment in federal contractor establishments held fixed.
** Significant at 1 percent level.

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