

THE ANTI-DISCRIMINATION PARADIGM: IRRATIONAL, UNJUST AND TYRANNICAL

BEN O'NEILL*, *Australian National University***

SUBMITTED TO THE LUDWIG VON MISES INSTITUTE¹

ABSTRACT

This paper presents a critique of the anti-discrimination paradigm and the anti-discrimination laws and 'political correctness' it engenders. For brevity, the paper focuses mainly on race discrimination, though the thesis of the paper applies equally to discrimination on other grounds such as sex, age, disability, sexual orientation, and so on. Part I of the paper argues that the anti-discrimination paradigm and its blanket condemnation of discrimination is irrational—in particular, that race discrimination may sometimes be rational, even in the absence of causal theories of racism. Part II of the paper then argues that the anti-discrimination paradigm is unjust and immoral. Part III of the paper argues that laws forcibly prohibiting discrimination are tyrannical—in particular, that they are an effort to destroy the legitimacy of concepts pertaining to man in an effort to enforce a form of epistemological egalitarianism. Such laws must necessarily lead to an implicit quota system, regardless of any alleged contrary intentions on the part of its supporters. Finally, Part IV of the paper discusses when it is right to discriminate and whether governments should engage in discrimination in their actions.

* E-mail address: ben.oneill@hotmail.com.

** School of Finance and Applied Statistics, Australian National University, ACT, 0200, Australia.

¹ Submitted as a working paper for the Ludwig von Mises Institute in December 2007. Updated in March 2008.

PART I –ANTI-DISCRIMINATION IS IRRATIONAL

From the most polite parlour discussions to drop-down drag-out-the-door brawls, debates over racism and discrimination almost always suffer from a toxic dose of ambiguity and equivocation, such that opinions are often blatantly at cross purposes. So I am going to start by engaging in a rather eccentric procedure: I am going to tell you what I am talking about —that is, I am going to define my terms.

The concept of race

Like all other concepts, ‘race’ is an abstraction formed by grouping different things into a conceptual whole by a process of measurement omission². In particular, a ‘race’ of people refers to the group of all people —that is, all people who have lived, are living, or will ever live— who share certain biological characteristics, omitting particular measurement of irrelevant characteristics such as height, weight, and so on. It is important to note that race is not a floating abstraction disconnected from any concrete manifestation. It refers to a definite group of people, albeit one which we may be uncertain about. There is no such thing as a ‘race’ of people apart from the actual people who form that race. There is not, as Plato would contend, any such thing as ‘Caucasian-ness’ apart from actual Caucasians, or ‘Negro-ness’ apart from actual Negroes.

Although, in its widest sense, a ‘race’ of people refers to a group of people some of whom are long dead and some of whom do not yet exist, it is common for people to refer to a race of people in contemporary terms only —that is, to refer to all people of a certain race who are currently alive. When we are interested in determining the characteristics of people of a certain race, and when there is no reason to believe that these characteristics are inherently connected with the biological characteristics of race, this narrower conception becomes a virtual necessity. Thus, if we are interested in, say, the diet of different racial groups then we will confine our analysis to the diet of races of people who are around right now.

² See Rand, A. (1990) *Introduction to Objectivist Epistemology (Expanded Second Edition)*. Meridian: New York, pp. 10-19.

Whether we are speaking only of the current population of people, or of human beings in general, when we refer to the “characteristics of a race” we are referring to the characteristics of an actual group of people, not to the characteristics of some abstraction disconnected from reality. Of course, in most cases, the characteristics that we are interested in only really apply to individuals and so, when we refer to the characteristics of the racial group we must be able to aggregate the characteristics of the individuals in that group in a sensible way. Thus, when we refer to the skin colour, height, weight or diet of Caucasians, we are referring to some aggregated measure of the skin colour, height, weight or diet of an *actual* group of people.

It is necessary to note that, in discussions of race and racism, one often hears the assertion that “race does not exist”, or at least, that there is no biological basis for human racial classification. For example, Lewontin conducts a statistical analysis of the gene frequencies from individuals from seven alleged racial groups and finds that “[l]ess than 15% of all human genetic diversity is accounted for by differences between human [racial] groups!”³ He concludes that:

It is clear that our perception of relatively large differences between human races and subgroups, as compared to the variation within these groups, is indeed a biased perception and that, based on randomly chosen genetic differences, human races and populations are remarkably similar to each other, with the largest part by far of human variation being accounted for by the differences between individuals. Human racial classification is of no social value and is positively destructive of social and human relations. Since such racial classification is now seen to be of virtually no genetic or taxonomic significance either, no justification can be offered for its continuance.⁴

However, Edwards explains that this conclusion is based on the statistical fallacy and that “[a] proper analysis of human data reveals a substantial amount of information about genetic differences. What use, if any, one makes of it is quite another matter.”⁵ Indeed, what use we should make of observable physiological characteristics of racial groups is a contentious issue and one which is the topic of this present paper.

³ Lewontin R.C. (1972) *The apportionment of human diversity*. In Dobzhansky, T., Hecht, M.K. and Steere, W.C. (eds) (1972) *Evolutionary Biology* 6. Appleton-Century-Crofts: New York, p. ???

⁴ Ibid, Lewontin (1972), p. ???

⁵ Edwards, A.W.F. (2003) Human genetic diversity: Lewontin’s fallacy. *BioEssays* 25, p. 801.

What is racism?

The term “racism” is a recent invention. Stone notes that the term “...is a neologism so recent that it was not in *The Oxford English Dictionary* as late as 1971. But it swept all before it once it did arrive”⁶. However, despite the current sweeping use of the word, there are many who have no clear idea of what they mean when they talk about racism. Worse still, there are many more who have *several* clear ideas of what they mean when they use the term, and they dance back and forth between their various conceptions of the term with all the zest and celerity of a prize-fighter.

Nonetheless, despite the various inconsistencies which one observes in discussions of the topic, there are a few key elements that emerge from those few commentators who manage to talk about racism in a clear and consistent manner. These elements are present in the explanation of Rand, who explains racism as follows:

Racism is the lowest, most crudely primitive form of collectivism. It is the notion of ascribing moral, social or political significance to a man’s genetic lineage—the notion that a man’s intellectual and characterological traits are produced and transmitted by his internal body chemistry. Which means, in practice, that a man is to be judged, not by his own character and actions, but by the character and actions of a collective of ancestors.

Racism claims that the content of a man’s mind (not his cognitive apparatus, but its *content*) is inherited; that a man’s convictions, values and character are determined before he is born, by physical factors beyond his control.⁷

As this explanation of the concept makes clear, racism is a thesis about the content of a person’s mind —his character, beliefs, attitudes and ideas. It is not a thesis about his physical characteristics. Thus, it is not racist to believe that the biological characteristics of Caucasians cause them to have lighter skin than Africans. Indeed, it is blatantly obvious that this is so, and that the biological characteristics of race *do* cause different physical characteristics in people, including different skin, hair and eye colour, face and body structure, and so on. In fact, it is precisely these physical differences that are the primary means by which we are able to differentiate people into different racial groups in the first place. We do not need any particular concept

⁶ See Stone, D. (1988) *Racial and other Antagonisms*, p. 99. In Stone, D (1995) *Cricket versus Republicanism and other Essays*. Quakers Hill Press: Sydney, pp. 91-105.

⁷ Rand, A. (1964) *The Virtue of Selfishness*. Signet: New York, p. 147.

to denote this banal observation, and certainly not one which has produced as much controversy as racism.

It is also important to note that racism is a *causal* thesis. It holds that the content of a person's mind, and thus the content of his character, is *caused* by genetic factors. It does not merely assert that race happens to be correlated with character traits, though this is obviously a consequence of the causal thesis. According to D'Souza:

It is not unusual to see the term used in various ways, but the basic definition remains clear: racism is an ideology of intellectual or moral superiority based upon the *biological* characteristics of race.⁸

Although correlation between racial characteristics and other characteristics can and does occur in the absence of any causal genetic influence on character, the conception of racism as the mere correlation between race and other characteristics is occasionally adopted as the hallmark of racism, such that any assertion of an empirical relationship between beliefs or character traits and race is regarded as racist. Stone uses the term in this sense and therefore accepts the thesis of racism as true — he says:

“Racism” is the belief that some human races are inferior to others in certain respects, and that it is sometimes proper to make such differences the basis of our behaviour towards people. It is this proposition which is nowadays constantly declared to be false, though everyone knows it to be true; just as everyone knows it to be true that people differ by age, sex, health, etc., and that it is sometimes proper to make *these* differences the basis of our behaviour towards them.⁹

This view holds that racism is an empirical thesis rather than a causal thesis. This definition of racism is highly problematic. First of all, it multiplies concepts beyond necessity since it essentially equates racism with race discrimination. Secondly, it does not sit well with the historical evolution of the concept of racism, which emerged during the Enlightenment period as a result of attempts to explain sociological and cultural differences between racial groups in terms of emerging and influential genetic ideas¹⁰. For these reasons, we will take racism to be a causal thesis which holds that a person's character is causally determined, either wholly or in significant part, by genetic factors.

⁸ D'Souza, D. (1995) *The End of Racism*. Free Press Paperbacks: New York, p. 27. Emphasis added.

⁹ Ibid, Stone (1988), p. 100.

The anti-discrimination paradigm

Most people now reject the thesis of racism —they reject the view that a person’s genetic lineage determines their beliefs and character. While such a belief may have been plausible during the Enlightenment period when racial groups were starkly separated and were far more homogenous with regard to culture and circumstance, generations of observing the heterogeneity of people within racial groups in the modern world has given a multitude of living counterexamples to falsify the theory of racism.

This has led many to conclude not merely that racism is false —not merely that race is not the cause of character—, but that in the absence of irrational discrimination, no *correlation* can exist between race and character, regardless of the cause. Indeed, it has long been the dogma of anti-discrimination activists that race discrimination is necessarily arbitrary and irrational —a manifestation of ignorance, fear and prejudice. In fact, the causal theories of racism have been regarded as the *sine qua non* of race discrimination.

According to this prevailing view, to engage in race discrimination is to identify oneself as an ignorant bigot, a primitive relic, not conversant with modern notions of reason and justice. And yet, this view of discrimination is entirely discredited by an examination of some of the most basic findings of the science of statistical inference and prediction.

Statistical inference and discrimination

The discipline of statistics is concerned with the analysis of rational inductive reasoning —with determining what inferences and predictions follow logically from observed data. Among the insights of this discipline is that it demonstrates that we may rationally infer unknown characteristics that are of interest to us from any observable characteristics which either tend to exist with the characteristic of interest, or tend not to exist with the characteristic of interest (as opposed to observable

¹⁰ For discussion on the emergence of the racist viewpoint during the Enlightenment period, see D’Souza (1995), pp. 25-66.

characteristics that are *statistically independent* of the characteristic of interest). In statistical parlance we say that we may rationally infer unknown characteristics of interest from any observed characteristics that are *statistically* dependant —not to be confused with *causally* dependant— on the characteristic of interest, conditional of course, on whatever other information is at hand.

It is well known among scientists and statisticians that mere statistical dependence does not imply any causal relationship —that is, correlation does not imply causation¹¹. However, it is rarely appreciated that, for the purposes of prediction, causal relationships are relevant only where we wish to know the *effect* of some action that we propose to take. In the absence of some intervening action —i.e., in the case of passive observation— *statistical* dependence is all that is relevant for rational prediction, and causal connections are of no concern.

This is a general principle of rational inference, admitting no special cases. In particular, the principle applies to race discrimination as much as to any other form of discrimination in decision making. Race is a characteristic like any other used in rational inference, and no special status should be accorded to it. Statistics, if done correctly, is a value-free science, concerned with rational inference and prediction. It knows no boundaries of political correctness and is not constrained by political or social expedience or popularity.

To illustrate this rather esoteric statistical argument by a concrete example, consider the case of taxi drivers in Washington D.C. —themselves of various races— who often refuse to pick up young black males for fear of being assaulted¹². This is a prediction problem like any other encountered in statistics. The characteristic of interest to the driver in such a situation is whether or not he will be assaulted by his prospective passenger. The available factors for prediction are restricted to what can

¹¹ Unfortunately, despite lip service to this principle, it is constantly violated, especially in the social sciences.

¹² A study by the Washington Lawyers' Committee for Civil Rights under the Law found that taxi cab drivers in Washington D.C. are less likely to pick up black males than other people and are less likely to drive passengers of any race to areas of the city with larger proportions of the black population. See Ridley, S.E., Bayton, J.A. and Outtz, J.H. (1989) *Taxi service in the District of Columbia: is it influenced by the patrons race and destination?* Washington, D.C. Lawyers' Committee for Civil Rights under the Law.

be determined from observing the potential passenger for the small amount of time before making a decision as to whether or not to pick him up.

In this context, the driver is able to observe the prospective passenger's race, sex, rough age, clothing and appearance and perhaps also gain a quick glimpse at his current behaviour and demeanour. On the basis of this information, the driver may infer a high or low risk of assault and use this inference to avoid those passengers that he predicts to be a high risk of committing assaults against him. This is done on the basis of a procedure which is common to statistical inference: using statistical correlations between known and unknown characteristics to predict the latter.

In judging these actions, few deny that there is a *correlation* between race and crime, sex and crime, and age and crime, such that it is demonstrably true that a young black male chosen at random (from the population of Washington D.C.) is far more likely to commit a crime during a taxi ride than say, a randomly chosen elderly Asian woman. Crime statistics coupled with elementary arguments in statistical inference clearly reveal as much. Williams observes that, “[w]hether we like it or not, race and crime are highly correlated. And, more important for dorm guards and taxi drivers, violent criminal acts are highly correlated with race. Black people know this, as do white people.”¹³ And yet, such discrimination practiced by taxi drivers is regarded by some as “patently racist”¹⁴ (presumably then, it is also patently sexist, patently ageist and even patently ‘fashionist’ in cases where the driver takes account of the clothing of the prospective passenger).

But to the taxi driver, it makes no difference at all *why* there is a correlation between race and crime. It makes no difference whether a young black male is more likely to assault him because of some inherent genetic predisposition to violence (as would be the case under a racist account) or because of some alternative cause such as poverty, a lack of education, a lack of positive male role-models, not enough hugs as a child, or whatever. All that is relevant for the purposes of rational prediction is the fact that there *is* a correlation.

¹³ See Williams, W. (1995) *Do the Right Thing: The People's Economist Speaks*. Hoover Institution Press: Stanford, California, p. 18.

¹⁴ See Hacker, A. (1992) *Two Nations: Black and White, Separate, Hostile, Unequal*. Balantine Books: New York. p. 20.

The case of discrimination in taxi provision has been correctly recognised by some as a manifestation of *rational* discrimination¹⁵, rather than racism. It is rational in the context of the limited information available to the taxi driver, who is not in a position to enquire into the criminal history of his prospective passengers. He is instead confronted with an inferential problem involving very little available information.

The effect of more information

This lack of information is crucial to the phenomenon of rational discrimination on the basis of non-causal characteristics, and indeed, is the entire basis for the existence of the inferential problem in the first place. It is our lack of knowledge, our non-omniscience, which compels us to make inferences about the unknown on the basis of the known.

However, as we gain information which is more directly related to those characteristics of interest to us, the situation changes. In particular, if there is no causal relationship between the characteristic of interest to us and some observable characteristic used for prediction then the relationship between the two must exist through some third intermediary characteristic. In this case, information on this intermediary characteristic may render the previous characteristic redundant for prediction.

This occurs in the case of race discrimination in situations where the decision maker is able to acquire information that bears more directly on the characteristic of interest. Thus, in the case of employment, there is generally no reason to use race as a factor to predict criminality. Instead, a prospective employee may be assessed on the basis of a police background check, character references, educational references, previous employer references, their demeanour at the interview, and so on. This kind of enquiry may be sufficient to ensure that there is little or no remaining correlation

¹⁵ For examples, see D'Souza, D. (1995), pp. 250-253; D'Souza, D. (1999) When discrimination makes sense. *Hoover Digest* 4. Available at <http://www.hoover.org/publications/digest/3513321.html>; and Williams (1995), pp. 17-19.

between race and crime *conditional* on this additional information¹⁶. Thus, we see that discrimination on the basis of a factor that does *not* have a causal connection to the characteristic of interest is based on a lack of information rather than on any more enduring judgement¹⁷.

An objection —that discrimination is based on collectivism

One common objection to race discrimination (even where it is done rationally, as described above) is that it focuses on the characteristics of racial groups instead of the characteristics of the actual individuals involved in the decision. And since such discrimination involves the making of a decision about the individual on the basis of the known characteristics of *others* who share the same race, rather than on the basis of the unknown characteristics of the person himself, some argue that this is a manifestation of collectivism.

Thus, in cases of race discrimination by taxi drivers, we sometimes hear the objection that the driver should focus their attention on whether the prospective passenger is a criminal or not, rather than on his race, and that, to do otherwise is a failure to judge the individual on his own merits.

But this kind of objection completely misses the point of the inferential problem, in that it advocates the impossible —namely, concentrating on a characteristic that is unknown. The very reason for the existence of the inferential problem is that we cannot ‘focus our attention’ on an unknown characteristic. Suffice to say, proposing that one take into account unknown variables in an inferential problem is not a solution to the problem —it is merely an attempt to wish the problem away.

This objection also misunderstands the nature of collectivism. Collectivism is a pernicious doctrine that sees the group as the relevant methodological unit for

¹⁶ In statistical parlance, we would say that race and crime are *marginally* correlated (i.e. in the absence of conditioning information), but are *conditionally* uncorrelated (based on any new information which renders the correlation to be nil).

¹⁷ Whether or not race is *causally* related to characteristics such as criminality, intelligence and so on —i.e., whether or not various racist theories are *true*— is beyond the scope of this paper. Rather, one of the major points of this paper is that such causal theories are irrelevant for the purposes of statistical inference and prediction in cases of passive observation.

decision making. The doctrine of collectivism does *not* direct us to use group characteristics as a means to allow us to predict the characteristics of the individual. Rather, it holds that the characteristics of the individual, known or not, inferred or not, are irrelevant. It is not concerned at all with any direct or inferential inquiry into the characteristics of the individual. It holds that the characteristics of the group *are* the relevant characteristics of interest.

It is not a manifestation of collectivism to use known information about groups in an attempt to predict relevant characteristics about the individual. Rather, the attempt to predict the characteristics of the individual *is* a correct and proper manifestation of methodological individualism.

An objection —that there are other important factors in prediction

Another similar objection is that race is not the only factor of predictive value in inference problems —that people have other characteristics of potential predictive value that we may observe with only a cursory inspection, such as their sex, apparent age, what they wear, how they walk, how they look at us, and so on¹⁸.

While it is certainly true that these kinds of characteristics may also have substantial predictive power, this is no objection to rational race discrimination. The presence of other characteristics does not necessarily render race redundant for prediction. It is only in cases where these other factors are sufficient to ensure that there is no remaining statistical dependence between race and the characteristic of interest, conditional on this other information, that race becomes irrelevant to inference and prediction.

Moreover, as a critique of actual cases of rational race discrimination which occur in practice, this objection is a straw man. Practitioners of rational discrimination rarely use race as the *only* factor in their decisions. Indeed, in the case of discrimination by taxi drivers, factors such as the sex, age, clothing and the apparent demeanour of the

¹⁸ For an example of this objection see the remarks of Corlett, J.A. (1993) Racism and Affirmative Action. *Journal of Social Philosophy* **24**, pp. 164-165.

prospective passenger have all been reported to be factors in the driver's assessment of whether the person is a safe passenger to pick up¹⁹.

An objection —that rational discrimination “gives comfort” to racists, sexists, etc.

Perhaps the perennial objection to any argument in favour of rational discrimination—or indeed, to any argument challenging the dogma of the anti-discrimination paradigm in any way—is that such talk “gives comfort” to racists, sexists, bigots, misogynists, etc.

There are several problems with this objection. First of all, it is not factually correct. It is unlikely that racists gain any comfort or ammunition from arguments for rational discrimination based on non-causal factors, let alone agree with them. Indeed, the defining characteristic of the racist is their belief in the *causal* determination of a person's character and actions from their genetic lineage. This is neither affirmed nor contradicted by arguments for rational discrimination on the basis of statistical inference. Indeed, as we have seen, such causal judgements are irrelevant to prediction and therefore irrelevant to the phenomenon of rational discrimination.

Nor is there any reason that racists *should* gain comfort from statistical arguments in favour of rational discrimination. For it is incorrect to claim that the actions of racists are indistinguishable from those of non-racist practitioners of rational discrimination. Discrimination on the basis of a judgement of racism (i.e. of a *causal* connection between race and crime, etc.) can be clearly distinguished from discrimination on the basis of a non-causal correlation by looking at the effects of additional information.

However, the most fundamental flaw in this argument is that, regardless of the correctness or incorrectness of the accusation, it is nonetheless an irrational appeal to the fallacy of guilt by association. The merits of arguments for rational discrimination are not dependant on whether such talk “gives comfort” to racists, sexists, the boorish, the bigoted, the stupid, the wicked, or anyone else.

¹⁹ See D'Souza, *op cit*, pp. 250-253.

Many people are uncomfortable with the notion of rational race discrimination. The idea of discrimination conjures up images of atrocities such as outright genocide. Indeed, Stone amusingly observes that “[i]t seems to be often believed that, if you admit truths of the kind which I have listed above [namely, that it is sometimes proper to adjust our behaviour towards people on the basis of racial differences], consistency requires that you try to murder entire races of people”²⁰. But as we can see, rational race discrimination requires no such thing. It is an inferential procedure that usually results in tentative conclusions, based on the absence of more direct information.

How to reduce rational discrimination

There are two means by which rational race discrimination can be diminished in frequency without the imposition of coercion or appeals to irrationality. The first is by gaining sufficient additional information so that race is rendered conditionally independent (or close to independent) of the characteristic of interest to us—that is, by finding ways to reduce the cost, difficulty or inconvenience of acquiring additional information in decision problems. The second is through effecting a long-term change in our data—that is, by encouraging long-term changes in the negative behaviour of racial groups so as to reduce the correlation between membership of these groups and negative behavioural characteristics that are of interest to us. As D’Souza puts it, “[r]ational discrimination against young black men can be fully eradicated only by getting rid of destructive conduct by the group that forms that basis for statistically valid groups distinctions.”²¹

Far from proposing either of these two courses of action, the anti-discrimination paradigm instead directs us to use even *less* information—to ignore knowledge of race that we know is correlated with characteristics of interest to us. Moreover, the philosophy of cultural relativism which permeates the anti-discrimination paradigm rejects any criticism of negative behaviour among racial groups.²² This approach is an aggravation of the problem, not a solution.

²⁰ Ibid, Stone (1988), p. 102.

²¹ D’Souza, *op cit*, p. 287.

²² Indeed, the philosophy of cultural relativism essentially rejects the *existence* of negative group traits—it holds that a cultural group can only be judged by the standards of the culture itself, so that it rejects the contention that we can even judge negative behaviour for a cultural group.

The use of known proxy characteristics to predict unknown characteristics of interest is a well known practice in statistical inference and prediction. Its usefulness lies in exploiting known statistical dependencies between characteristics to gain information on unknowns. The anti-discrimination paradigm, which holds all discrimination to be irrational is contradictory to basic principles of rational inference and prediction. Far from identifying irrational behaviour based on ignorance and prejudice, the anti-discrimination paradigm is *itself* irrational and is itself based on ignorance and prejudice —ignorance of the principles of rational inference, and a baseless prejudice that there must be empirical equality among racial groups.

PART II - ANTI-DISCRIMINATION IS UNJUST

We have seen that, contrary to the anti-discrimination paradigm, race discrimination can be rational even in the absence of a causal link between race and those characteristics that are of direct interest to us. This occurs when there is a statistical correlation between these characteristics, conditional on the limited information available to us.

Notwithstanding that such discrimination may be *rational* in certain contexts, is it nonetheless *unjust* to discriminate against a person on the basis of their race? Or, to put it another way, is it *morally* okay to engage in rational discrimination, or is the anti-discrimination paradigm the quintessence of justice that its advocates would have us believe?

It is certainly clear that discrimination, whether rational or irrational, is harmful to the interests of those who are discriminated against. Or rather, we call it discrimination *against* a person only when the discrimination *is* harmful to their interests. This is often no fault of the person who is the subject of discrimination —even in cases of rational discrimination— as many are the victims of rational but nonetheless incorrect inferences about their individual characteristics (although some are indeed judged correctly). Indeed, in some contexts, such as discrimination against young black men in the provision of taxi services, the majority of those discriminated against are

innocent of any wrongdoing and would not be subjected to discrimination if not for the limited information available to the decision maker.

In considering the fate of African Americans who are the object of race discrimination, D'Souza contends that:

It cannot be denied that African Americans suffer slights in terms of taxidivers who pass them by, pedestrians who treat them as a security risk, banks that are reluctant to invest in black neighbourhoods, and other forms of continued discrimination. Some of this discrimination is irrational, motivated by bigotry or faulty generalization. Much of it, as we have seen, is behaviour that is rational from the point of view of the discriminator and at the same time harmful for black individuals who do not conform to the behavioural patterns of their peers.²³

It is perfectly legitimate to sympathise with those who are the victims of incorrect inferences that lead them to be feared as criminals and excluded from the provision of certain services. Indeed, this form of inference may permeate much deeper than the mere loss of amenities. To a young black man, his first encounter with any new person begins with an inescapable warning sign from the information bearing characteristics of his age, sex and race. Before he can even open his mouth to speak, he has given a signal to those who meet him: "Look out, I am statistically more likely to assault and rob you!" Such a person is indeed a victim of his unchosen characteristics and we may rightly sympathise with his predicament.

For this reason, many of those who have recognised the *rationality* of certain instances of race discrimination have nonetheless balked at the actual practice of rational discrimination, fearing that it may be logically valid but morally unacceptable. For example, despite his clear acceptance that certain forms of race discrimination are rational, D'Souza nonetheless states:

Just because discrimination is rational, however, does not mean that it is moral. ...rational discrimination based on unalterable characteristics is problematic in a way that discrimination against high school dropouts and convicted felons, who are in a position to reform their circumstances, is not. ... The public policy dilemma is that such discrimination forces a choice in which the claims of morality are on one side, and the claims of productivity are on the other.²⁴

²³ D'Souza, D. (1995) *The End of Racism*. Free Press Paperbacks: New York, pp. 525-526

²⁴ Ibid, pp. 286-287.

Of course, many go much further than D'Souza, regarding discrimination as a mortal sin, rational or not. So common is this attitude that the eradication of all forms of race and sex discrimination has become the core of modern programs of alleged 'social justice'²⁵. But is the claim of morality really on one side (anti-discrimination) against the claim of rationality? Is rationality really opposed to morality and justice?

Justice as the rational objective judgement of men

In order to understand whether instances of race discrimination are unjust we must be clear on the nature of justice, and in particular, on what rights and legitimate moral expectations apply to those affected by our decisions. This may sound trite, but it is a logical step which is rarely included in discussions of the alleged injustices of discrimination. In such discussions it is often presumed that the any harm to the 'interests' of those discriminated against is sufficient to demonstrate injustice. In other words, it is presumed that others are morally entitled to the fulfilment of certain desires, and our failure to fulfil these desires, on the grounds of race discrimination, is an affront to their alleged rights.

However, there is no such thing as the right to a taxi cab, a bank loan, or a job. Indeed, there is no such thing as the right to have others provide us with *any* services or opportunities, even if these things are made readily available to others. There is only the right to have services supplied to us or opportunities granted to us when we can find a willing supplier. Similarly, there is no such thing as the right to have a woman refrain from avoiding us on the street or clutching tightly at her handbag, even if she is willing to contentedly walk past others. We may only expect her to pass gracefully when she feels safe and happy to do so.

If the actions of others that are to our benefit cannot be regarded as rights, can they nonetheless be regarded as legitimate expectations, especially when similar actions are taken to benefit other people? To answer this question we must ask how others should act to fulfil their *own* desires and why they should offer some people beneficial services and opportunities, but not others —i.e., why they should discriminate. But

²⁵ For example, see the United Nations *Declaration on the Elimination of All Forms of Racial Discrimination*.

we have already seen the answer to this question. We should expect a person to discriminate in decision making when it is rational to do so.

In fact, contrary to the whole morality versus rationality dichotomy adopted by D’Souza²⁶ and others, justice is nothing more than the rational objective judgement of men. According to Rand, justice requires that “...you must judge all men as conscientiously as you judge inanimate objects, with the same respect for truth, with the same incorruptible vision, by as pure and as rational a process of identification...”²⁷. There is no disparity between the rational and the just —the rational *is* the just. And so it follows apodictically that rational discrimination is just, *by virtue of its rationality*.

This conception of justice as the rational judgement of man is an *epistemic* formulation —i.e., one which regards justice as a property of human decision making. This is in fundamental opposition to the notion that people are entitled by moral right to the equal fulfilment of certain desires. This latter view is a manifestation of the idea of justice as a metaphysical property, rather than an epistemic property. It is a manifestation of the insidious idea of egalitarianism or ‘social justice’ —that justice consists of the equality of *results*, with the process by which these results are attained being mere window-dressing.

Despite its ancient lineage, the egalitarian theory of justice is entirely bereft of any rational basis²⁸. It is a theory that destroys rational distinctions between people and thereby undercuts genuine *rational* justice. To understand the injustice in the anti-discrimination paradigm, it is this egalitarian theory of justice that must be rejected and the virtue of rationality which must be upheld.

²⁶ Throughout this paper, I have chosen to direct my critique largely at the work of D’Souza (1995). This is not because his is an especially defective analysis —far from it. Rather, I have chosen to critique his work precisely because it is one of the best expositions of the theory of racism and discrimination currently written, and it is therefore an excellent lead-off point for further analysis. The critiques in this paper express my view that, while D’Souza makes enormous ground in his seminal work, he nonetheless uncritically accepts some of the false contentions made by those who peddle the anti discrimination doctrine —namely the claims that rational discrimination is an insult and an injustice to those affected.

²⁷ Rand, A. (1957) *Atlas Shrugged*. Signet: New York, p. 933.

²⁸ For a discussion of the nature of egalitarianism see Rothbard, M.N. (2000) *Egalitarianism as a Revolt Against Nature and Other Essays*. Ludwig von Mises Institute: Alabama, pp. 1-20. For a

Rational discrimination as a just and moral act

By the very fact that rational discrimination involves the rational objective assessment of men, albeit based on very limited information, it is thereby a just and moral act. It involves as conscientious a judgement as for any inanimate object, "...with the same respect for truth, with the same incorruptible vision, by as pure and as rational a process of identification...". In particular, it involves the use of *all* available information that has any predictive value in the inferential problem. It does not ignore information bearing characteristics such as race, sex or age. Rational discrimination does not involve any injustice or any weighting exercise "...in which the claims of morality are on one side, and the claims of productivity are on the other."

It may be objected that rational discrimination can lead to an unfair *result*, when our inferences about a person are incorrect. For instance, a young black male who is refused service by a taxi driver may *not* be a criminal —indeed, most are not. This young man suffers difficulty that could have been avoided if the taxi driver had ignored race, sex and age as factors in his decision. But we have already seen that this young man has no inherent right to a taxi cab, or to any other service. The decision to provide this service is the prerogative of the taxi driver²⁹, who stands to suffer serious harm if he incorrectly judges a passenger not to be a criminal. In assessing the results, the driver must weigh the loss from a false positive against the danger of a false negative. And since rational discrimination, by definition, produces the best inference of the risk of these errors, it is this assessment which is best suited to an optimal weighting of risk versus reward³⁰.

demolition of the egalitarian theory of justice of John Rawls see Rand, A. (1973) *An Untitled Letter*. In Rand, A. (1984) *Philosophy: Who Needs It?* Signet: New York, pp.102-119.

²⁹ Of course, depending upon the terms of the driver's employment, this may instead be the prerogative of the taxi company. In any case, the prospective passenger has no inherent right to the service.

³⁰ The magnitude of the damage to be suffered is also a part of the consideration and so, it may be objected that the taxi driver is concerned only with those incentives which impact on him, ignoring the negative impact on the prospective passenger. However, in a free market, where the taxi driver is compensated for picking up passengers, the passenger would be free to offer a premium to the driver for the taxi ride, thus factoring in the value to the passenger. All that is lacking for such an arrangement is sufficient entrepreneurialism to solve the problem of limited information and the repeal of laws prohibiting such arrangements.

More importantly, while errors in judgement are unfortunate and do indeed lead to detrimental effects, they are the product of limited information. They are not a defect specific to rational discrimination. To object to rational discrimination on the basis that it can lead to error is to regard omniscience as the standard of justice, a standard that any other inferential method—including adopting the anti-discrimination paradigm—also fails.

Nor is rational discrimination an insult to the affected individual as is often claimed by those who champion the anti-discrimination paradigm. For a taxi driver to decline a young black male trying to hail a cab is not a malicious snub or an unwarranted attack on his character. His assessment of the man means what it means: that he does not *know* the character of the man, but that he does know that a higher proportion of people with this man's observable characteristics (i.e., young black males) are violent thugs who commit assaults against taxi drivers, and hence, *based on what he knows*, there is too high a risk that this man may be such a person. This does not involve any direct data on the actions or the character of the man, which is precisely the complaint of those who regard it as an unwarranted insult. However, for this very reason, neither is it an implicit insult.

It is again important to note that rational discrimination is not a manifestation of collectivism³¹, so that the individual is not punished for the sins of the group *per se* (although the inference is indeed dependant on group behaviour). The assessment involved in rational discrimination is an inference *about the individual*, albeit based on knowledge of correlations between characteristics that is obtained from wider observations of groups. It can be clearly distinguished from collectivist judgement since rational discrimination is based solely on the absence of more direct information about the individual—as soon as we are able to observe characteristics of the individual that are more directly related to the characteristic of interest to us³², the inferential connection between the individual and the group is severed, or at least diminished.

³¹ See Part I, 'An objection—that discrimination is based on collectivism'.

³² In the sense that conditioning our judgement on this new information sufficiently reduces or eliminates the correlation between race or sex and the characteristic of interest to us.

The injustice of the anti-discrimination paradigm

Clearly, to engage in *irrational* discrimination is unjust. If a person bases their assessment of others on irrelevant information or on demonstrably false theories (whether these are racist theories or not) and engages in discriminatory actions that are not warranted by the information available, then this is indeed an injustice. This is not because discriminatory action involves a violation of rights (it rarely does) and it is not because such actions are to the detriment of the person discriminated against. There is no such thing as a right to the absence of detrimental treatment unless this detrimental treatment involves an aggression against person or property. Rather, irrational discrimination is unjust because it involves a failure by the decision maker to rationally objectively assess the person discriminated against on the basis of all the available evidence.

It is important to note that, not only is rational discrimination just, but the *failure* to engage in rational discrimination is itself unjust, as this involves a failure to engage in rational objective judgement about others. In particular, the failure to rationally discriminate involves an evasion of the available evidence or a failure of the inferential process³³. Thus we see that the anti-discrimination paradigm, which forbids race discrimination is itself unjust—it mandates the irrational.

This may seem a surprising claim. After all, rational discrimination often involves a negative judgement against a person, as in the case of taxi drivers who assess young black men as having a higher likelihood of criminality than the general populous. How then can the absence of negative judgement of others involve injustice? The answer is that to irrationally refrain from negative judgement is no different in principle from irrationally refraining from positive judgement. *Any* irrational judgement of another person is an injustice, regardless of whether the judgement is negative or positive. As Rand puts it, "...to withhold your contempt from men's vices

³³ This should not be taken to mean that all errors in judgement are unjust. One must distinguish between shortcomings in knowledge and the wilful evasions of available evidence, both of which can and do lead to error.

is an act of moral counterfeiting, and to withhold your admiration from their virtues is an act of moral embezzlement...”³⁴.

Of course, unlike judgements of a person’s character based on more direct evidence such as observation of their actions, inferences based on race discrimination are likely to be fairly weak. They are unlikely to be sufficiently reliable to warrant “contempt for a man’s vices”. Rather, they are likely to warrant only *caution* at the higher *likelihood* of a man’s vices. Nonetheless, what is true for the known vices and virtues of a person is also true (though to a lesser degree³⁵) for the vices and virtues of a person that are rationally inferred from the available evidence, even if this includes inferences from characteristics that have only a correlation and not a causal link with these vices and virtues³⁶.

An objection —that race and sex are unchosen and unchangeable characteristics

The fact that race is an unchosen characteristic and cannot be changed means that a person is not responsible for, and cannot avoid rational discrimination against them on the basis of their race. The only way that a person may diminish rational discrimination is to provide additional information to those who are attempting to judge them. For example, in the case of discrimination by taxi drivers, this may involve wearing more ‘respectable’ clothing, smiling and displaying a friendly demeanour, or adopting some other observable characteristic that is negatively correlated with criminal conduct.

We have heard D’Souza’s contention that “...rational discrimination based on unalterable characteristics is [morally] problematic in a way that discrimination against high school dropouts and convicted felons, who are in a position to reform their circumstances, is not.”³⁷ But if the moral is simply a species of the rational, then

³⁴ Rand, *ibid*, p. 933.

³⁵ ...due to the greater likelihood of error.

³⁶ Indeed, many philosophers contend that *all* knowledge is just a matter of probability. While I do not agree with this view (in fact, it is self contradictory since its alleged validity rests on the fact that it is implicitly a statement of absolute knowledge itself, and not just a statement of probability) it is illustrative for certain empirical observations, particularly those involving character assessments of others. Many such judgements are indeed the result of an accumulation of evidence leading to a higher and higher degree of confidence, which we eventually designate as knowledge.

³⁷ D’Souza (1995), pp. 286-287.

this is clearly not the case. Because rational discrimination is not predicated on an assessment of causal relationships between characteristics, it makes no difference whether a characteristic is changeable or not. The fact that it is *present* is all that matters.

Although both chosen and unchosen characteristics are treated identically for the purposes of statistical inference, there is one important empirical difference between them. Because chosen characteristics are based on the decisions of the individual we are assessing they often have a stronger statistical relationship with unknown characteristics about the individual that are of interest to us. And so, as a practical matter, chosen characteristics are often more important in making assessments about an individual, even in situations of very limited information. Thus, in trying to assess whether a prospective taxi passenger is likely to assault or rob the taxi driver, the person's clothing and demeanour may be more relevant than their race (though it is unlikely to be more relevant than their sex or age). Some black men report that they have difficulty catching taxis wearing casual clothing but that they are able to catch a taxi if they are wearing more formal clothing such as a suit and tie³⁸. This is due to the rational inference of the driver, who knows that men wearing suits are statistically less likely to assault him, even if they are also black. Contrarily, if a person has chosen to adorn themselves in gangland tattoos or act in a menacing or intimidating manner, then perhaps it is best for the driver to look for passengers elsewhere.

Contrary to fashionable theories of 'social justice', there is nothing at all unjust about rational discrimination, and hence, there is nothing just about the total elimination of discrimination. While *irrational* discrimination is indeed an unjust phenomenon, *rational* discrimination is a just and moral act, involving as it does, an objective and rational assessment of people on the basis of all of the available evidence. It is the anti-discrimination paradigm which is unjust, as it mandates the irrational suppression of relevant evidence. It is an attempt to supplant truth with egalitarianism.

³⁸ Ibid, p. 250.

PART III - ANTI-DISCRIMINATION LAWS ARE TYRANNICAL

I know what you're thinking: "Tyrannical!? Surely that's a little melodramatic. Ill-advised sure, even unjust, but tyrannical?" This is a common view, even among those who recognise the irrationality and even the injustice of coercive anti-discrimination laws. But it is one which fails to recognise the ultimate goal and full implications of these laws and the insidious philosophy on which they rest. We must disabuse ourselves of the naïve notion that anti-discrimination laws are merely one particular manifestation of statism. They are much more than this. In fact, anti-discrimination laws represent a full scale frontal assault on reason with a goal which transcends the political.

Anti-discrimination and epistemological egalitarianism

To see the full meaning and consequence of anti-discrimination laws we must first understand that discrimination, in its widest sense —i.e., the ability to draw relevant distinctions between things— is the basis of concept formation, which is the basis of reason³⁹. Discrimination of some kind is therefore the basis of all rational thought. And while this is true of discrimination in its widest sense, the same is true *mutatis mutandis* for discrimination on the basis of the attributes of man. That is, the ability to discriminate between different kinds of people is the basis for forming and using anthropic concepts —i.e., concepts pertaining to man. Discrimination is the means by which we are able to identify and evaluate different people.

Without the mental act of differentiation of different kinds of people —i.e., discrimination— there can be no anthropic concepts. Without anthropic concepts, we are forced to treat each man as a distinct phenomenon, unable to be rationally compared with others. This does not mean that we are blind to the observable characteristics of those we meet. It simply means that we are unable to abstract from these perceptual characteristics to gain conceptual knowledge about man. "Man's sense organs function automatically; man's brain integrates his sense data into

³⁹ In particular, concepts are formed by differentiating between different existents and grouping these existents according to a process of measurement omission. For a detailed treatment of this topic, see Rand (1990).

percepts automatically; but the process of integrating percepts into concepts—the process of abstraction and of concept formation—is *not* automatic.”⁴⁰

It is this conceptual faculty that the philosophy of anti-discrimination is designed to cripple. For, the objective and logical consequence of the anti-discrimination paradigm is not merely political egalitarianism, but *epistemological* egalitarianism. It is not based merely on cultural relativism, but on complete anthropological relativism. It is a doctrine that seeks, not merely to secure the egalitarian provision of certain services and opportunities, but rather, to prevent the use of any anthropic conceptual distinctions, with political egalitarianism as a *consequence* of this wider aim.

Since the anti-discrimination paradigm cannot attack the perceptual —because our perceptions function automatically—, it instead attacks the conceptual faculty, particularly the higher level concepts. It achieves egalitarianism at a conceptual level by attacking the epistemological and moral legitimacy of forming and using anthropic concepts. It cannot completely obliterate elementary concepts such as black, white, tall, short, man, woman, and so on, since these concepts are too easily derived from perceptual information. So it instead attacks the legitimacy of the *use* of these concepts in decision making with the ultimate goal of making all conceptual distinctions between humans totally anathema.

Explicit statements of the goal of epistemological egalitarianism

While this may seem a radical claim, it is substantiated both by the express statements of the backers of anti-discrimination laws and by the progression of these laws, from initially innocuous beginnings, to increasingly extensive and repressive systems of state control. Indeed, an explicit statement of the full import of the anti-discrimination paradigm, as it pertains to race discrimination, can be found in the United Nations Declaration on the Elimination of All Forms of Racial Discrimination, which holds that “...*any doctrine of racial differentiation* or superiority is scientifically false, morally condemnable, socially unjust and dangerous and has no justification in theory or practice”⁴¹.

⁴⁰ Rand, A. (1964) *The Virtue of Selfishness*. Signet: New York, p. 21.

⁴¹ Emphasis added.

To understand the full absurdity and wickedness of this statement, observe that the very *concept* of race used by the United Nations is itself based on a ‘doctrine of racial differentiation’. It is this concept which is the object of their attack. The Declaration regards any use of this concept as “scientifically false, morally condemnable, socially unjust and dangerous”. This is their conception of ‘science’, ‘morality’ and ‘justice’.

Nor is this epistemological egalitarianism confined solely to matters of racial discrimination. The United Nations International Covenant on Civil and Political Rights directs that “...the law shall prohibit *any discrimination* and guarantee to all persons equal and effective protection against discrimination *on any ground* such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status”⁴². The absurdity of this statement is palpable. If applied consistently it would grind the entire process of inference and cognition to an immediate halt.

Some may accuse this of being too literal an interpretation. However, it should be clear from the immense amount of thought and effort applied by the United Nations to its various declarations and covenants that these statements are carefully crafted, and stated with full awareness of their profound epistemological implications. The full absurdity and malevolence of these statements should not be read down. For, as Rand warns:

All philosophical con games count on your using words as vague approximations. You must not take a catch phrase—or any abstract statement—as if it were approximate. Take it literally. Don’t translate it, don’t glamorize it, don’t make the mistake of thinking, as many people do: “Oh, nobody could possibly mean this!” and then proceed to endow it with some whitewashed meaning of your own. Take it straight, for what it *does* say and mean.⁴³

The reason this is so important is that the progression of an idea is not determined by our fuzzy notions of when we wish to stop applying it—the progression is determined by the logical consequences of the idea. So long as an idea is accepted, even if this is so only on the basis of intellectual evasion or passive acquiescence, it will march inevitably towards its logical end, slowly grinding down all barriers of common sense or ‘pragmatism’ placed against it. In fact, this is precisely what we observe when we

⁴² Emphasis added.

⁴³ Rand, A. (1984) *Philosophy: Who Needs It?* Signet: New York, p. 16.

observe the actual materialization of the anti-discrimination paradigm in the evolution of anti-discrimination laws and the attendant intellectual culture of political correctness.

The progression of anti-discrimination laws

Although it is useful to hear the implications of the anti-discrimination paradigm in explicit form, and straight from the horse's mouth, we do not need to rely solely on abstract statements of principle to see the goal and logical progression of anti-discrimination laws. The goal is demonstrated by the evolution of these laws.

From modest beginnings, anti-discrimination laws have expanded substantially in scope, breaking through every barrier of principle presented against them, even those principles that have been argued as the basis for the legitimacy of the initial anti-discrimination laws. These laws have metastasizing far beyond the anticipations of those who have failed to appreciate the principle of full epistemological egalitarianism at their root. Moreover, so long as this principle is accepted, these laws will continue to progress further and further beyond the expectations of the short sighted 'pragmatists'.

In Australia, race discrimination was legally prohibited in various contexts by the *Racial Discrimination Act 1975* (Cth). The Act makes it 'unlawful'⁴⁴ for a person to do any act involving a distinction, exclusion, restriction or preference based on race, colour, descent or national or ethnic origin within certain contexts such as the provision of employment, goods, services, housing or accommodation. This includes 'indirect discrimination' which occurs when discrimination on another ground has a differential impact on the basis of race, colour, descent or national or ethnic origin. The Act also prohibits any public act that is reasonably likely to offend, insult,

⁴⁴ To further compound the tyrannical nature of the laws, the Act creates the legal concept of 'unlawful' conduct, which, unlike the concept of genuine criminal conduct, allows a complainant to bring a complaint before an executive government commission (rather than a court) where the defendant is judged on the civil rather than the criminal standard of proof and can be (and often is) denied the right to legal counsel and the right to cross examine the complainant. Of course, when a defendant is publicly found by the commission to have engaged in 'unlawful' conduct, the distinction between this finding and a finding of criminal guilt is lost on most observers —which is precisely the intention.

humiliate or intimidate another person if the act is done because of the race, colour or national or ethnic origin of the other person.

The scope of anti-discrimination laws was expanded by the *Sex Discrimination Act 1984* (Cth) which contains similar prohibitions against discrimination on the grounds of sex, marital status, pregnancy or potential pregnancy and family responsibilities. The scope was further expanded by the *Disability Discrimination Act 1992* (Cth) which contains similar prohibitions against discrimination on the grounds of disability or the consequent possession of palliative and therapeutic devices and auxiliary aids, interpreters, readers, assistants, guide dogs, hearing assistance dogs and other trained animals. The scope was further expanded by the *Age Discrimination Act 2004* (Cth) which contains similar prohibitions on age discrimination.

These laws continue to expand in scope to prohibit more and more kinds of discrimination in more and more contexts, with no sign of any end to the expansion. Observe also that these laws have broken through many of the very principles that have been used to justify laws prohibiting race discrimination in the first place. Some advocates of anti-discrimination laws complain that race is not *causally* related to those characteristics that are important in our judgements of people. And yet, we see that the laws they support prohibit discrimination on the basis of age and disability, both of which *are* causally related a great many important characteristics. We hear them complain that race is an unchosen and unchangeable characteristic. And yet, we see that the laws they support prohibit discrimination on the basis of marital status and pregnancy, characteristics that *are* chosen and changeable.

The rise of political correctness

The institution of laws against discrimination has been accompanied by a wider moral crusade against discrimination which has made it highly taboo to call attention to even the most obvious distinctions between groups of people. Truth has increasingly been subordinated to political correctness. As Rothbard observes:

In academic and literary circles “Political Correctness” is now enforced with an increasingly iron hand; and the key to being politically correct is never, ever, in any area, to make judgements of difference or superiority. Thus, we find that a Smith College handout from the Office of Student

Affairs lists ten different kinds of “oppression” allegedly inflicted by making judgements about people. ... [This includes] “lookism” (or “looksism”), defined as the construction of a standard of beauty-attractiveness.” “Oppression” is also supposed to consist not only of discriminating in some way against the unattractive, but even in noticing the difference.⁴⁵

In light of the explicit philosophical statements of the United Nations and others and the consequent evolution of anti-discrimination laws, the goal of the anti-discrimination paradigm should be clear. The ultimate goal of anti-discrimination laws and the attendant drive for political correctness is to make categorical distinctions between people unthinkable.

Using anthropic concepts to identify discrimination

We have seen that the ultimate goal of the anti-discrimination paradigm is to prevent the use of conceptual distinctions between people —to establish epistemological egalitarianism by destroying the legitimacy of anthropic concepts. However, this goal must necessarily involve the use of anthropic concepts, since one cannot eliminate that which one cannot identify.

Those who seek to prevent conceptual distinctions must therefore use these very concepts in order to identify when conceptual distinctions are being made by others. Just as animals lack the conceptual ability to understand or even notice the use of higher level concepts by humans, so too, the actual destruction of anthropic concepts would make it impossible to prevent or even identify discrimination.

Thus, there is one and only one use of anthropic concepts that is countenanced by the anti-discrimination paradigm. That is the use of these concepts to identify acts of discrimination by others and to ‘correct’ these acts. Thus, we see the final irony of anti-discrimination laws: that while advocating alleged colour-blindness in evaluating people, they must in fact lead to the establishment of an implicit quota system where all people must be coerced into representative demographic groups in all areas of human activity.

⁴⁵ Rothbard, M.N. (2000) *Egalitarianism as a Revolt Against Nature and Other Essays*. Ludwig von

How anti-discrimination laws establish an implicit quota system

Anti-discrimination laws have often been distinguished from quota programs and other forms of affirmative action on the basis that quotas involve an explicit attempt to forcibly establish a particular demographic breakdown in human activities, whereas anti-discrimination laws, allegedly, does not. However, in practice, anti-discrimination laws must lead to an implicit quota system, just as dangerous as the most explicit quota program, regardless of the alleged contrary intentions of its supporters.

Since we cannot directly observe another person's reasoning, we must instead infer their reasoning through their actions. This can be a difficult process, especially where the person has cause to intentionally disguise their reasoning, as is the case where we are attempting to infer a motive which is punishable by law. In cases of discrimination, we expect a person who has breached the law to concoct plausible alternative reasons for their decision and to deny culpability. Thus, it will rarely be possible to determine their reasoning on the basis of their testimony.

To establish unlawful discrimination in this context, all anti-discrimination laws must instead rely on some counterfactual theory of human decision making. That is, they must rely on some theory of how decisions would have been made in the absence of discrimination. This is not merely a useful evidentiary tool. It is an absolutely necessary component of any anti-discrimination law. Since this counterfactual theory tells us how things would occur in the absence of discrimination, deviation from the results predicted by this theory is regarded as *prima facie* evidence of discrimination, especially when this deviation is statistically significant⁴⁶. Indeed, since this counterfactual theory is regarded as an objective means of inferring motive, whereas all other evidence is potentially veiled in deceit, deviation from the counterfactual theory is regarded as virtual proof of discrimination.

Mises Institute: Alabama, p. 290.

⁴⁶ Meaning that it is unlikely to have arisen merely by random deviation. In particular, statistical significance tests work by assuming the counterfactual theory to be true, and then asking how likely it is that a deviation from the theory at least as large as the one observed would occur under the hypothesis of non-discrimination (i.e., assuming that the person did not discriminate). If this probability is sufficiently low then the hypothesis of non-discrimination is rejected as implausible and the person is found to have discriminated.

This is not merely a speculative insight. It is borne out by the actual legal reasoning used in anti-discrimination cases. In practice, deviation from alleged statistical norms based on a counterfactual theory of demographic breakdowns in human activity is indeed regarded as sufficient to establish that unlawful discrimination has occurred.

Thus we see that, as a matter of practice, anti-discrimination laws must necessarily establish an implicit quota system based on the prevailing counterfactual theory of demographic breakdowns in human activity. The statistical norms set by the counterfactual theory form an implicit set of quotas that must be forcibly accomplished by law in all areas of human activity. Failure to adhere to these quotas is regarded as ‘discrimination’ and punished.

Whether a political program seeking to achieve some counterfactual demographic breakdown in human activities proceeds using the nomenclature of ‘quotas’, ‘goals’, ‘factors’, or whatever else, it must necessarily impose implicit quotas by virtue of the demographic theory at its base. While affirmative action programs may take more obvious steps towards establishing demographic quotas, this is solely a difference of degree rather than a difference in kind. Since anti-discrimination laws enforce adherence to a particular demographic theory of human activity, they are themselves a form of affirmative action.

Proportional representation

It should come as no surprise that the theory of demographic breakdowns in human activity that is used in anti-discrimination law is the egalitarian theory of proportional representation. Under this theory, statistically significant deviations from the demographic proportions in the general population, occurring in any human activity are taken to be the result of discrimination on the basis of these demographic characteristics. Thus, if black women form $x\%$ of the general population then, absent demographic discrimination, they should also form $x\%$ of all bus drivers, school teachers, beer brewers, Supreme Court judges and company executives (subject to statistically insignificant fluctuations).

Although highly fashionable, the theory of proportional representation is entirely baseless and has been thoroughly annihilated by empirical evidence⁴⁷. Far from forming an accurate counterfactual theory for anti-discrimination law, proportional representation in human activities has always been the exception rather than the rule, even in the absence of demographic discrimination.

It is important to note that the fundamental problem with anti-discrimination laws is not the particular theory of proportional representation. Although this false theory aggravates the injustice of these laws, the implicit imposition of quotas by anti-discrimination laws follows from *any* counterfactual theory of demographic breakdown in human activities. No matter how accurate or absurd, any such theory imposes an implicit quota system, imposing its own mandated demographic breakdown by force of law. Moreover, as Sowell observes, it is ridiculous to suppose that we may determine such counterfactual outcomes⁴⁸.

We should not underestimate the malevolence of the anti-discrimination paradigm. It is an irrational and unjust theory which aims for nothing less than to impose complete epistemological egalitarianism by gradually making anthropic concepts illegitimate. On the basis of the presumption of counterfactual proportional representation, it seeks to impose demographic quotas into all areas of human activity by the use of legalised thuggery. The intellectual culture of political correctness that it spawns is an attempt to enforce this view by moral intimidation. And the laws that it spawns are a tyranny and an attack on human reason itself.

⁴⁷ Thomas Sowell discusses some of the empirical evidence on this point and finds that:

Even an approximate equality of “representation” of different groups in different occupations, institutions or income levels has been a very rare — or non-existent — phenomenon, except where such numerical results have been imposed artificially by quotas.

See Sowell, T. (2004) *Affirmative Action Around the World: An Empirical Study*. Yale University Press: New Haven and London, pp. 6-7.

⁴⁸ See Sowell, T. (1990) *Preferential Policies: An International Perspective*. William Morrow: New York, p. 129.

PART IV – WHEN AND HOW SHOULD WE DISCRIMINATE?

We have seen that certain forms of discrimination are rational and just and that the failure to engage in these kinds of discrimination is irrational and unjust. Clearly, acts of rational discrimination should not be proscribed by law. However, under the libertarian directive of non-aggression, even irrational discrimination should not be forcibly prevented, whether by law or otherwise. Indeed, attempts to impose rationality by force⁴⁹ are no less a tyranny than attempts to impose irrationality by force. Both involve the initiation of the use of violence and are therefore illegitimate criminal acts.

In fact, this point goes beyond merely the issue of discrimination. All people must be free to engage in all kinds of irrational and unjust behaviour so long as they do not initiate the use of violence against other people or their property. People must be free to squander their own property, their own good will, and so on, by their own irrational and unjust decisions.

Although irrational discrimination leads to unfair detriment to those who are discriminated against, the discriminator also suffers the consequences of irrational discrimination. Therefore, absent some external interference, irrational discrimination is automatically penalised. A man who irrationally refuses to hire black men in his business without any attempt to judge the individual merits of prospective employees will find himself suffering the consequences, both from the smaller talent pool from which to select his workforce, and from consumer disdain for his business methods. So long as he is willing to pay this premium he must be allowed to act irrationally — violence, legalised or otherwise, should not be brought to bear to punish him.

Thus, we see that anti-discrimination laws should not apply to non-aggressive actions. In particular, such laws should not apply to actions taken in the *private sector*, even for areas that are ‘public’ in the sense that they deal with matters that affect the public at large. The mere fact that most businesses provide goods and services to anyone willing to pay the price, regardless of their race, sex, age or whatever else, is no

⁴⁹ Which is a contradiction in terms, since breaching the non-aggression principle is itself irrational.

reason to forcibly impose this practice on those who choose to discriminate, rationally or irrationally in conducting similar enterprises.

Discrimination in illegitimate activities

It is clear that discrimination should be allowed in the course of non-aggressive activities, since the forcible prohibition of discrimination in the course of such activities is itself a criminal aggression. However, for aggressive actions, the situation is more complicated, since these actions are themselves illegitimate criminal acts. We may certainly state that all actions involving an aggression against a person or their property should be proscribed by law and ideally, should not occur. But what if they do occur? Should we then prefer that such aggressive actions be directed at a particular group of people or spread more generally around the entire population?⁵⁰

From the libertarian perspective this question is a determination of the lesser of two evils. The question is not whether such an aggressive action is good or bad (clearly it is the latter), but rather, whether an aggressive act is made less bad or more bad if it is undertaken in a manner that discriminates against a particular group of people. Of course, in considering this question, it must not be forgotten that the aggression itself renders the act illegitimate, regardless of the methodology used in choosing a victim.

In considering whether discrimination makes an aggressive act less bad or more bad, Whitehead and Block argue that "...if something is illegitimate to its core ... but somehow, we stipulate, that it *must* exist, then it is a positive benefit that it must be run as *inefficiently* as possible"⁵¹. This is because if an aggressor acts irrationally or inefficiently in the choice of his victim, then we would expect him to derive less benefit from his aggression, which acts as a disincentive for further aggression. Thus, there is some positive benefit if the aggressor engages in irrational discrimination or refrains from rational discrimination in choosing the victim of his aggression.

⁵⁰ Clearly, we should prefer less crime to more. However, for the sake of this analysis, we will consider the case where the total amount of crime is fixed and the question is only how this crime is spread among the victims. So, for example, we may consider the imposition of a tax that is set in order to raise a particular amount of revenue, with the only question being how this tax is spread around.

⁵¹ Whitehead, R. and Block, W. (2001) Should the government be allowed to engage in racial, sexual or other acts of discrimination. *Northern Illinois University Law Review* **22(1)**, pp. 53-84. Available at http://www.walterblock.com/publications/government_discrimination.pdf, p. 38.

Weighed against this inefficiency benefit, there may also be a benefit from a more rational objective choice of victim by the aggressor. Rationality and objectivity entail predictability, whereas irrationality and subjectivity entail arbitrariness and capriciousness. To those in the path of an aggressor, a more rational, objective and systematic methodology for the crimes of the aggressor can make his actions more predictable and therefore easier to avoid or easier to bear.

Given that human beings are generally risk averse, particularly with respect to aggression, there may also be some benefit if whatever aggression does exist is spread around a large population, rather than being concentrated on a particular group. This increases the probability of small amounts of harm while decreasing the probability of large or even catastrophic harm.

In determining whether rational or irrational discrimination makes an aggressive act less bad or more bad, these competing effects must be weighed against one another. However, it is crucial never to lose sight of the ultimate objective of the complete abrogation of all criminal (i.e., aggressive) conduct. Any argument over the relative merits of discriminatory practices in the course of such criminal conduct is merely the icing on the cake —or rather, the type of bullets in the gun.

Should the government be allowed to discriminate?

Instead of distinguishing between aggressive and non-aggressive actions, Whitehead and Block distinguish between actions taken by private citizens and actions taken by the government. They argue that the non-discrimination rule should apply to all government actions that are not in the furtherance of its alleged protection functions:

If the limited government and anarchist wings of libertarianism are united on the claim that private individuals or groups have a complete and total right to discriminate on any basis they choose, and against any group or individual they wish, both would also agree that government, if it is justified at all, should *not* be allowed to do so. ... Government in this philosophy, is not only to be blind to the race, color, natural or ethnic origin, religion, sex, disability, age, sexual orientation or veteran status, the usual suspects, but is to totally ignore *all* other criteria as well. For example, the state must not discriminate on the basis of intelligence, athletic ability, eye

color, business acumen, initiative and ambition, unless these characteristics are somehow related to conducting its business of protecting person and property rights.⁵²

Under this view, if the government takes some actions outside its alleged protection functions, such as providing educational services in public schools, then it must not discriminate on *any* grounds, including clearly rational grounds such as intelligence and teaching ability. Clearly this is irrational on the part of the government, but Whitehead and Block are in favour of this irrationality and consequent inefficiency:

Yes, it would be the death knell for prestigious public institutions of higher learning to be forced not to discriminate in favour of the highly intelligent. But this is precisely what is required by considerations of justice. If an institution should not exist at all, but somehow persists, then equity entails that it be *ineffective*.⁵³

Thus, we see that Whitehead and Block give weight solely to the inefficiency benefit of irrationality in government actions that are outside the scope of protection functions. They would prefer that the government give *bad* service in these areas. They therefore advocate that the government should adopt the anti-discrimination paradigm in actions that are not within the scope of its protective functions precisely *because* it is irrational to do so. They allege that this methodology is more likely to lead to the cessation of these government actions, which is the goal.

However, contrary to the example given by Whitehead and Block, public schooling is no more “illegitimate to its core” than public protection services. Both are legitimate services if they are financed voluntarily and both are illegitimate acts involving robbery if they are financed by taxation. However, even in the latter case, it is not the provision of the public service which is the problem. It is not these schooling or protection services that are illegitimate; it is the taxation that funds them.

Thus, although we should indeed hope that tax collection will be inefficient, there is no reason to hope that the service provided by public schools, public police or public courts with that money is inefficient, except of course where these services involve aggression. Or, to put it another way, there is no reason to prefer a robber to act irrationally in his other non-aggressive activities than to act rationally. Indeed, we should prefer the latter. Thus, rather than discriminating between the actions of

⁵² Ibid, p. 36 of Internet version.

generally aggressive and non-aggressive *parties* (governments and private citizens) we should instead distinguish between aggressive and non-aggressive *actions*.

Block asserts that it would be the death knell for public education if the government were forced to act in a highly irrational and inefficient manner in the provision of this service. Of course, this is correct. However, if we are able to convince others that the government should be forced to act irrationally *in order to destroy itself* then we might as well just cut out the middleman and argue directly for non-aggression and privatisation. Indeed, the former argument cannot possibly convince anyone who has not already accepted the principles of libertarian thought.

Block's argument in favour of the anti-discrimination paradigm for government works only if the government is forced to quickly and consistently implement non-discrimination for such a wide variety of characteristics and in such a wide variety of areas of its operations that its actions will become manifestly repugnant to the general public. However, evil theories are never implemented immediately or consistently; they are always implemented gradually, step by step, each time to the point where the leaders of the swindle can still maintain control over their victims. Anti-discrimination law proceeds precisely in this way, allowing time for the public to submit to each new imposition before the law is expanded again.

There is no evidence that the gradual imposition of irrational rules on the provision of government services is likely to lead to the cessation of the service or indeed, to any reduction in the size of government. On the contrary, the more inefficient and irrational are the rules of government, the more the bureaucracy must expand to try to obscure these problems. Inefficiency in government services leads only to more funding, and irrationality leads only to more state propaganda.

In fact, to suppose that a profoundly evil theory such as the anti-discrimination paradigm can be converted into a libertarian weapon against government shows remarkable naïveté. The history of government is a continuous saga of rat cunning by Court Intellectuals who have co-opted all manner of human desires and ideas into the

⁵³ Ibid, p. 38 of Internet version.

service of greater statism. Using ideas that are already a force for egalitarianism and statism is playing on their home turf.

How should we discriminate?

The science of statistical inference directs us to use all available information in making inferences about the nature of things and predictions about their future behaviour. The exclusion of relevant information is irrational, and as we have seen, it is therefore also unjust.

In all of our evaluations and actions we should act rationally, to the greatest extent of our ability⁵⁴. This is the surest way to avoid error. In evaluating other people, whether as a tentative estimate when we first meet them, or as a more substantial and enduring judgement as we get to know them, we should use all of the information that is available to us and discriminate rationally on this basis. We should use our knowledge of correlations between group traits to make the most accurate predictions that we can make about people given our limited information. In cases of passive observation, we have seen that we need not speculate about causal theories of the relationships between group characteristics —it is enough to rely on knowledge of correlation rather than cause. It is only when we are in a position to test the characteristics of others through our own actions towards them that causal understanding becomes relevant and non-causal characteristics become less and less useful for prediction.

Rational discrimination on the basis of characteristics that are not causally related to those characteristics of interest is justified on the basis of correlations between group traits. These correlations are useful only when the information available to us is sufficiently limited that we cannot distinguish more finely within these groups. Thus, in evaluating other people for the purposes of decision making, we should also consider whether we are able to acquire additional information that would allow us to get a more direct insight into their nature. In particular, we should acquire additional

⁵⁴ Or, to put it another way, rationality is the primary virtue of moral philosophy. For discussion of this claim see Rand, A. (1961) *The Objectivist Ethics*. In Rand, A (1964) *The Virtue of Selfishness*. Signet:

information when the value of this additional information (in terms of its usefulness in improving our predictions) outweighs the difficulty, inconvenience and cost. In some situations, such as evaluating a candidate for a job, there is ample scope to acquire all sorts of relevant information before making a decision. In others, such as evaluating a prospective passenger for a taxi ride, the scope for acquiring additional information is minimal.

In addition to considering the costs of additional information, we must also be mindful of the cost of our inferential process itself, which requires time, effort and thought. Clearly, rational discrimination does not require us to build a formal statistical model every time we wish to make a decision⁵⁵. In the vast majority of our decisions we rely instead on heuristic methods, such as ‘stereotypes’ and other rules of thumb, which are based on prior observation of correlations between group traits. As with the acquisition of additional information, we should undertake additional inferential analysis only when the value of this additional analysis (in terms of its usefulness in improving our predictions) outweighs the difficulty, inconvenience and cost. In situations in which the stakes of our decisions are high, we will generally expend more time, effort and thought in making our decision. We may indeed wish to engage in formal mathematical modelling, or hire others to do so, in such cases. However, in situations involving smaller stakes we may be content with simple heuristic inferential methods, which allow us to make rational inferences without spending large amounts of time and effort on analysis.

What kind of demographic breakdowns should we expect in human activities?

Regardless of whether we regard particular manifestations of discrimination to be warranted by the available evidence or not, we should not be so conceited as to pretend that we are able to determine the demographic outcomes that would exist in the absence of discrimination. Even the most sophisticated and expert praxeological theories in existence today are unable to predict the next election win or fashion trend,

New York, pp. 13-39; see also, Peikoff, L (1993) *Objectivism: The Philosophy of Ayn Rand*. Meridian: New York, pp. 220-229.

⁵⁵ In fact, this would be impossible, since the decision to build a formal statistical model to analyse a problem is itself a decision, which would therefore require another statistical model to make, and so on *ad infinitum*.

let alone provide a detailed account of demographic breakdowns that will arise in various professions and other human activities.

There is no reason to suppose that the absence of rational discrimination would lead to identical demographic breakdowns in different human activities, even in the long run. On the contrary, we have seen that correlations between group characteristics can arise even in the absence of any causal connection between the group characteristics and other characteristics which may be relevant to human activities.

There are many reasons why demographic breakdowns in human activities may not match the demography of the general population. Some activities may simply be more attractive to particular demographic groups of people than to others. For example, the prevalence of male mechanics and engineers is probably largely due to the fact that more men than women are interested in mechanics and engineering. It is also likely that there are high numbers of German beer brewers simply because beer is a larger part of German culture than for others. The relatively high number of homosexual men working in the fashion industry may also simply be a case of a culture that is more concerned with fashion and artistic creation than others. None of these ‘over-representations’ should be regarded as a problem that is in need of ‘correction’ —especially as this ‘correction’ is so often coercive. Nor should a thousand other human activities where people make their own free choices which lead to the ‘under-representation’ or ‘over-representation’ of certain demographic groups.