Introduction

In 1957, Gary S. Becker published the first edition of his path breaking treatise, *The Economics of Discrimination*. Becker's text was published three years after the famous *Brown v. Board of Education*case, wherein a unanimous US Supreme Court ruled that separate but equal school systems were inherently unconstitutional. Prior to Becker's treatise, economists have virtually ignored the fact that blacks and whites failed to engage in mutually beneficial gains from trade. In Becker's words:

> One might venture the generalization that no single domestic issue has occupied more space in our newspapers in the postwar period than discrimination against minorities, and especially against Negroes. This generalization is unquestionably true of the period since the momentous decision by the Supreme Court to outlaw segregation by color in public schools. While much of the discussion has concentrated on discrimination in such non-market activities as church and school attendance and voting, there has also been considerable discussion of discrimination in the market place—in employment, housing, transportation, etc. Such discrimination has assumed importance not only because of its direct economic consequences but also because of the belief that by eliminating market discrimination one could eliminate much of the discrimination in non-market areas.[1]

Perhaps the most remarkable characteristic of Becker's introduction was that fact that he cited only one publication prior to his own.[2] For a social science that can trace its roots to ancient Greece, and whose metamorphosis in 1776 is literally as old as our country, the lack of interest by economists in discrimination is startling. Nevertheless, since 1957, economists have become preeminent in explaining and measuring racial and gender discrimination.

A Brief History of Discrimination[3]

Economic discrimination is more difficult to measure than are economic inequality and poverty, because discrimination is a *process*, while inequality and poverty are outcomes. In Chapter 10, we found that inequality can be depicted with Lorenz curves and measured with Gini coefficients. In Chapter 11, we discussed both international and national definitions of poverty. Measures of inequality and poverty are empirically testable. Once we agree on a definition, we merely compare the measure with the definition and decide whether or not the household is poor, or in the lowest income quintile, or so forth. But a different type of evidence is required for discrimination. Unfortunately, there is no shortage of historical documentation that ethnic discrimination had long been the law of the land.

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[1] Gary S. Becker, *The Economics of Discrimination*, 2nd ed. (University of Chicago Press, 1971), Introduction to the First Edition, p. 9.
[2] Donald Dewey, "Negro Employment in Southern Industry," *Journal of Political Economy*, LX (August 1952), 279–293.
[3] You can find an extended list of government discrimination at *Diversity Inc.*, "The History of Race-Based Government Decisions," www.diversityinc.com/members/43116print.cfm.

We begin with the Constitution: in Article 1, Section 2, Clause 3 of the U.S. Constitution, citizens are taxed in proportion to a number "which shall be determined by adding to the whole number of free persons, including those bound to service for a term of years, and excluding Indians not taxed, three fifths of all other Persons." The Constitution counted AfricanAmerican slaves as 60 percent of a person, indentured servants (whites who were temporarily bound in service to a creditor) as whole persons, and treated Native Americans as if they did not exist. Furthermore, women were prohibited from voting, and in some states women could not own property. The Declaration of Independence may have proclaimed "that all men are created equal," but some men were more equal than others, and women deserved no mention.

Throughout the pre-Civil War period, Congress engaged in a delicate balancing act.The House of Representatives was dominated by free states (despite the fact that non-voting slaves are counted for slave state representation in Congress), but the Senate is balanced. In 1819–21, the Missouri Compromise recognized that territory as a slave state by also admitting Maine as a free state. In 1857, a slave, Dred Scott filed a lawsuit claiming that, because he lived in a free state, he was entitled to his freedom. Chief Justice Roger B. Taney disagreed, ruling that blacks were not citizens and therefore could not sue in federal court. Taney went so far as to argue that Congress had no power to forbid slavery in any part of the country. This inflamed the passions of abolitionists, who detested slavery and put their money on the line by operating the Underground Railroad, which smuggled escaping slaves into Canada.

In 1861 the election of Abraham Lincoln as president of the United States led Southern states to succeed from the Union. The question of succession was not discussed in the Constitution; Southerners compared membership in the United States as equivalent to membership in a gentlemen's club.[4]Lincoln and the Northern states saw succession as insurrection, to be suppressed by force of arms. Ironically, it was Southerners who most reveled in the divine sanction for their cause. Rarely, however, did they attribute their loss to divine will.

On January 1, 1863, President Lincoln issued his Emancipation Proclamation: that all "slaves within any State, or designated part of a State ... then ... in rebellion, ... shall be then, thenceforward, and forever free."[5] The change in focus from "preserving the Union" to "freeing the slaves" breathed fresh life into the war effort. Eventually, the Union advantages in population and wealth overcame the South's initial military successes, and General Robert E. Lee surrendered the Army of Northern Virginia to General Ulysses S. Grant at Appomattox Courthouse on April 9, 1865. Five days later, John Wilkes Booth assassinated Abraham Lincoln, and Andrew Johnson, former governor and senator from Tennessee, became president.

Initially incensed by Lincoln's assassination, Johnson led the Union government's retribution against the conspirators, but later Johnson adopted Lincoln's reconciliation with the former rebellious states. The Thirteenth Amendment to the Constitution, outlawing slavery, was ratified in December 1865. The Fourteenth Amendment extends the bill of rights to the states, and recognizes the citizenship of all *men*, save Native Ameri-

[4] See, for instance, General Picket's proclamation in the movie *Gettysburg.*
[5] See: http://plus.aol.com/aol/reference/EmancipaP/Emancipation_Proclamation?flv=1.

cans, thereby undoing the Dred Scott Decision. In 1870, during the administration of President U. S. Grant, the states ratified theFifteenth Amendment, guaranteeing blacks the right to vote. However, the government lost interest in enforcing this amendment.

Founded by former Confederate general Nathan Bedford Forrest,[6] the Ku Klux Klan, a terrorist groupof white supremacists, rose up in the South, using violence and intimidation to suppress the freed slaves. By the 1920s the Ku Klux Klan would enroll 3 million members, who proclaimed their support for white, Christian virtues. The Klan used cross burnings, beating, and lynching to keep blacks, Jews, and Catholics from gaining political influence.

In 1896, the United States Supreme Court provided legal support for racial segregation in ***Plessy v. Ferguson***, ruling that separate-but-equal accommodations for blacks on railroad cars did not violate the "equal protection under the laws" clause of the Fourteenth Amendment. This ruling ratifiedSouthern **Jim Crow**[7]laws, which mandated racial segregation and provided government enforcement of racial discrimination. Asian Americans have also suffered discrimination. The most egregious example was the forced evacuation of Japanese Americans from the West Coast during World War II (1939–1945)—an event upheld by the Supreme Court in 1944 but repudiated by Congress many years later.

The nation continued to evolve, divided by race, with **de juro** (legally sanctioned) segregation in the South and **de facto**(actual, but not legally supported) segregation in the rest of the country. In 1954 the United States Supreme Court overturned *Plessy v. Ferguson*, ruling in ***Brown v.(the Topeka, KS) Board of Education***that separate school systems for blacks and whites are unconstitutional. The ruling paved the way for large-scale desegregation, culminating in the 1964 **Civil Rights Act** and the 1965 **Voting Rights Act.** But those gains did not come easily.

In 1955, Emmett Lewis Till, a 14-year-old black teenager from Chicago, visited his uncle in Mississippi. Unfamiliar with the strict racial taboos of Mississippi, Emmett whistled at a 21-year-old white woman. Despite the attempts by his friends to hide him from whites, Emmett Till's naked, beaten, and decaying body was found in the TallahatchieRiver. The white perpetrators were acquitted by an all-white jury. The national outrage led Congress to include a provision for federal enforcement of civil liberties in the Civil Rights Act of 1957.

Between 1954 and 1964, Americans watched the civil rights struggle play out nightly on their television news programs. In Montgomery,Alabama, in 1955, Rosa Parks, a black woman, refused to give up her bus seat to a white man. The ensuing Montgomery bus boycott thrust Martin Luther King Jr. into national prominence. Under King's leadership, the Southern Christian Leadership Council, along with the National Association for the Advancement of Colored People, and the Urban League staged peaceful demonstrations, such as refusing to leave segregated lunch counters until black patrons were served or arrested; they were arrested. The southern White establishment won

[6] The namesake of Forrest Gump

[7] Jim Crow was the name of a character in minstrelsy (in which white performers in blackface used African American stereotypes in their songs and dances); it is not clear how the term came to describe American segregation and discrimination.

most of the battles, but, because of negative publicity, a decisive liberal majority in Congress, and a skillful president, the Civil Rights Act of 1964 was ultimately passed, after the Senate broke the longest filibuster in history.

The 1964 Civil Rights Act outlawed discrimination in public facilities and in employment. Essentially, Congress used the **interstate commerce clause** of the U.S. Constitution to trump state Jim Crow laws. The Civil Rights Act was given additional teeth in 1965 with the passage of the Voting Rights Act. Southern states had been effective at denying blacks their civil liberties because they need not fear black retaliation at the ballot box. The Voting Rights Act charged the federal government with assisting disenfranchised blacks in registering to vote and actually voting. Many southern cities had black majorities, and as blacks elected more mayors, sheriffs, and congressional representatives, whites fled the cities and the Democratic Party for the segregated suburbs and the sympathetic Republican Party. The Voting Rights Act was extended in 1970 and 1982, the last time over the vigorous opposition of the Reagan administration.

In 1968 President Johnson signed the Civil Rights Act of 1968, prohibiting discrimination in the sale, rental, and financing of housing. In 1970 the Supreme Court ratified the anti-employment discrimination provision of the Civil Rights Act in its ruling in *Griggs v. Duke Power*. Willie Griggs was a laborer at the Duke Power Company who was denied promotion because he lacked a high school diploma. Griggs's lawyers pointed out that a majority of whites in better paid positions at Duke Power also lacked high school diplomas, and were **grandfathered** into their positions by virtue of recommendations from white supervisors. Griggs's lawyers also presented statistical evidence that whites with high school diplomas performed no better than whites without high school diplomas. The Court ruled that the requirement of a high school diploma was not job related and served as a **grandfather clause**. During Reconstruction, southerners got around the provision in the Fourteenth Amendment that barred discrimination against individuals because of "previous condition of servitude" by disallowing civil liberties to people whose *grandfathers* had been slaves. Hence, a grandfather clause refers to a rule that has the effect of discriminating on the basis of race, although the stated basis for discrimination is some permitted basis, in this case, education.

By ruling that,when there was circumstantial evidence of discrimination, the burden of proof rests with the employer to prove that the underrepresentation of blacks, women, the elderly, or other protected groups is related to job performance. We will see that by forcing employers to prove that they were not discriminating led many well-meaning or cautious employers to adopt an **affirmative action** hiring and promotion strategy.

In 1971, the Supreme Court, in *Swann v. Charlotte-Mecklenburg Board of Education*, upheld busing as a legitimate means of achieving integration in public schools. Typically, blacks and whites live in segregated neighborhoods, as explained in Chapter 5. Busing transported black students to white neighborhoods and white students to black neighborhoods. As whites left cities for segregated school districts in the suburbs, or sent their children to segregated Christian academies, busing had a limited influence on the racial composition of schools. To this day, blacks typically attend high schools that are overwhelmingly black (and Hispanic), while whites attend schools with few minority classmates.

In response to the Civil Rights Act and similar legislation from the Johnson era, which continued into the Nixon era, mostly because Richard Nixon was preoccupied with foreign policy, blacks voted overwhelmingly for Democratic candidates. Whites reacted first by voting in large numbers for third-party candidate and former segregationist George Wallace, until, with the coming of the Reagan administration, the Republican Party adopted the interests of angry white males who see the civil rights achievements as an unfair attack on their privileges.

Following conservative Supreme Court appointments, the *Griggs* ruling was largely overturned in *Ward's Cove Packing Company v. Antonio* (1989) which revised the standards established by the 1971 *Griggs* decision. The *Ward's Cove* decision required that employees filing discrimination lawsuits demonstrate that specific hiring practices had led to racial disparities in the workplace. Even if this could be shown, these hiring practices would still be legal if they served legitimate employment goals of the employer.[8] By placing the burden of proof on the plaintiff (the party complaining of discrimination), the *Ward's Cove* decision reduced employer reliance on affirmative action as a defensive strategy against discrimination charges.

In 1991, Congress passed and President George H. W. Bush signed the civil rights act of 1991 that, among other things, reinstated the rules from the Griggs case: if there is no pattern of discrimination, the burden of proof rests on the plaintiff in a job discrimination case. However, if there is a statistically significant pattern of under-representation of women or minority workers, the burden of proof shifts to the employer, who then must defend the hiring, retention, promotion or pay regulations that led to the pattern of discrimination. Once again, proactive employers would have an incentive to practice affirmative action if they found themselves with legally indefensible employment practices.

But the Supreme Court recently returned with two more decisions that had the effect of reducing the rights of women and minorities to redress discrimination. Lilly Ledbetter worked for Goodyear Tire Company from 1979 to 1998, when she discovered that she had been paid substantially less than her male peers over that time. "She had no way of knowing that she was being underpaid until just before her retirement when a source that remains anonymous today, slipped a note into her mailbox. The note listed the salaries of three other men doing the same who were being paid $4,286 to $5,236 per month. Lilly was only making $3,727 per month. When she filed a complaint with the EEOC [Equal Employment Opportunity Commission] she was subsequently assigned to lift heavy tires. She was in her 60s at the time but she continued to perform the tasks her ruthless employer required of her. Ledbetter retired early and filed suit 'asserting, among other things, a sex discrimination claim under Title VII of the Civil Rights Act of 1964.' A jury awarded Ledbetter about $3.3 million, but the amount was later reduced to around $300,000. November 2006 - May 2007: Goodyear appealed to the U.S. Supreme court who overturned the lower court's ruling in favor of Goodyear. In a 5-4 vote it was decided that Ledbetter was not entitled to compensation because she filed her claim more than

[8] See http://www.law.cornell.edu/supct/html/historics/USSC_CR_0490_0642_ZS.html.

180 days after receiving her first discriminatory paycheck. (*Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618; R048; No. 05-1074; Argued 11/27/06; Decided 05/29/07." [9]

Nine days after taking office, on January 29, 2009, President Barack Obama signed the *Lilly Ledbetter Fair Pay Act*, "which supersedes the Supreme Court's decision in *Ledbetter v. Goodyear Tire & Rubber Co., Inc.*, 550 U.S. 618 (2007). *Ledbetter* had required a compensation discrimination charge to be filed within 180 days of a discriminatory pay-setting decision (or 300 days in jurisdictions that have a local or state law prohibiting the same form of compensation discrimination). The Act restores the pre-*Ledbetter* position of the EEOC that each paycheck that delivers discriminatory compensation is a wrong actionable under the federal EEO statutes, regardless of when the discrimination began."[10]

Another Supreme Court ruling, reminiscent of the Wards Cove case, played a bizarre role in the Senate confirmation hearings for Justice Sonia Sotomayor. The New Haven, Connecticut Fire Department used a written exam (65%) and an oral exam (35%) to determine eligibility for promotion to fire lieutenant and fire captain positions. When 19 of 20 candidates passing the exam turned out to be white, with one Hispanic, the City of New Haven withdrew the promotions, following the rules set down in the Griggs case and the 1991 Civil Rights Act. The federal district court ruled in favor of the city, which was consistent with the law at the time. So did the Court of Appeals for the Second Circuit, with the Judge Sotomayor as part of the two judge majority. When President Obama appointed her to replace Justice Suitor on the Court, Republicans criticized Judge Sotomayor for favoring affirmative action. Eventually the Supreme Court overturned the case, finding that the City of New Haven had violated the civil rights of the 20 applicants who had scored highest on the test. The Supreme Court never addressed the issue of whether written or oral tests are legitimate bases for promotion.

Taste for Discrimination

In his seminal work, *The Economics of Discrimination*, Gary S. Becker introduced into economic discourse the possibility that employers, employees, and consumers might not be motivated solely by their own self-interest, as usually assumed in economic theory. Becker introduced his first chapter with the following discussion of the meaning of discrimination, which we quote at length here:

> In the socio-psychological literature on this subject [discrimination] one individual is said to discriminate against (or in favor of) another if his behavior toward the latter is not motivated by an "objective" consideration of fact. It is difficult to use this definition in distinguishing a violation of objective facts from an expression of tastes or values. For example, discrimination and prejudice are not usually said to when someone

[9] See http://womeninbusiness.about.com/od/successfulwomenprofiles/p/lilly-ledbetter.htm.
[10] http://www.eeoc.gov/laws/statutes/epa_ledbetter.cfm.

> prefers looking at a glamorous Hollywood actress rather than at some other woman; yet they are said to occur when he prefers living next to whites rather than next to Negroes. At best calling one of these actions "discrimination" requires making subtle and rather secondary distinctions. Fortunately, it is not necessary to get involved in these more philosophical issues. It is possible to give an unambiguous definition of discrimination in the market place and yet get at the essence of what is usually called discrimination.
>
> Money, commonly used as a measuring rod, will also serve as a measure of discrimination. If an individual has a "taste for discrimination," he must act *as if* he were willing to pay something, either directly or in the form of reduced income, to be associated with some persons instead of others. When actual discrimination occurs, he must, in fact, either pay or forfeit income for this privilege. This simple way of looking at the matter gets at the essence of prejudice and discrimination.[11]

Becker goes on to develop a simple but elegant theory that we will paraphrase in the remainder of this section. Suppose that an employer is confronted with two types of job applicants, L_w (whites) and L_b (blacks), who, like any other workers, vary in their potential productivity. Following Becker, the employer has a taste for discrimination if he behaves *as if* the **psychic cost** of hiring blacks exceeds the psychic cost of hiring whites, $w_b(1+d_b) > w_w$, where $d_b$is the employer's **discrimination coefficient**. For instance, if the w_b were \$5, but the employer acted as if the wage rate were \$7.50, then d_b = 50 percent. Such an employer would hire a white worker, at say \$7.00 per hour, assuming that the discrimination coefficient for whites, $d_w = 0$,[12] since the psychic cost of hiring whites is lower than the psychic cost of hiring blacks.

Strictly speaking, Becker's discrimination coefficient is different from prejudice, which is defined as an opinion formed before learning the facts, typically to the detriment of a person or group. The two are closely related because whites who do not like blacks typically convince themselves that blacks are less productive due to **stereotyping.** Technically, a prejudiced employer may think that he is not hiring blacks because he believes that blacks are less productive, when in fact, he refuses to test this assertion.

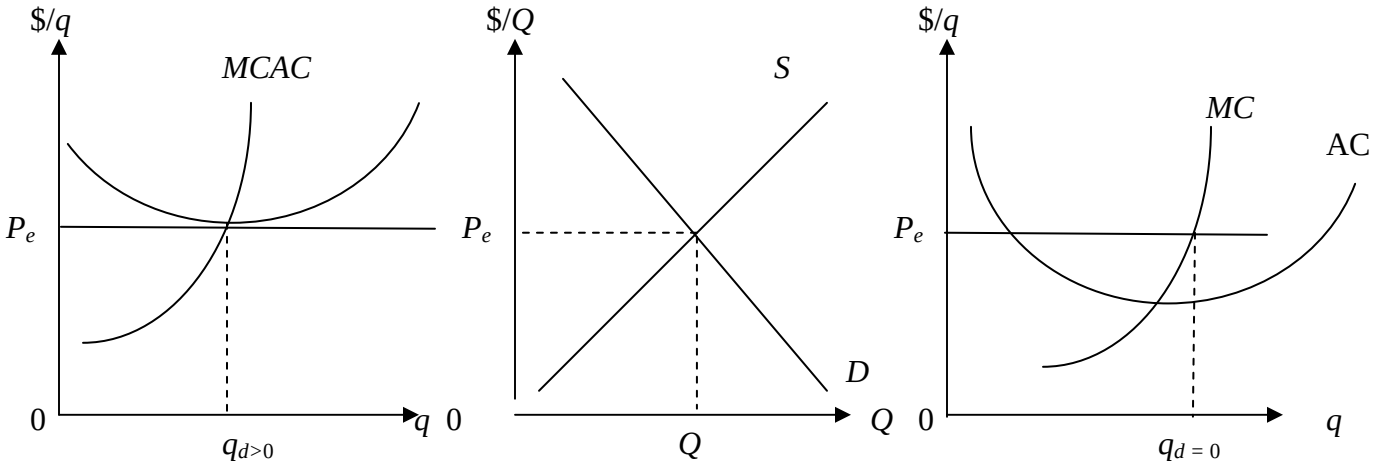
An employer with a taste for discrimination will ultimately act on that preference by hiring less-productive whites instead of more-productive blacks. The consequence of a taste for discrimination is higher production costs than what would occur in the absence of that preference. Figure 12-1 reprises the model of a competitive market. In the left-hand panel we show the marginal firm, whose taste for discrimination raises his marginal cost curve and his average cost curve just enough that he makes a zero economic profit. The market is in short-run

[11] Gary S. Becker, *The Economics of Discrimination,* 2nd ed. (University of Chicago Press, 1971), pp. 13–14.

[12] Note the effect would be the same if the employer practiced **nepotism**, whereby he discounted the wage rate paid to family and friends by, say, d_f = -.333, since the net wage for whites, \$7(2/3) = \$4.67 $< w_b$.

equilibrium, since the market price is set by the intersection of the market supply curve (the sum of the marginal cost curves for all the firms in the market) and the market demand curve. The right-hand panel shows a firm with an owner whose taste for discrimination is 0, that is,$d_b = d_w = 0$. Since $w_b < w_w$, the non-discriminating employer will hire only black workers, whose wage rate is lower relative to their productivity.

In the labor market, it follows that $w_b(1+D) = w_w$, where D is the market discrimination coefficient. Since we assume that $D = d_i$, the marginal firm on the right should be indifferent between hiring black or white workers.Hence, $w_b = w_w/(1+D)$, and since $D > 0$, $w_b < w_w$.



Discriminating Firm Competitive Market Non-Discriminating Firm

Figure 12-1

After nearly a semester of studying economics you should have led to a healthy skepticism that leads you to ask "What is wrong with this picture?" The discriminating firm at the left is earning zero economic profit, so that there is no incentive for similar firms to enter the market. However, the non-discriminating firm on the right is earning a positive economic profit, since, as Becker showed, non-discriminating firms are more efficient. In the long run, the competitive market should eliminate the inefficient discriminating firms. So, why doesn't the firm on the left disappear?

Now we have the economic explanation for **Jim Crow** laws that make it illegal for *non-discriminating firms* to enter or survive in the market. Those familiar with the civil rights era will recall that Southern whites not only denounced "uppity blacks,"[13] but also "outsiders," especially Jews. Perhaps stemming from a long history as victims of discrimination themselves, and also because Jewish theology has long resisted the temptation to remake God in the image of a bigot, Jews tend to have tastes for discrimination near 0. Because of that, they are denounced as "money grubbers," which, of course, is a derisive term for "profit-maximizer." So, by threats of fines and police-sanctioned violence, Southern governments protected discriminating firms from the entry by non-

[13] Unfortunately, they typically invoked the "n" word in voicing their personal tastes for discrimination.

competitive firms. Interestingly, during Reconstruction, when Northern occupation forces were unsympathetic to Southern tastes for discrimination, the Ku Klux Klan emerged as an extra-governmental organization to intimidate blacks and the whites (non-Christians) who would hire them. During World War I, when labor shortages threatened to undermine the enforcement of Jim Crow laws, the Ku Klux Klan emerged from obscurity, disguising itself as a patriotic organization in defense of Christian virtues, especially the purity of Southern women. Indeed, there was a renewed resurgence of Klan activity during and immediately after the civil rights movement, particularly after voting rights neutralized local governments as agents of economic inefficiency. Nevertheless, illegal means are more expensive than governmental means of enforcing collective discrimination, and so the Civil Rights and Voting Rights Acts unleashed the competitive forces of the market.

Next, consider the case of **employee discrimination**. An employee reveals a taste for discrimination by discounting the wage rate offered from a black employer, or the wage offer for a job that would involve black supervisors or coworkers. If $w_{ww}$is the wage offer for a job in an all-white establishment, and w_{wb} is the wage offer to a white from an establishment that also hires blacks in the same or higher positions,[14] the worker would prefer the wage offer w_{ww} if $w_{wb}>w_{wb}(1-d_j)$, where d_j is the discrimination coefficient by the j^{th} job applicant. Even if employers had no taste for discrimination, they would not wish to pay a wage premium to white workers to work alongside black workers. Therefore, employee discrimination tends to promote labor-force segregation. If both the employer and the employee have tastes for discrimination, then unequal wage rates (the result of employer discrimination) will reinforce labor-force segregation (the result of employee discrimination). Note that a segregated school system, with inferior schools for blacks reinforces both employer and employee discrimination, by preventing blacks from preparing for well-paying, but white-dominated, occupations. Also, discrimination creates a self-fulfilling prophecy for blacks. If, for instance, architecture firms will not hire black architects, then blacks will not prepare for careers in architecture. Then, when the Civil Rights Act removes impediments to discrimination, employers will shrug their shoulders and proclaim, "We would like to hire black architects, but noneapplied."

The third type of market discrimination consistent with competition is **consumer discrimination**. When whites buy manufactured goods, they typically neither know nor care whether the workers who created those goods are black or white. Similarly, when hiring servants, whites may prefer blacks because they feel this places them (the whites) in an advantaged social position. However, whites will typically prefer white professionals, such as doctors, lawyers, and architects, as well as rolemodels like entertainers and athletes.[15] Indeed, until 1947 (the year that I was born), Major League Baseball teams had no AfricanAmerican players. In 1997, professional baseball celebrated the fiftieth anniversary of Jackie Robinson's breaking the color barrier. What is telling is that teams

[14] Many whites had no qualms about working in establishments wherein blacks worked in lower status jobs, since the ability to "look down on" blacks was part of the mystique of being white in the South.
[15] Minstrel shows, popular in the late nineteenth century, featured white entertainers in dark makeup (blackface) playing black entertainers, who were barred from performing in the shows.

that added blacks to their roster tended to fare better in competition with all-white teams, who had substituted inferior white players for more qualified black players.

A consumer who has a taste for discrimination would behave *as if* the price of buying a product from a black (say, a store clerk) is greater that the price of buying the same product from a white: $P_b(1+d) > P_w$. Since consumers will gravitate to firms charging lower *psychic* prices, employers without tastes for discrimination will be reluctant to hire blacks for "consumer-sensitive" positions. Becker illustrates the importance of discrimination in various professions with the following observation:

> This analysis also partly explains why Negroes and whites choose different occupations. It is more difficult for Negroes to acquire formal education because they are poorer than whites; since engineering requires less formal schooling than medicine, dentistry and the law, one might expect relatively more Negroes to enter engineering. The data … show that relatively fewer Negroes are in engineering that in the other professions. A large fraction of the dentists, doctors and lawyers are self-employed, while most engineers are employed by private firms. This implies that engineers are employed in relatively large establishments; therefore, even if the average taste for discrimination was the same against all Negro professional men, Negro engineers would suffer more actual discrimination, and consequently there would be less incentive for Negroes to enter this profession.
>
> Although roughly the same amount of education seems to be required for dentistry, medicine, and law, relatively more Negroes are in dentistry and medicine than in law. If there are tastes for discrimination, the differences between the professions become relevant, one of them being that lawyers must argue in white courts. Members of the court are, as it were, a complementary factor, and if they prefer white lawyers, the demand for Negro lawyers will be curtailed.[16]

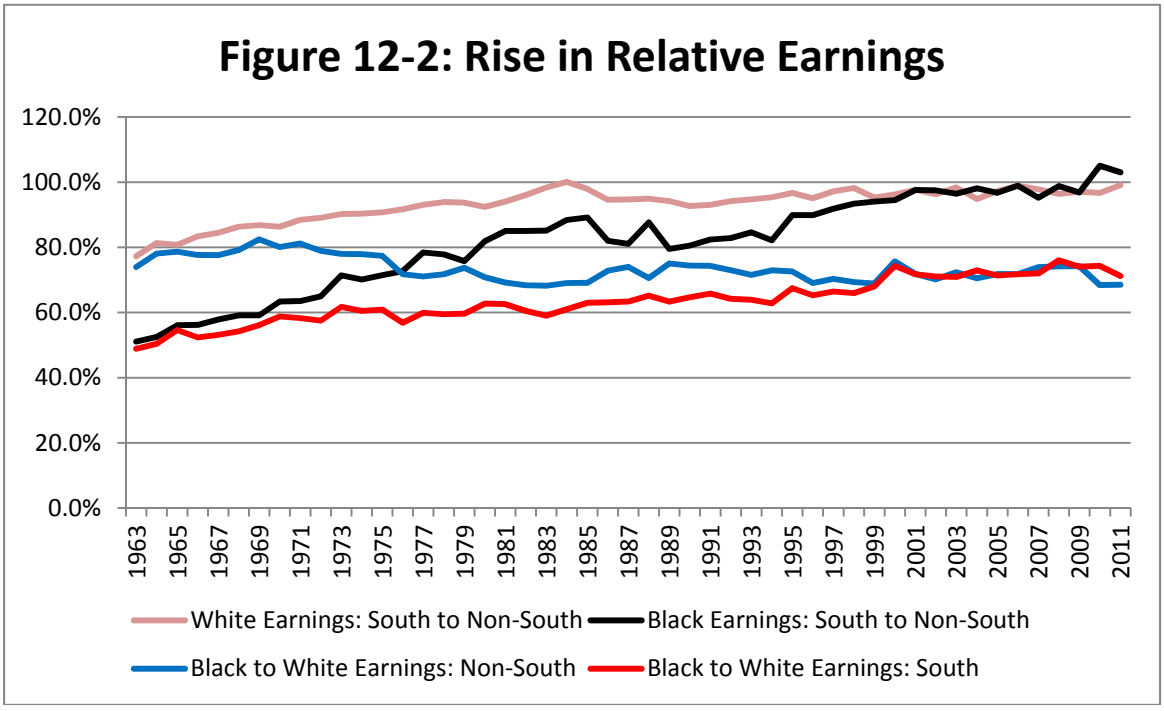
To summarize, the existence of a taste for discrimination, or prejudice based on inaccurate information, which resists empirical correction, places discriminating employers at a competitive disadvantage. Jim Crow laws and other legal impediments to market competition protect discriminating firms from competition, but they do not overcome the inherent inefficiency of discriminating firms. Furthermore, white employees will accept lower wages to work with whites than to work with blacks, a factor that would tend to depress the wage rates for southern whites. Finally, consumers who pay higher prices to avoid contact with black salespeople or professionals will have a lower standard of living than would equivalent consumers without racial hang-ups. Ironically, it was the willingness of the South to erect an elaborate system of segregation that kept the standard of living of all southerners lower than those of residents of other parts of the country.

The economic effect of the Civil Rights Act was to remove state governments as protectors of segregated firms from market competition, and allowed blacks to sue discriminatory employers or businesses. The Voting Rights Act solidified the gains made

[16] *The Economics of Discrimination*, pp. 90–92.

by blacks by making them a force to be reckoned with in Southern elections. In *Griggs v. Duke Power*, the Supreme Court placed the burden of proof on employers who had to show that they were not discriminating. In the 1980s, the Republican Party broke the bi-partisan consensus in favor of equal rights and encouraged the ideological, gender, and racial divisions that still plague the country.

Figure 12-2 shows that, in 1963, the typical black adult earned 50% of what the typical white earned both in the South and outside the South. We also find that the typical southerner – white or black – earned about 75% of what a non-southerner earned. With the passage of the Civil Rights Act in 1964, black income rose relative to white income faster in the south than outside the south. If racial equality were a **zero-sum game**, we would expect the gains to blacks to come at the expense of whites. However,the average earnings of white southerners reached parity with the earnings of whites outside the south by the mid 1980's. Note that Southern blacks did not reach that milestone until 2009. The move toward equal economic opportunity, embodied in the civil rights legislation of the 1960s, was a rising tide that lifted all boats—black and white together—because equal economic opportunity is consistent with economic efficiency.



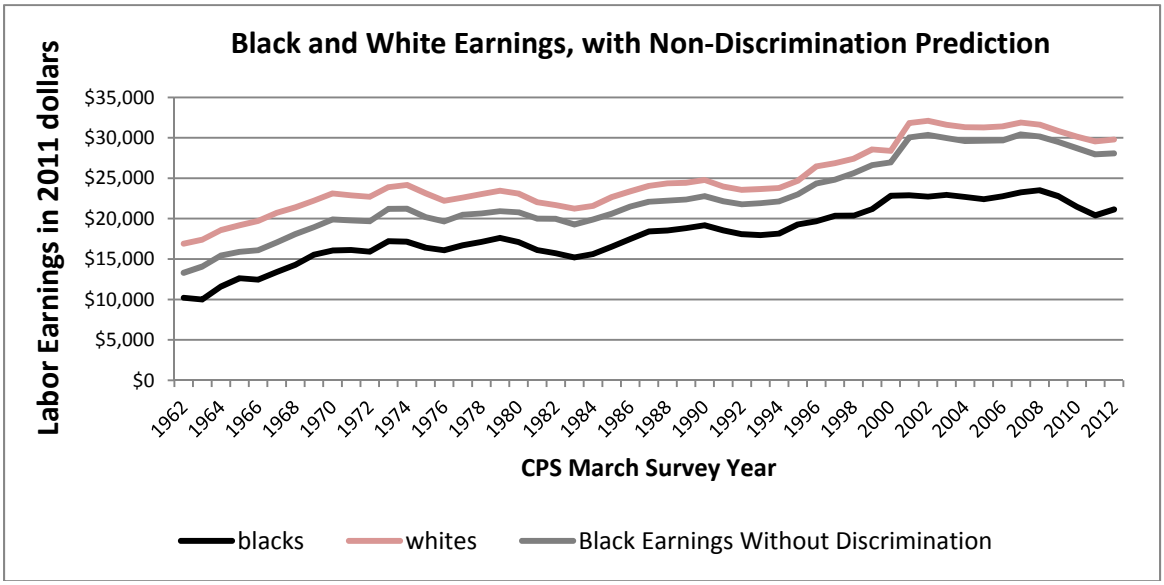
The Trend in the Market Discrimination Coefficients

We have seen that Becker traced black-white earnings differentials to the existence of a **taste for discrimination** by white employers, employees, and customers against dealing with black workers. If potential employer *i* has a personal discrimination coefficient of d_i, that employer behaves *as if* the wage rate paid to black workers is $w_b(1+d_i)$; that is, the employer *inflates* the monetary wage w_b to a **psychic wage** $w_b(1+d_i)$. Among equally qualified white job applicants (with reservation wage w_w) and black job applicants (with reservation wage w_b), the white employer will nevertheless hire the white job applicant if $w_b(1+d_i) > w_w$, even though $w_w > w_b$. Supply and demand will clear

the market, generating the **market discrimination coefficient,** $MDC = \frac{w_b}{w_w}$**,** where w_b and w_w are the equilibrium wage rates for white and black workers, respectively.

All employers whose personal discrimination coefficient exceeds the market discrimination coefficient hire only white workers and incur larger wage costs than do those employers whose personal discrimination coefficients are less than the market discrimination coefficient, will hire only black workers, resulting in a segregated labor force.[17] However, because discriminating employers would have higher labor costs than would non-discriminating employers, competitive-market forces would eventually displace discriminating employers, causing the market discrimination coefficient to decrease over time. Until 1964, however, state anti-competitive **Jim Crow** laws deterred employers with low discrimination coefficients – blacks, Jews, Catholics and non-Southerners – from entering southern labor markets. With the passage of the Civil Rights Act we should observe a gradual decrease in the market discrimination coefficient.

Figure 12-3



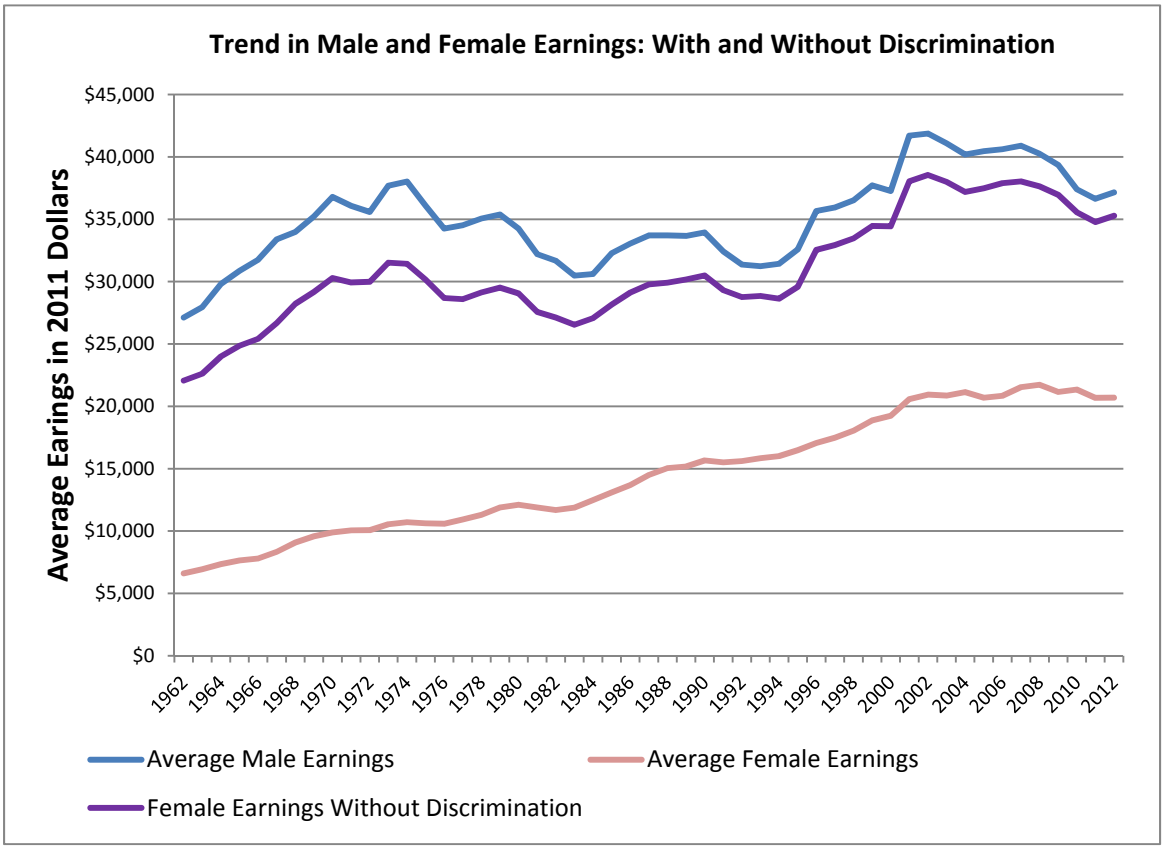
The pink line shows the average annual wage and salary earnings for white workers. The black line shows the average wage and salary earnings for black workers, both in constant 2011 dollars. The grey line shows what black workers would earn if they received the same pay by age, education, and occupation that white workers receive. For instance, in the March 1962 *CPS*, black workers earned an average of 60.44% of what the average white workers earned. Had black workers been paid the same as white workers with the same age, occupation, and education, that discrepancy would have been reduced by half; black earnings would have received 78.74% of what white workers received.

[17] Segregation resulting from employer discrimination is reinforced by employee discrimination, whereby white workers demand a wage premium, $w_w d_j$ for working with black co-workers (or supervisors). Even if an employer had a relatively low personal discrimination coefficient, they would hire only white workers or only black workers to avoid paying the "integration premium" to white workers.

That is, about half of the earnings difference between the earnings of black and white workers could be attributed to lower education and selection of lower paying occupations. By 2012, the average black worker earned 70.99% of what the average white worker earned. Because of gains in education and occupations, blacks would have been paid 94.21% of what white workers earned. So while pay discrimination is gradually declining, black workers continued to earn less than white workers.

Figure 12-4 shows a similar comparison between the earnings of male and female workers. In 1962, the typical female worker earned only 24.36% of what the typical male worker earned. Had she been paid the same rate as men were for hours worked, education, age, and occupation, the average woman would have earned 81.36% of what the average man earned. That is, nearly three-force of the male/female wage discrepancy was due to unequal pay for equal characteristics. By 2012, female earnings had increased to 55.36% of male earnings; had women been paid the same rate as men earned, they would have earned 94.95% of what men earn. This continuing earnings discrepancy works to the benefit to families wherein the husband is the sole or chief earned – namely high income families. This discrepancy works to the detriment of two-earner families and families headed by women – typically low income families.

Figure 12-4



Litigating against Discrimination

As we noted in earlier chapters, **discrimination** is a process, meaning that people are excluded from product or factor markets or trade at a disadvantage due to the tastes of discrimination by the economic majority. Economic discrimination causes **economic inequality**, whose extreme consequence is **poverty**. However, discrimination is not the only cause of economic inequality, or even poverty. Indeed, documenting discrimination, let alone eliminating it, has been a major issue of the **civil rights movement.** Without access to the courts and without the ability to vote, African Americans, Native Americans, AsianAmericans, and femaleAmericans had to suffer their discrimination in silence.

Before the Civil Rights Act, discrimination was documented by journalists and historians, whose photographs depicted lynchings and grinding poverty. There were a few noteworthy counterexamples, including the case of African slaves and the Armistead case, argued by former President John Quincy Adams and depicted in the movie by the same name.[18] We should not overlook the Civil War, when 70 percent of the population fought 30 percent over the issue of slavery. That the *Brown* case was decided in favor of racial justice by a unanimous Supreme Court in 1954 was nothing short of remarkable. But it was the 1964 Civil Rights Act, whereby the United States Constitution trumped state laws, when blacks, other racial minorities, and women gained recourse to the courts.

In the early 1960s, the backlog of clear-cut discrimination cases began to filter through the court system. When Southern white males believed they could murder blacks with impunity, they had no worries that a court would find them guilty of employment or consumer discrimination. It was the *Griggs* case, however, that set the precedent for how the federal and state courts would weigh the evidence in anti-discrimination suits.

In *Griggs v. Duke Power* (1971), Willie Griggs was the **plaintiff**—the party bringing the complaint—and Duke Power was the **defendant**—the party answering the complaint. Griggs and his attorneys alleged that Duke Power had discriminated against Griggs because of his race.The defendant responded that Griggs was not promoted because of his lack of education, which was perfectly permissible under Title VII of the 1964 Civil Rights Act,which dealt with discrimination in employment. Griggs's attorneys countered that the requirement that promotion beyond laborer required a high school diploma was unfairly applied to Griggs, since many white employees did not meet that qualification. In ruling for the plaintiff, the Supreme Court held that "Title VII bans 'not' only overt discrimination but also practices that are fair in form but discriminatory in operation." In order to avoid discrimination lawsuits under Title VII, public and private employers began to adopt hiring policies designed to recruit more minorities. The Equal Opportunity Act of 1972 expanded Title VII protections to educational institutions, leading to the extension of affirmative action to colleges and universities."[19]

The ruling in the *Griggs* case informed employers that **circumstantial evidence** of discrimination—that is, the statistical underrepresentation of a protected demographic group shifted the **burden of proof** to the employer, who then had to show that the out-

[18] The case was admitted to the courts because there were several different claimants to Amistead's cargo, namely human beings, not because American courts were sympathetic to the plight of African slaves.

[19] Microsoft® Encarta® Reference Library 2003. © 1993–2002 Microsoft Corporation. All rights reserved.

come of inequality was **not** the result of discrimination. It is a well-known precept of logic that one cannot prove a negative; I cannot prove I did not discriminate. However, an adequate defense would be to show that the process I used in hiring was nondiscriminatory. It would not do for employers to argue "no qualified applicants came forward," since discrimination creates a self-fulfilling prophecy. If Duke Power discriminates against blacks in general, blacks with high school diplomas are not likely to apply to Duke Power.

As a legal defense, most employers adopted an **Affirmative Action** employment policy. The term was first used, in 1961, by President Kennedy in an executive order designed to encourage companies doing business with the United States government to hire the most qualified workers available, taking *positive steps* (i.e., affirmative action) to find qualified minority candidates if underrepresented groups had not applied. In a 1965 speech to Howard University, President Johnson set the tone for Affirmative Action when he said: "You do not take a person who, for years, has been hobbled by chains and liberate him, bring him up to the starting line of a race and say, 'you are free to compete with all the others,' and still justly believe that you have been completely fair."[20]

So, imagine you were the chancellor at the University of California, Davis, and you realized that the demographic profile of medical students would pass the legal standard for discrimination:

> The Medical School of the University of California at Davis opened in 1968 with an entering class of 50 students. In 1971, the size of the entering class was increased to 100 students, a level at which it remains. No admissions program for disadvantaged or minority students existed when the school opened, and the first class contained three Asians but no blacks, no Mexican-Americans, and no American Indians. Over the next two years, the faculty devised a special admissions program to increase the representation of "disadvantaged" students in each Medical School class. The special program consisted of a separate admissions system operating in coordination with the regular admissions process.
>
> From the year of the increase in class size—1971—through 1974, the special program resulted in the admission of 21 black students, 30 Mexican-Americans, and 12 Asians, for a total of 63 minority students. Over the same period, the regular admissions program produced 1 black, 6 Mexican-Americans, and 37 Asians, for a total of 44 minority students. Although disadvantaged whites applied to the special program in large numbers, none received an offer of admission through that process. Indeed, in 1974, at least, the special committee explicitly considered only "disadvantaged" special applicants who were members of one of the designated minority groups.
>
> Allan Bakke is a white male who applied to the Davis Medical School in both 1973 and 1974. In both years, Bakke's application was considered under the general admissions program, and he received an in-

[20]Microsoft® Encarta® Reference Library 2003. © 1993–2002 Microsoft Corporation. All rights reserved.

> terview. His 1973 interview was with Dr. Theodore C. West, who considered Bakke "a very desirable applicant to [the] medical school." Despite a strong benchmark score of 468 out of 500, Bakke was rejected.… In neither year did the chairman of the admissions committee, Dr. Lowery, exercise his discretion to place Bakke on the waiting list. In both years, applicants were admitted under the special program with grade point averages, MCT scores, and benchmark scores significantly lower than Bakke's.
>
> After the second rejection, Bakke filed the instant suit in the Superior Court of California. He sought mandatory, injunctive, and declaratory relief compelling his admission to the Medical School. He alleged that the Medical School's special admissions program operated to exclude him from the school on the basis of his race, in violation of his rights under the Equal Protection Clause of the Fourteenth Amendment, Art. I, § 21, of the California Constitution, and § 601 of Title VI of the Civil Rights Act of 1964.…

Before continuing with the Court's ruling, consider the result if Bakke had sued the American Medical Association, or even the University of California, under an anti-trust statute. By conspiring to maintain an artificially low number of medical school students, the University of California conspired with the American Medical Association to restrict trade and create a monopoly price for healthcare. Had the Court ordered that the AMA approve, say, a doubling of the number of medical student slots at all medical schools, there would have been no need for discrimination.Since Bakke did not sue under an anti-trust statute, the Supreme Court had to limit its ruling to the facts of the case. The Court essentially split a legal hair, finding against UC-Davis because it used an explicit racial quota, which, by discriminating in favor of racial minorities, could not help but discriminate against Allan Bakke, a mediocre white male. However, the Court explicitly approved of affirmative action programs, like that at HarvardUniversity, which included ethnicity as one factor in admission (i.e., accepting lower test scores from minority applicants) without establishing an explicit quota.

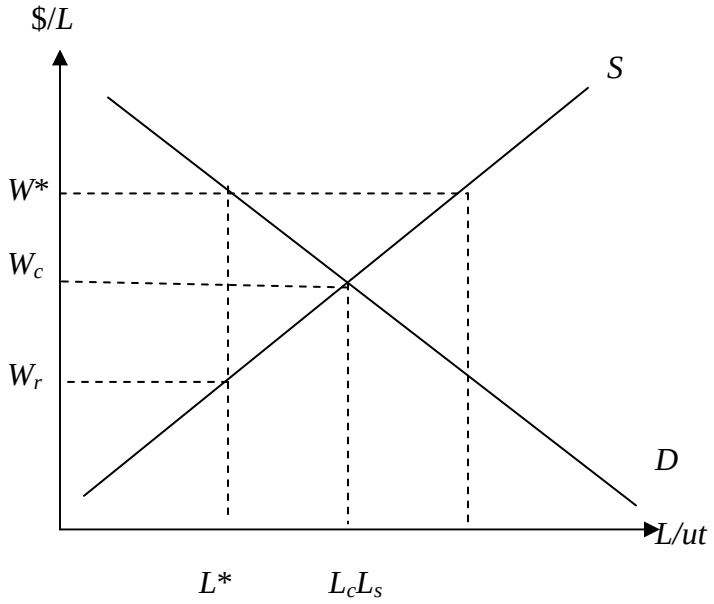


Figure 12-7

Figure 12-7 presents the dilemma facing medical schools, whose admissions are artificially restricted by a powerful labor cartel, in this case, the American Medical Association.[21] The demand curve shows the demand for physician's services; it is negatively sloped because, the higher the wage rate, the fewer physician visits patients will make. The demand curve is relatively steep (**price inelastic)** because physicians often provide life-and-death services, and, more importantly, most medical bills are paid for by private insurance (with a nominal copay), or by government programs like Medicaid (for the poor) or Medicare (for seniors). The supply of physicians is positively sloped because medicine is a stressful occupation, and because the required four years of college, four years of medical school, plus another four or more years of internship and residence before doctors can earn substantial income (and start paying off those student loans) is expensive. Nevertheless, judging by the ratio of medical school applicants to admissions, the restriction on medical school admissions creates a labor surplus.[22] Overall, there are L_s individuals who apply to medical schools, but only L^* slots available. The consequence of restricting the number of slots in medical school is that the wage rate for physicians is W^* instead of W_c, the competitive-market clearing wage. But the university is left with a rationing problem. The AMA prefers a balance of two conflicting goals: keeping AMA members happy, by guaranteeing that their sons and nephews are admitted, and keeping society happy by restricting admission to the most qualified.

You should recognize the model of a labor cartel operating in an erstwhile competitive labor market. If admission to medical school was completely left to competitive markets, L_c applicants would be admitted (after some screening for minimum qualifications), and physicians would earn a market-clearing wage rate of W_c. That was essentially the status quo at the end of the nineteenth century, when most physicians received their training through apprenticeships. When the American Medical Association gained control of physician certification,[23] the number of physicians (as measured by their percent of the population) fell from L_c to L^*, resulting in a substantial increase in the wage rate from W_c to W^*. But the higher-than-competitive wage rate for physicians means that medical schools must ration L^* slots to L_s applicants. In Chapter 9, we reviewed three alternative rationing schemes. If universities wished to clear the market, they could set tuition so high that only L^* students applied. Note that W_r is the **reservation wage**for the L^{*th} applicant. A tuition level that confiscated $W^* - W_r$ would eliminate the surplus of applicants and make medical schools more profitable for universities than NCAA football or basketball. In fact, those with the lowest reservation wages would likely be women and minorities, so medical schools would simultaneously increase their tuition coffers and remove the circumstantial evidence of racial and gender discrimination.

Obviously, charging market-clearing tuition was not the screening technique that UC-Davis or most other medical schools adopted. Typically, elite universities set their

[21] One urban legend that I heard as a student at SyracuseUniversity in the 1970s, told of a threatened disaccreditation of the Johns Hopkins medical school that had proposed a night program, using medical school faculty serving with the Department of Health, Education, and Welfare.

[22] More relevant empirical evidence of an artificial shortage of medical-school slots is the fact that while American colleges and universities export education, particularly post-graduate education, in virtually every field, a significant portion of physicians in the USA were trained in other countries.

[23] The fox assumed control of the henhouse!

tuition to raise sufficient revenue from rich, qualified applicants[24] in order to offer scholarships to overqualified poor applicants, who otherwise could not attend that university and make life at the university more pleasant for elite faculty members. So, the affirmative action program adopted by UC-Davis did not eliminate discrimination, it merely shifted the discrimination away from minority and female applicants to academically average white male applicants without connections.

So, as a remedy against the charge of discrimination in a competitive market, affirmative action works to identify minority candidates, and, eventually, transform the demographic profile of an occupation to more closely match that of the relevant population. However, when applied to an imperfectly competitive labor market, like medicine, affirmative action does not eliminate discrimination; it merely changes who the victim is. Affirmative action has become another wedge issue the Republican and Democratic Parties use to divide the country.

In 1989, after several successful conservative Supreme Court appointments, including the elevation of William Rehnquist to Chief Justice, the Court reversed the *Griggs* decision. In *Wards Cove Packing Company v. Antonio*, Native Americans sued because they were underrepresented among managers in other white-collar positions and overrepresented in laborer positions (pulling guts out of salmon along a conveyor belt):

> The Supreme Court's ruling in *Wards Cove Packing Company v. Antonio* (1989) revised the standards established by the 1971 *Griggs* decision. The *Wards Cove* decision required that employees filing discrimination lawsuits demonstrate that specific hiring practices had led to racial disparities in the workplace. Even if this could be shown, these hiring practices would still be legal if they served "legitimate employment goals of the employer."[25]

After *Wards Cove*, employees had to prove that employers intended to discriminate; they mustpresent a written record where employers explicitly state that they did not hire an applicant because of race, gender, age, or nationality. Now most discrimination suits are dismissed for lack of proof; those that pass the hurdle of correlating the underrepresentation of specific groups to the firm's hiring practices still must answer the question of why they know the employment goals of the firm better than the employer does. It follows that employers have less of an incentive to maintain affirmative action policies.[26] However, the burden of proof was shifted back to employers in the Civil Rights Act of 1991.

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[24] When professors at private liberal arts colleges explain the performance of their academically challenged students, the label they use is "full-pay" students.

[25] Microsoft® Encarta® Reference Library 2003. © 1993–2002 Microsoft Corporation. All rights reserved.

[26] Much of the material for this chapter comes from a website, Diversity Inc., sponsored by such prominent companies as Starbucks, Marriott, Ford, and Mercedes Benz. The stated mission of Diversity Inc. is to assist human resource corporate officers and small business employers appreciate and further the diversity within American business. Is it possible that the Republican Party has not kept pace with its key constituency? Check out http://www.diversityinc.com

Did the Americans with Disabilities Act Work?[27]

In 1990, during the first Bush administration, Congress passed the Americans with Disabilities Act. The ADA took effect two years later in mid-1992. The ADA has two major provisions. First, owners of public buildings are required to make those facilities accessible to the disabled, by adding ramps, modifying restrooms, and so forth. Second, employers had to make reasonable accommodation to hire and retain the disabled. This second effect is more relevant to our purposes; if employers are required to accommodate the disabled, we should see a significant decrease in the poverty rate among disabled individuals.

The Americans with Disabilities Act is a noble but flawed experiment. Like minimum wage laws and rent controls, the ADA is an attempt to be altruistic with other people's money, causing a market distortion and economic inefficiency. Just as minimum wage laws say "We want to help unskilled workers, but we want employers to bear the cost," the Americans with Disabilities Act says the same thing about disabled individuals. If a worker became injured and was able to continue with his same employer, that worker is generally better off, because the employer is familiar with the worker. However, if an individual is congenitally disabled, or can no longer continue in his or her pre-injury occupation, ADA has the perverse effect of reducing the individual's employment prospects. In hiring a new employee, an employer values the option to dismiss the employee if he or she fails to perform adequately. That is why many states, including Nevada, have **employment at will** laws that give the employer the right to terminate a worker for any cause. Many employers waive their right to terminate without cause after the worker has proved himself or herself after some probationary period. Nevertheless, the employer prefers to have the option to terminate workers if their performance differs from their promise.

The problem with the ADA is that the act prohibits discrimination against the disabled, by requiring employers to make only *reasonable* accommodations to change the worksite to one more conducive to work by the disabled. Ambiguity about what constitutes a *reasonable accommodation* has led to a spate of litigation, culminating in the U.S. Supreme Court's relatively narrow enforcement of the ADA. Before ADA, a disabled job seeker would have to battle employer prejudice and the possible resentment of fellow workers who might have believed that disabled workers would not pull their own weight. Indeed, to the extent that ADA has provided employers and fellow employees with the opportunity to get to know disabled colleagues, the law may have had a useful public relations role to play. Indeed, workers whose aptitude and honesty are known to an employer tend to benefit from ADA, in that the law makes it difficult for an employer to fire disabled workers. However, if the worker cannot perform his or her pre-injury job, she must re-enter the labor force in a condition of asymmetric information—the job-seeker knows more about her ability to perform than the potential employer does, but the job-seeker is inclined to overstate that ability. Indeed, people sometimes fool themselves about how much they can accomplish until they have actually tried to do the job. If the employer has the option to fire, she may take a chance on a disabled employee, since the

[27] This section is based on "The Impact of the Americans with Disabilities Act on Labor Market Outcomes: Lessons for Forensic Economists," National Association of Forensic Economics Session, Southern Economics Association Meetings, San Antonio, Texas, November 22, 2003.

cost of that person's inability to perform can be mitigated by dismissal. It follows that an employer will try to find an excuse, other than disability, for not hiring a disabled job-seeker. Of course, the job-seeker has the right to sue under ADA. However, as we will see in the next chapter, the party that bears the burden of proof in a discrimination case generally loses.

Table 12-1 presents the annual data for the subset of 310,726 respondents to the March *CPS* who answered "Yes" to the disability question between 1988 and 2012. The first column shows the year of the survey, and the second is the disability rate for all individuals each year (a sample of 3,349,678). The growth rate at the bottom of the page indicates the average annual percent change in that variable. Significance is the probability that the actual growth rate is zero. The effect of ADA measures the percent change in the variable after the passage of the Americans with Disabilities Act; the significance of that effect is the probability that the ADA had no effect on the variable in question.

	Disability	Poverty	Participation	Employment	abor Earnings in 2011 $		Real Wage Rate		Total Income in 2011 $'s	
year	rate	rate	Rate	Rate	Able-Bodied	Disabled	Able-Bodied	Disabled	Able-Bodied	Disabled
1988	9.08%	23.06%	27.50%	67.63%	$34,162	$18,581	$18.04	$14.47	$31,784	$19,446
1989	9.13%	22.75%	27.47%	67.30%	$34,049	$18,153	$17.87	$13.83	$32,092	$19,081
1990	9.10%	22.82%	28.53%	68.63%	$34,612	$18,614	$18.08	$14.42	$32,791	$19,728
1991	9.14%	24.72%	27.47%	66.95%	$33,543	$17,868	$17.64	$14.07	$31,827	$19,130
1992	9.18%	24.59%	27.91%	67.74%	$33,041	$18,413	$17.57	$14.05	$31,108	$18,987
1993	9.55%	24.85%	27.35%	67.82%	$33,467	$17,234	$17.68	$13.52	$31,130	$18,348
1994	10.63%	25.17%	25.06%	67.47%	$33,672	$17,346	$17.77	$14.26	$31,440	$18,304
1995	10.55%	24.53%	24.95%	66.81%	$34,733	$17,921	$18.11	$14.59	$32,097	$18,583
1996	10.58%	23.06%	24.54%	68.43%	$37,027	$20,654	$18.53	$15.65	$33,802	$19,300
1997	10.44%	23.69%	25.07%	69.53%	$37,520	$19,295	$18.63	$14.69	$34,417	$18,802
1998	9.75%	24.10%	24.28%	69.54%	$38,199	$18,125	$18.74	$14.23	$35,725	$19,116
1999	9.57%	24.30%	23.82%	71.11%	$39,549	$20,128	$19.37	$15.08	$36,812	$19,635
2000	9.65%	22.42%	24.53%	71.12%	$39,309	$21,154	$19.65	$15.94	$36,697	$20,364
2001	8.93%	23.71%	25.61%	69.60%	$41,914	$20,794	$20.23	$15.82	$38,303	$19,832
2002	8.88%	24.26%	24.90%	69.24%	$42,568	$21,431	$20.67	$16.68	$38,078	$19,258
2003	8.74%	25.13%	23.35%	68.47%	$42,492	$20,950	$20.78	$16.41	$37,339	$18,650
2004	9.00%	24.89%	23.31%	69.46%	$42,340	$20,868	$20.88	$16.38	$37,398	$18,453
2005	9.06%	24.97%	22.28%	69.09%	$42,314	$20,558	$20.67	$15.99	$37,368	$18,654
2006	9.25%	24.86%	22.15%	69.89%	$42,590	$20,362	$20.59	$15.71	$37,829	$18,928
2007	8.64%	24.44%	21.94%	69.80%	$43,302	$19,976	$20.78	$15.79	$38,512	$19,112
2008	8.57%	25.05%	21.89%	68.79%	$43,008	$19,754	$20.92	$16.09	$38,180	$18,922
2009	9.04%	25.01%	21.30%	68.47%	$42,137	$18,273	$20.81	$15.58	$37,216	$18,183
2010	8.96%	25.16%	20.24%	66.91%	$41,594	$18,903	$21.20	$15.69	$36,508	$18,478
2011	9.02%	26.00%	19.40%	67.05%	$41,080	$18,293	$21.05	$16.05	$35,870	$18,025
2012	9.37%	26.39%	18.41%	65.52%	$41,875	$17,842	$20.94	$16.65	$36,240	$17,695
Total	9.28%	24.49%	23.88%	68.48%	$39,342	$19,293	$19.69	$15.28	$35,545	$18,876
te of chan	-0.06%	0.08%	-0.37%	-0.02%	1.31%	0.58%	0.83%	0.74%	1.10%	0.22%
ignificanc	5.01E-108	5.96E-108	2.61E-161	29.60%	0	1.16E-07	0	4.34E-29	0	0.22%
										3.39E-08
ffect of AD	1.00%	0.28%	0.46%	1.31%	-0.80%	0.22%	-2.97%	-1.91%	-0.54%	
ignificanc	2.81E-67	32.30%	9.50%	0.40%	1.20%	91.60%	4.82983E-52	13.30%	11.10%	-1.40%

The disability rate increased from 1988 to 1997 and then declined. Overall, the disability rate declined by 0.06% per year, but jumped by 1% upon the passage of ADA. The poverty rate among the disabled increased at a rate of 0.08% per year, and was not did not depart from that path upon the passage of the ADA. The ADA was intended to

increase the labor-force activity rate of the disabled, who were expected to become more optimistic about their employment prospects; the labor-force participation rate actually declined at a rate of 0.37% per year, and the passage of ADA barely offset one year's decline in the labor force participation of the disabled. The employment prospects of the disabled did improve marginally; while the employment rate did not change from year to year, the employment rate for the disabled did increase by 1.31% the year after ADA passed. The annual earnings of the disabled increased during the 1990's, but then declined from 2000 to 2012; overall, the rate of increase was only half that experienced by able-bodied workers. There was a drop of less than one year's earnings growth for able-bodied workers' earnings in 1991, compared to an insignificant departure from the growth trend for disabled workers. The inflation-adjusted wage rate for wage rate grew only slightly less for disabled workers than for able-bodied ones; this reflects a reduction in the average hours worked per year by the disabled. Finally the average income able-bodied individuals grew at five times the rate as did the income of the disabled.

The Americans with Disabilities Act was at best a partial success at increasing the lot of the disabled. Most successful were the architectural accommodations at places of business and hotel accommodations. Today it would be more expensive to construct offices that did not comply with ADA than to build ones that comply; ADA compliant architecture is now standard. Less successful were the employment provisions. For workers who become disabled but are able to perform their pre-injury jobs with modest accommodations by their employer were made better off by ADA. For workers who are unable to continue in their pre-injury occupation, the ADA probably makes their employment prospects worse. Recall the asymmetric information problem from chapter two of *Freakonomics*; such a problem bedevils the employment decision. Job seekers typically know more about their abilities than prospective employers do, and often job seekers exploit this ignorance, hoping to fool their employer, and perhaps even themselves, claiming skills they do not possess. To counteract this problem, most states, including Nevada, have employment-at-will statutes, which give employers the right to terminate employment *at will* – that is, without giving a reason or the employee the right to sue.

By forbidding employment discrimination against the disabled, the Americans with Disabilities Act may actually deter prospective employers from hiring the disabled. Being sued for terminating a disabled worker is bad publicity at best and may result in paying damages. As long as an employer has a record for accommodating the disabled workers he knows, the burden would be on a disabled job applicant to prove that he could have performed a job if he had been hired. In short, employers may decide that it is less risky not to hire disabled job applicants than to hire them, find that they cannot perform their job, and lose a court battle in a wrongful termination suit.

The premise behind antidiscrimination laws is that minority and female job applicants are likely to be as productive as white, non-Hispanic male job applicants are. Prejudice is not a defense; an employer with a history of discrimination must prove that his hiring, retention, promotion and pay practices are related with actual worker performance. With disabled and older job applicants, prejudice may be accurate; disabled and older workers are often less productive than their able-bodied and younger counterparts. Imposing anti-discrimination rules that result in lower business profits turns employers into enemies rather than allies in the struggle for equal economic opportunity. That is

why it is so important that society erect a strong economic safety net – such as a negative income tax – which provides better support for young, disabled, and elderly citizens than a competitive market could.

Conclusion

The United States has had a long, shameful history of **de juro discrimination** against African Americans, Native Americans, Asians, Hispanics, and women of all ethnicities. From a Constitution that did not count Native Americans, and treated black slaves as three-fifths of a person, the nation limped along until the Civil War finally united the country as an unbreakable union of Free states. But the nation was reconstructed under the separate-but-equal banner of *Plessy v. Ferguson*, until *Brown v. Board of Education* proclaimed that separate but equal was an oxymoron. The Civil Rights Act of 1964 and the Voting Rights Act of 1965 wiped away the formal discrimination of Jim Crow laws in the South, although housing segregation, and segregated education, both forms of **de facto discrimination**, persist to this day.

The national consensus favoring equal rights eroded in the 1980s, first with the rejection of the Equal Rights Amendment for women, and then with Republican Ronald Reagan's embracing the white backlash and giving the country a kinder, gentler form of racism. Today, affirmative action, reproductive rights, and civil rights for gays and lesbians are wedge issues, splitting the country along fundamentalist versus libertarian lines.

From an economic perspective, discrimination is economically inefficient because discriminating firms incur higher production costs than non-discriminating firms would. Market competition would eliminate economic discrimination if pro-discrimination laws did not exist. Jim Crow Laws were cartel protections for discriminators, and the implementation of the Civil Rights Act was sufficient to set competitive markets back on the path to economic efficiency. However, economic efficiency does not lead employers to hire minority workers if they would have to pay higher wages to other workers with tastes for discrimination. Nor do employers hire minority employers if consumers with a taste for discrimination would shun the firm. By giving victims of discrimination the right to sue firms that practice employment discrimination or charge higher prices or refuse to deal with minorities for damages, civil rights legislation deterred discrimination even when firms themselves were otherwise following profit-maximizing strategies. When the Supreme Court placed the burden of proof on employers in employment discrimination cases, many firms and governments adopted affirmative action strategies to (1) assure that their employees' demographic characteristics matched those of the general population, or (2) failing equal employment outcomes, document equal employment opportunity by taking proactive steps to identify and nurture qualified minority applicants.

When the inaugural class at the University of California, Davis medical school contained few minority members, the school adopted an affirmative action policy that set aside a number of slots for minority applicants. When Allan Bakke sued the medical school for reverse discrimination, the Court ruled that explicit quotas, like that adopted by UC-Davis, were violations of the Fourteenth Amendment's equal protection clause in that they denied due process to white-males, like Allan Bakke. In reaffirming affirmative action programs that do not involve strict quotas, the Court unknowingly bowed to economic reality. When markets, like that for physicians, are not competitive, some form of

discrimination will always exist. Society's tolerance for pockets of monopoly means that affirmative action has become another wedge issue splitting the country.

Economists use statistical analysis to explain away earnings differences. By computing what black workers would have earned if they received the same rate of pay based on age, education, and occupation, we see that the proportion of the difference of the earnings between black and white workers attributed to human capital and occupational differences has actually decreased over time. We find a similar pattern for the differences between female and male earnings.

The one anti-discrimination program that has been at best a modest success has been the employment discrimination section of the Americans with Disabilities Act. The requirement that employers accommodate the impairment of their workers increased the demand for disabled workers, but the adverse selection problem has not helped the employability of the disabled. Because of access to Social Security disability payments, the participation rate among the disabled actually declined after the implementation of the ADA.

Summary

1. Unlike economic inequality and poverty, which are outcomes of factor markets, discrimination is a process, which makes discrimination difficult to measure.
2. Gary S. Becker was the first economist of note to analyze discrimination. According to Becker, whites who discriminate act as if the psychic cost of trading with blacks exceeds the money price.
3. The United States has had a long, unfortunate history of de facto discrimination, beginning with slavery, continuing through Reconstruction, the genocide against Native Americans, and the shameful internment of Japanese Americans during World War II.
4. The Supreme Court's historic decision in *Brown v. Board of Education* in 1954 overturned the judicial approval of separate-but-equal treatment of blacks, codified in Jim Crow laws, which protected discriminating firms from competition with more efficient non-discriminating businesses.
5. With the Civil Rights Act of 1964 and the Voting Rights Act of 1965, Congress invalidated Jim Crow Laws. In *Griggs v. Duke Power*, the Supreme Court placed the burden of proof on employers in employment discrimination cases. Many firms adopted affirmative action strategy to document their anti-discrimination employment policies.
6. Allan Bakke successfully sued the University of California-Davis medical school for admission, arguing that quota programs that set aside positions for minority applicants violate the Fourteenth Amendment's guarantees of due process.
7. In 1989, in the *Wards Cove Cannery* case, the Supreme Court overturned *Griggs*, arguing that employees must prove that employers intended to discriminate. This decision reduced popular support for affirmative action.
8. The 1991 Civil Rights Act reversed the decision of *Wards Cove*, allowing plaintiffs to use statistical evidence to prove adverse treatment in hiring decisions. However, by

allowing for compensatory and punitive damages, the 1991 Civil Rights Act shifted focus to discriminatory termination decisions. Some economists have argued that the 1991 Civil Rights Act had the perverse effect of discouraging employers from hiring marginal female and minority employees.

9. Because firms with a taste for discrimination are less profitable than non-discriminating firms would be, the market will tend to eliminate discriminating firms, unless those firms are protected by anti-competitive institutions like Jim Crow laws or the Ku Klux Klan.
10. When labor markets are not competitive, job discrimination is a natural consequence of employee cartels rationing a shortage of jobs, and wage discrimination as a natural consequence of employer monopsony.
11. Evidence indicates that Southern white wage rates increased relative to white wage rates in the rest of the country, validating Becker's prediction that discrimination hurts both the perpetrator and the victim of discrimination in competitive markets.
12. Because discrimination is a process that is difficult to document, in a civil suit in which the plaintiff alleges discrimination and the defendant responds to that charge, the party that bears the burden of proof tends to lose.
13. The Americans with Disabilities Act imposed an obligation on employers to hire the disabled. The act has had little impact on the wage rates earned by the disabled, apparently because the working-disabled already possessed better than average endowments. Although ADA made it easier for the newly disabled to keep their pre-disability job, the act created an adverse selection problem for the disabled who had to change employers, since ADA compromised the employers' options to terminate unproductive employees.

Glossary

Taste for discrimination: Behaving as if the psychic cost of dealing with a black exceeds the monetary cost.

De juro: Something that is true by force of law; the Thirteenth Amendment gave legal support to Lincoln's emancipation proclamation.

De facto: Something that is true in fact, without regard to legal status. Jim Crow laws caused de juro segregation; northern housing patterns created de facto discrimination.

Discrimination coefficient: Factor d in the following equation, $w_b(1+d_b)$, which gives the psychic cost of a white dealing with a black.

Racial prejudice: Having an erroneous idea about the characteristics of people against which one has a taste for discrimination; typically racial prejudice is resistant to evidence to the contrary.

Market discrimination coefficient: The equilibrium discrimination coefficient that equates the equilibrium wage rates for blacks and whites: $w_b(1+D) = w_w$.

Jim Crow laws: Laws named for a minstrel character that mandated segregation and racial discrimination in the pre-civil rights era south.

Grandfather clause: A stipulation in law or contract that a person could not enjoy certain privileges if his/her grandfather had been a slave. This clause was a shameful, but legal, legal maneuver around the Fifteenth Amendment's prohibition of denial of voting rights based on "previous condition of servitude."

Employer discrimination: When an employer uses his/her taste for discrimination, hiring less-qualified white or male workers over more qualified minority or female job applicants.

Employee discrimination: When an employee demands a higher wage to work with fellow workers or supervisors against whom he has a taste for discrimination. Employee discrimination leads to labor market segregation.

Consumer discrimination: When consumers will pay a higher price to avoid dealing with a minority employee of a firm. Consumer discrimination leads employers to fail to hire minority applicants, even if the employer does not have a taste for discrimination.

Psychic cost: A factor, like a taste for discrimination, which causes people to act as if market prices are higher than they in fact are.

Stereotyping: A form of racial prejudice in which all members of a demographic group are assumed to have the real or imagined characteristics of individuals in that group.

Abortion on demand: The policy preferred by radical feminists where the state has no say in abortion, even after the fetus becomes viable.

Civil rights: Access to the rights of citizenship: the right to vote, to sue in court, to serve on juries, and to compete in markets.

Civil suit: A court case in which the plaintiff accuses the defendant of a careless or intentional action that inflicts harm. Civil suits are based on juries deciding for the party favored by the preponderance of the evidence, compared to criminal cases, where the prosecution must prove guilt beyond a reasonable doubt.

Plaintiff: The party, like a person alleging employment discrimination, who brings the suit and demands restitution from the defendant.

Defendant: The party alleged to have harmed the plaintiff, who can choose to settle the dispute out of court, or litigate the case, asking a judge or jury to decide.

Circumstantial evidence: Evidence consistent with the alleged action by the defendant; for instance, a significantly lower proportion of black employees than their number in the population of qualified applicants is circumstantial evidence of discrimination.

Burden of proof: In a discrimination suit, the plaintiff bears the burden of proof if he must demonstrate that the employer intended to discriminate when the plaintiff was not hired, not promoted, terminated, or paid less than another employee who is equally productive. If the employer bears the burden of proof, he must show that the lack of employees from protected demographic group is *not* due to inten-

tional discrimination. From 1969 to 1989, the employer bore the burden of proof; after 1989, employees have borne the burden of proof.

Compensatory damages: Measurable economic damages, such as lost pay and attorney's costs.

Punitive damages: Monetary awards to the plaintiff designed to punish the defendant beyond compensatory damages. While deterring undesirable behavior by defendants, punitive damages may encourage excessive or frivolous lawsuits by plaintiffs and plaintiffs' attorneys.

Affirmative action: The employment or recruiting strategy that proactively seeks to identify and hire (admit) minority or female applicants, with the goal of making the firm's labor force or the school's student body consistent with the demographic characteristics of the population.