

ECONOMIC SCENE

Equality in hiring remains the key to civil rights goals.

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WHEN he voted against the Civil Rights Act of 1964, Barry Goldwater declared, "The problems of discrimination cannot be cured by laws alone."

More than three decades of experience suggests that Goldwater was wrong, although not entirely. There is abundant evidence that the act did much to improve prospects for blacks, but as the continuing series in *The New York Times* on race in America makes clear, discrimination persists, taking on more subtle forms that are less amenable to correction by legislation. Still, existing laws could combat discrimination more effectively.

Title VII of the Civil Rights Act, which took effect 35 years ago next month, prohibited employment discrimination and established the Equal Employment Opportunity Commission. The first studies on the law's economic impact were conducted by Richard Freeman of Harvard and Orley Ashenfelter of Princeton in the early 1970's. They found that after 15 years of stagnation, black men's earnings increased relative to those of whites shortly after the act took effect, with the median earnings gap closing from 36 percent in 1965 to 26 percent in 1975. Gains were particularly large for black professionals. The timing suggests, but certainly does not prove, that the Civil Rights Act was responsible for the improvement.

Professors Freeman and Ashenfelter were quickly criticized by both the right and the left. From the right, critics argued that the narrowing gap was a mirage -- that low-wage workers, who were disproportionately black, were induced to drop out of the labor market by expanded income-transfer programs. The average wage of black workers rose, it was argued, because many who would have earned low wages left the labor force. Others argued that improvements in African-American education and Northern migration were responsible. Some left-wing critics argued that the strong economy, not civil rights legislation, had lifted the earnings of blacks.

Underlying these criticisms was the belief of the right that job discrimination could not persist in a competitive economy because employers would bid up the wages of minorities if they were equally productive but less well paid, and the left's belief that more government intervention was needed to make a real dent in discrimination.

The accumulating evidence has convinced most critics that the Civil Rights Act was a principal cause of black progress. The black-white earnings gap continued to narrow until the mid-1970's, in both strong and weak economic times. Several studies, including a recent working paper by Chinhui Juhn of the University of Houston, found that labor market dropouts accounted for only a small part of the narrowing. The gap shrank most impressively in the South, for workers in all age groups, suggesting that educational improvements and migration were not primarily responsible.

It is possible that the earnings gap shrank because of deeper changes in society -- the very forces that led to the enactment of the Civil Rights Act. But a 1998 study by Kenneth Chay of the University of California at Berkeley found that when smaller establishments became covered by the act in 1972, the employment and pay of black workers increased in them more than in establishments that were already covered. Because societal forces operated on both large and small employers, coverage by the Civil Rights Act made the difference.

The improvement in the relative economic status of African-Americans halted in the mid-1970's, especially for college graduates, and the earnings gap increased slightly in the 1980's. Strong economic growth in the late 1990's helped return the black-white wage gap for men to about where it was at the end of the 1970's. For black women, who have a smaller earnings gap than do black men, the gap has continued to widen slowly.

Progress in narrowing the gap slowed primarily as a byproduct of forces that caused rising wage dispersion throughout the American economy.

To some extent, the Civil Rights Act has also been a victim of its own success. The early cases brought under the law were predominantly class-action suits against employers who refused to hire African-Americans in higher-paying jobs and industries, like steel and aircraft manufacturing.

The nature of litigation has changed. Research by John Donohue III and Peter Siegelman published in the Stanford Law Review found that in 1966, charges of racial discrimination involving hiring outnumbered those involving firing by 50 percent. In 1999 firing cases outnumbered hiring cases by more than six to one. The number of class-action suits, though up in the last five years, declined from a peak of 1,100 in 1975 to 28 in 1999.

Antidiscrimination policy works best when it opens doors and gives people a chance to prove their mettle. Studies in which paired black and white job seekers apply for the same job routinely turn up evidence of bias in hiring. But cases involving individual discharges are easier and less costly for lawyers to pursue. This is unfortunate because "abuses of the system are greater on the firing side, and the potential for achieving the goals of the legislation are greater on the hiring side," Professor Donohue said.

Concerns about possible litigation over future discharges could also discourage employers from taking a chance on minority job applicants in the first place.

To make the Civil Rights Act more effective, Professor Donohue proposes doubling or tripling damages in discriminatory hiring cases, as is done in antitrust cases, and curtailing punitive damages on the discharge side.

But Paul Steven Miller, a commissioner with the Equal Employment Opportunity Commission, said he was concerned that different penalties for hiring and firing cases would send a signal that some forms of employment discrimination are more offensive than others. Instead, he favors increased technical assistance for minority job applicants, greater use of programs to send matched-race testers to apply for jobs and affirmative action to identify and reduce racial bias in hiring.

Still, it is hard to argue with Professor Donohue when he says, "It would be a shame if Title VII of the Civil Rights Act, which embodies one of the most noble ideas of the 20th century, becomes used primarily as a way for less competent workers to hang on to their jobs or walk away with a sizable, undeserved severance package."