



Bias in Employment: Toward a New Approach

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What good does it do to integrate a lunch counter if you don't have the price of a meal?

THE QUESTION has merit, for much of the civil rights problem is economic in origin. The statistics are impressive in showing the general economic lag of Negroes behind whites. They indicate, too, that the gap between the two races is being narrowed, slowly and somewhat unsteadily. In 1939, the median wage and salary incomes of non-white males were 41.4 per cent of those for whites. By 1960, the figure had risen to 59.9 per cent. For females, the corresponding figures were 36.4 per cent and 50.3 per cent. These Negro-white differentials are accounted for largely by the Negroes' concentration in lower-paying unskilled jobs.¹ Incidentally, it was World War II which hastened the upgrading of Negroes into more skilled, high-

ly paid work and the professions. From 60 per cent in 1930, the proportion of Negro men in unskilled or service jobs, including farm labor, was reduced by 1960 to 40 per cent. For Negro women, the reduction was from 80 per cent to less than 60 per cent.² The enrollment of Negroes in college or professional schools rose 87.9 per cent between 1947 and 1961, while the enrollment of whites rose 60 per cent in that period.³ By 1962, the average white person from 25 to 29 years of age had finished 12.5 years of school, compared with 11.2 years for the average non-white person in the same age group; for non-white men this represented a gain of about four and one-half years of school since 1940, compared with an average white gain of two years.⁴ The importance of education as a key to the Negroes' relative, as well as absolute, progress can be seen from

the fact that, in 1961, the median income of non-white families headed by an elementary school graduate was 68 per cent of the median income for white families in the same category. But when both families were headed by college graduates, the gap diminished, so that the Negro family's income was 84.5 per cent of that of the white family.⁵

These encouraging statistics, showing a narrowing economic gap between Negroes and whites, are subject to two reservations. First, they offer no warrant for complacency, for the differential still exists and it will be further reduced only through continued effort and education. Secondly, and of critical importance, the figures showing the relative improvement between the races reflect primarily the growth of a Negro middle-class minority.⁶

For many Negroes below the middle class, the economic gap is closing too slowly or, worse still, is widening. The overall ratio of non-white to white family median income rose from 51.1 per cent in 1949 to 57 per cent in 1952, but it has since declined to 53 per cent for each of the years, 1961, 1962, and 1963, which is where it was in 1957.⁷ This absence of relative gain may be attributed to the fact that, since the mid-fifties, professional, technical and managerial workers, in which groups non-whites are underrepresented, have shown much larger relative income gains (up 70 per cent) than the 40 per cent gains registered by laboring and service workers, 54.7 per cent of whom were non-white in 1962.⁸ Moreover, it is a consistent fact that the lifetime earnings of Negroes in any particular field run noticeably lower than those for whites in the same field.⁹ Unemployment rates, and the rates of part-time and part-year work due to job scarcity, are generally higher among Negro than among white workers.¹⁰ In October, 1965, 7.9 per cent of the Negro work force was un-

employed, while the figure for whites was 3.9 per cent.¹¹ President Johnson, in his 1965 address at Howard University, noted that, in the years 1955-57, 22 per cent of experienced Negro workers were out of work at some time during the year, but that in the period 1961-63, that proportion soared to 29 per cent.¹² In 1948, the unemployment rate for Negro teen-aged boys who were looking for work, was less than that for whites, 7.6 per cent compared to 8.3 per cent.¹³ In 1953, the Negro rate was 7.1 per cent compared with 6.3 per cent for whites. But, by 1957, the Negro rate had risen to 17.7 per cent, as against 10.6 per cent for whites. In 1958, a recession year, the jobless rate for white teen-aged boys rose to 14 per cent, but for Negroes it soared to 24.3 per cent. The figures for both races in this category have remained at or slightly above these last figures since then.¹⁴

Unemployment statistics, however, should be cautiously treated. Labor columnist Victor Riesel reported in the summer of 1965 that the steel mills in some sections of the country have many skilled as well as unskilled jobs which are going begging for lack of interested applicants. Other industries are experiencing similar shortages.¹⁵ Mr. Riesel asked: "Why, if there is bread to be earned?" Wisely, he answered, "Perhaps some of them are eating cake elsewhere."¹⁶ More recent figures, compiled after President Johnson's 1965 Howard University address, confirm that, in the long-term trend, the Negro unemployment picture for adults and teenagers has been improving more rapidly than for whites.¹⁷ Still, in general, the unemployment rate in all categories for Negroes living in the ghetto areas of Harlem, Chicago, and other places, is steadily and substantially higher than for whites in the same cities.¹⁸ And it is this, of course,

which can help provide tinder for explosive violence.

These sobering figures remind us that, although Negroes in general are closing the economic gulf that separates them from whites, their progress is uneven. Much needs to be done, especially by Negroes themselves but also by whites, to achieve a more even and faster advance in the Negro economic condition.

It is, of course, as difficult to suggest remedies for Negro as for white unemployment. In part, Negro joblessness is a function of the larger problem of unemployment in general. In this respect, improvement will follow upon a betterment of the overall economic situation in the country, an analysis of which is beyond the scope of this study.¹⁹ On the other hand, there are specific factors, bearing more heavily upon the Negro worker, which clearly contribute to his higher relative rate of unemployment. Among these are automation, monopolistic practices of some labor unions, the discouragement of Negro initiative through misdirected public assistance and, last but not least, prejudice.

Automation can be blamed in part, since it places a premium on education and highly developed skills, which Negroes today possess generally to a lesser degree than whites. Proportionately more of those who lack qualifications for highly skilled work are Negroes.²⁰ A recent study indicates, for example, that mechanical cotton pickers, tractors, and chemical weed killers have driven hundreds of thousands of Southern Negroes off the farm and into unemployment since 1950. Many of these displaced workers have been unable to find jobs commensurate with their limited skills.²¹ Automation, however, need not of itself increase long-term general unemployment, and recently available studies indicate that the introduction of automation can be followed by an ultimate in-

crease in employment in the industry involved as well as by an early absorption of temporarily displaced workers into new jobs in the same or other industries.²² The crucial factor, both in alleviating short-term unemployment and in facilitating the longer-term shift away from blue-collar toward white-collar jobs, is education and upgrading of skills through training.²³ Automation appears to be an incident, if not a cause, of an expanding economy, and the interest of all, including the Negro, will not be served by resistance to mechanization, any more than the long-term interest of the nineteenth-century Luddites was served by their destruction of newly-installed machines in the mills in Nottingham. Rather, to the extent that automation is a cause of the employment plight of Negroes, there is a need for a priority program, with government support where necessary, to offer adequate training to unemployed persons of all races. In practice, most of those eligible will be Negroes, and therefore such an effort to relieve technological unemployment can serve to alleviate the racial problem as well. There are several federal programs in this area. Certain of the programs, such as the Occupational Job Training Program, conducted by the Office of Economic Opportunity in its War on Poverty are designed to meet this need. There is reason to believe, however, that the War on Poverty is less than a ringing success, and indeed that Representative Albert H. Quie (R., Minn.) was justified in his complaint that "for all its exalted motives and glamorized goals the so-called war on poverty is a mess and the Office of Economic Opportunity is an administrative shambles; the programs it administers are sad shadows of press releases which describe them."²⁴ Equally stringent criticisms have been voiced by others, ranging from the unruly and riotous behav-

ior of Job Corps trainees at a number of training centers²⁵ to the top-heavy bureaucratic structure of the Office of Economic Opportunity itself.²⁶

It is not the purpose here, however, to explore the poverty program in any extensive way. The program, at least in its job-training aspects, was conceived in response to a genuine need, and the fact that it has gone awry may be due to the inherent clumsiness of bureaucratic administration as much as to the fact that the program was tainted in its inception by fantasy, political motivations and opportunism.²⁷ There is, beyond any doubt, a real need for a properly conceived and executed training program to meet the challenge of automation. And government, particularly at the state and local levels, has a role to play here. But the program must be as free as possible from political influence and ought to utilize the resources of private industry and state and local governments to a much greater degree than is presently being done. And it bears repeating here that improvement is needed in the quality of elementary and secondary instruction in reading and writing skills. Recent statistics indicate a growing shortage of skilled workers in defense and other industries.²⁸ One can hardly blame an employer, hiring for a technical job, for not taking a chance on an applicant, even a high school graduate, who is a functional illiterate.²⁹ In short, if the full resources of private enterprise, education, and government are brought to bear to equip the unskilled worker to meet the demands of modern technology, automation will be clearly seen to be an opportunity rather than a curse. As Secretary of Labor W. Willard Wirtz put it well, "I suggest that we have no alternative except to accept automation as a fact, as an inexorable force, and a force for good as far as the development of civilization is concerned. . . . The

alternative to automation is stagnation as far as this economy is concerned."³⁰

Over the past three decades, and more, labor unions have been raised to a preferred position among private organizations. The law has accorded to them some prerogatives, such as the power to compel unwilling employees to join or pay dues, which are properly governmental in character and ought not to be enjoyed by any private groups. Federal and most state laws permit unions, which are certified as bargaining agents for the employees concerned, to enter union-shop agreements with the employer under which the employees must join the union, or at least pay dues, as a price of their continued employment. Not unexpectedly, as unemployment persists and competition for jobs increases, some unions have restricted admission to their ranks in order to protect the jobs of those who are already members. The burden of such exclusion tends to fall most heavily upon Negroes, especially in the skilled and construction trades, and in some cases it is apparently designed to fall that way.³¹ At the AFL-CIO 1965 national convention in San Francisco, only 20 of 922 delegates were Negroes and most of those 20 were from New York City.³² It is also true, however, that unions have sometimes been unjustly accused of discrimination by civil rights leaders who seem to want preferential treatment for Negroes. Moreover, the unemployed Negroes over whom the battle is fought are frequently uninterested or unqualified for the jobs in question. For instance, after civil rights leaders pressured the New York Building and Construction Trades Council into accepting applications for apprenticeship training from all Negroes who cared to apply, 3,500 Negroes applied for the program. But only 700 of the applicants had the basic qualifications to warrant further investigation and many of these could not pass

a simple aptitude test which included such problems as indicating a three-quarter inch mark on a ruler. Nearly half of those responding to the training offer were not interested in skilled training and 450 failed even to show up for interviews.³³

Predictably, there have been conflicts between labor unions and Negro groups. The Labor Secretary of the NAACP, Herbert Hill, who describes himself as a disciple of the Socialist leader, Norman Thomas,³⁴ was moved on one occasion to complain that the labor movement "is being transferred into another bureaucratic device for controlling the employed worker and doesn't give a damn for the unemployed," whether black or white.³⁵ And William H. Booth, former state chairman of the NAACP, said, upon assuming his duties as chairman of the New York City Commission on Human Rights, that building-trades unions were "particularly guilty" of job discrimination.³⁶

Various state laws, and the federal Civil Rights Law of 1964, prohibit racial discrimination by unions in the admission of members. It remains to be seen, however, whether these laws can be effective to prevent evasion, "tokenism," and inverse discrimination.³⁷ Regardless of the outcome of such devices to prevent discrimination by unions, it is a puzzle that no civil rights leaders have spoken in support of right-to-work laws which ensure that no person can be compelled to join or support a union in order to hold a job. Contrary to popular assumption, right-to-work laws do not impede the growth of labor unions, nor do they depress wages or employment.³⁸ And they would prevent the intrusion of a mandatory labor union between the Negro worker and a job for which he is qualified. Unfortunately, there is a working alliance between the major Negro civil rights leaders and some of the nation's top labor leaders.³⁹ This coalition, designed for political ac-

tion⁴⁰ may inhibit the leaders of both camps from addressing themselves in this area to the real needs of those they purport to serve.⁴¹

Another factor that may account for the recent increase in Negro unemployment is the corrosive effect of indiscriminate public assistance programs. In July, 1965, there were 8,100,000 persons on public relief rolls in the United States.⁴² Federal, state, and local expenditures for relief have risen an average of 20 per cent each year since 1935. In the past ten years, the population of the United States has risen by 18 per cent, but those on relief have increased by 42 per cent. Total relief costs climbed 90 per cent during that period.⁴³ A fourth generation of children is now coming onto the relief rolls, warned New York City Welfare Commissioner Joseph H. Louchheim in November of 1965.⁴⁴ In that city, the welfare program for 1965 cost \$521,301,500, with roughly one-third each being paid by the city, state, and federal governments, and the Department of Welfare's projected budget for the current year is \$663,607,986.⁴⁵ The cost of New York City's welfare program has risen 97.5 per cent in the past five years.⁴⁶ At the same time, New York City taxpayers finance, by their state and federal taxes, the burgeoning welfare programs of their state and federal governments. The problems of welfare and civil rights, moreover, are closely and tragically related. In New York City, for example, the great majority of recipients under such programs are Negro and Puerto Rican, although these groups constitute only about one-quarter of the city's population. The last racial tabulations issued by the New York City Department of Welfare were in 1959, and they showed, for instance, that of those receiving Aid to Dependent Children, 58 per cent were Negro, 30 per cent Puerto Rican, and only 12 per cent others.⁴⁷ The

ratio has, if anything, increased over the intervening years. One recent estimate indicates that 20 per cent of the city's Negroes and Puerto Ricans are receiving welfare payments of one sort or another, and that 72.3 per cent of all new applicants for welfare programs of all types are Negroes and Puerto Ricans.⁴⁸

The tragic aspect of this interrelation flows from the fact that, as Franklin D. Roosevelt truly said, "The lessons of history . . . show conclusively that continued dependence upon relief induces a spiritual and moral disintegration fundamentally destructive to the national fiber."⁴⁹ Negroes are the primary recipients of relief today in New York and other major cities, and, although the national interest clearly dictates that they be encouraged and enabled to take advantage of the increased opportunities resulting from the elimination of many forms of invidious discrimination, the prevailing welfare policies too often have precisely the opposite effect. This was illustrated recently in Detroit where two programs aimed at providing opportunities for poverty-stricken teen-aged Detroiters had difficulty getting off the ground. The Youth Employment Project and the Neighborhood Youth Corps offered \$1.25-an-hour summer training jobs designed to qualify the youths for higher-paying full-time jobs after fifteen weeks. But the trouble arose because many youths refused to work for \$1.25 an hour, the federal minimum wage. As one prospect told a counselor for YEP, "You're crazy, man. I don't work for that kind of money."⁵⁰ These jobless teen-agers were "poverty-stricken" and therefore, presumptively, without access to private resources sufficient to maintain them in idleness. It is a fair assumption that many, if not most, were subsisting on public assistance extended to their families. The episode is interesting, if only to reinforce the

experience of many that welfare programs as now administered do not operate to stimulate initiative and frequently have an opposite, deadening effect.

It is not a purpose of this discussion to level an indiscriminate attack at public assistance programs. On the contrary, in our culture there is a duty on the part of government to maintain at least at a subsistence level all those who cannot, or even will not, provide for themselves. Preferably, this public task ought to be performed by local or state governments, and only where absolutely necessary ought the federal government to become engaged. But whichever government is involved, a sound welfare policy would protect those who need it but would also encourage recipients to become self-supporting if they are able to do so. A sound policy would vary from current welfare practices in certain important respects. For one thing, a reasonable residency requirement ought to be imposed, as it is in most states, for eligibility for public assistance. In most cases, one year would be fair. In New York City, for instance, a requirement of this sort would serve to stem the scandalous immigration of the indolent who descend upon that city for the primary purpose of extracting their support from the taxpayers. Commissioner of Welfare Dumpson, in submitting his 1965-1966 budget request, stated that 6 per cent of the new cases accepted on welfare, during the fiscal year 1964-1965, had been in New York City less than a year.⁵¹ The problem of residency, therefore, is not insignificant and a one-year requirement would certainly reduce the spiraling cost of the program. Nor would this be a heartless reform, for appropriate provision, with safeguards against abuse, could still be made for temporary sustenance of legitimate hardship cases which do not meet the residence requirement.

Once an individual goes on the welfare

rolls, an enlightened policy would seek to get him off, and back to a condition of self-subsistence, as quickly as possible. Care should be taken, for instance, to encourage the recipient to earn money by his own efforts without having all of such earnings deducted from his welfare allowance. Until he reaches a level of income at which his retention on the welfare rolls would be inappropriate, the recipient should be allowed to better his circumstances by earning money in addition to his welfare check. This would provide a material incentive to the welfare client to become self-supporting.⁵²

An even stronger incentive would be provided by a requirement that all able-bodied welfare clients, in exchange for their welfare checks, report every morning for appropriate work on the construction, maintenance, or administration of some municipal enterprise. The rehabilitation and cleaning of slum areas, the clearing of empty lots for use as playgrounds, the performance of auxiliary administrative services in public schools, and many other types of work could well be included in such a program without infringing upon the employment opportunities of private and municipal employees. An exception should be made here, of course, for all those actually involved in caring for children. And the assigned work would have to be geared to the physical and mental capacity of the worker. As an alternative to participation in such public work, welfare recipients should be offered increased opportunities for job training, to qualify them more readily for personal advancement. Such increased job training would incidentally require an intensification of placement efforts, so that the newly-trained welfare recipient could have a real opportunity to use his skills. The need for something of this sort is evident:

James J. McFadden, the city's Acting Commissioner of Labor, acknowledged yesterday that 50,000 jobs paying \$90 a week and more are "going begging" in New York City because none of the "tens of thousands" of needy are qualified to fill them.

Mr. McFadden said 520,000 are illiterate, that 700,000 adults among the needy never finished elementary school, but that efforts to train these people for semi-skills have been a failure, despite the expenditure of millions in public funds.^{50,53}

It is fair to predict that a reasonable program of public work, combined with increased job training and employment opportunities, and greater initiatives through reform of inequitable allowance systems, would serve to promote the restoration of personal independence which is the proper goal of welfare assistance. Proposals such as these are commonly greeted with the criticism that they are inhumane. Quite to the contrary, however, they would not only have a remarkable and immediate effect in eliminating frauds and malingerers from public rolls, but would also go far toward restoring to the welfare recipient that self-respect and initiative which are the most prominent casualties of the present system.

Other reforms in the existing welfare programs could readily be suggested. The enormous and strangling burden of administration and paperwork ought to be reduced. More stringent regulations should be adopted and enforced to prevent fraud. We need a thorough review of welfare rates, in comparison with prevailing wage rates and the wage scale for municipal employees, to ensure that the welfare payments are indeed sufficient to maintain a decent standard of living, and at the same time to make certain that those welfare rates do not discourage initiative by

providing recipients with a higher allotment than the earned wages of comparable private or municipal employees. And the welfare authorities should check more rigorously on the financial capacity of legally responsible relatives who often could and should relieve the taxpayer of the burden of assistance.

As a matter of fact, there is no reason why the obligation of government to aid the impoverished could not be discharged more effectively by the "negative income tax" proposed by Professor Milton Friedman of the University of Chicago. The Friedman idea is that the federal government ought simply to disburse a cash subsidy to those whose incomes are "negative," that is, which fall below a reasonably determined poverty level. This plan has in fact been adopted by Sargent Shriver as part of the federal war on poverty, but with a big difference. Professor Friedman proposes the outright subsidy as a replacement for the burgeoning "rag bag" of current welfare programs. But the federal poverty officials have proposed it, in Friedman's phrase, as merely another "rag in the bag" without any diminution of the existing poverty schemes.⁶⁴ The beauty of the Friedman plan, assuming that it were accompanied by a revision of the tax structure to prevent fraud and unworthy claims by persons with high income, is that it would reduce the swelling bureaucracy of "poverty fighters," eliminate the carnival of political patronage currently attending the poverty war, and redirect the needed government aid to those who really need it. For a sound welfare policy would seek to aid the needy but no one else.

It was not without reason that President Franklin D. Roosevelt observed in 1935 that, "To dole out relief . . . is to administer a narcotic, a subtle destroyer of the human spirit."⁶⁵ And indiscriminate welfare's

harmful impact today bears down most heavily upon those ethnic groups, the Negro and Puerto Rican, who are most in need of a reinfusion of initiative to enable them to take advantage of their newly-won and rightful opportunities. It is the function of these pages, not to catalogue a lengthy series of remedies, but rather to point to indiscriminate public assistance as one of the factors contributing to higher Negro unemployment and slower Negro upward mobility. These fragmentary suggestions are offered, too, with the realization that they are probably visionary. For the urban political machines of both major parties depend upon the voting blocs, including the "bum bloc," for their maintenance in power. It is not likely that they will concur in any suggestions aimed at reducing their capacity to manipulate those blocs.

A fourth factor operating to impede the employment of Negroes is plain, garden-variety racial prejudice. That this exists is a matter of common experience, although the extent to which prejudice operates to depress Negro employment is less clear. But whatever its magnitude and impact, invidious discrimination in employment is an evil and its eradication is an object of high urgency. To the accomplishment of this end, there are two general devices—legal prohibition and the encouragement of voluntary action.

Title VII of the Civil Rights Act of 1964 went into effect on July 2, 1965, to bar racial discrimination by employers, employment agencies, and unions.⁶⁶ There are exceptions in Title VII, to permit classification of an employee on the basis of "religion, sex or national origin in those certain instances where religion, sex or national origin is a bona fide occupational qualification reasonably necessary to the normal operation of that particular business or enterprise" (presumably the American-Irish

Historical Society could not be compelled to hire a Japanese librarian; or the American Jewish Congress an Arabian director; or the New York Jets a female equipment manager);⁵⁷ to permit church-related schools to hire employees of a particular religion;⁵⁸ to deny the benefits of the title to members of the Communist Party or officially designated Communist organizations;⁵⁹ to prevent interference by the title with government security programs;⁶⁰ to permit the application of different terms and conditions of employment "pursuant to a bona fide seniority or merit system, or a system which measures earnings by quantity or quality of production or to employees who work in different locations, provided that such differences are not the result of an intention to discriminate because of race, color, religion or national origin";⁶¹ to permit the use of a non-discriminatory and "professionally developed ability test" as a criterion of employment⁶² (This is the "Motorola Amendment," adopted as a reaction to the Motorola controversy discussed below); and to vary compensation according to sex in the cases where such is authorized by the Fair Labor Standards Act of 1938.⁶³ The Act expressly negates any intent to require preferential treatment "on account of an imbalance which may exist with respect to the total number or percentage of persons of any race, color, religion, sex, or national origin" employed or otherwise involved in the particular situation.⁶⁴ It remains to be seen, however, whether this provision can prevent preferential treatment in practice.

Title VII is administered by a five-member Equal Employment Opportunity Commission, which may establish regional and state offices as necessary.⁶⁵ The Commission has power to investigate charges of unlawful discrimination in employment, to seek to remedy discrimination by conciliation, and to initiate civil proceedings

in federal District Courts.⁶⁶ Civil actions may also be brought by the Attorney General to enforce the title.⁶⁷ The federal courts are authorized to issue injunctions against the discriminatory conduct, and any violation of the injunction is punishable, after a jury trial, as a contempt of court.⁶⁸

Title VII is vulnerable on two counts. It will, on one hand, greatly extend the reach of the federal power over commerce. For example, it will apply, after a gradual application period of four years, to every employer "engaged in an industry affecting commerce" among the states who has twenty-five or more employees.⁶⁹ The term "industry affecting commerce" will undoubtedly receive a construction broad enough to include every business of every kind having the minimum number of employees.⁷⁰ Title VII incidentally and further confirms the impotency of the commerce clause as a meaningful limitation on the extent of federal power. Secondly, and more importantly, Title VII will surely require for its proper enforcement a corps of federal officers and agents, the existence and growth of which will surely tend toward the establishment of the general national police force we have heretofore avoided.

At least twenty-one states now have enforceable fair employment practices laws of their own.⁷¹ These laws have regularly been upheld by the courts as constitutional.⁷² Unlike Congress, the power of the states in this area is not limited to businesses which engage in or affect commerce among the states.

However, regardless of their constitutionality, both federal and state fair employment laws raise serious questions of prudence and wisdom. To the extent that they are enforced by compulsory sanctions, they tend to encourage "tokenism," with an employer forestalling a charge of

discrimination by hiring a limited number of prominently displayed Negroes. Fair employment laws, where enforced by court orders and punitive sanctions, also inherently tend to stimulate preferential hiring of members of minority groups. Where two applicants, one Negro and one white, are fairly equally qualified for the job in question, any employer could be tempted to hire the Negro to avoid the inconvenience and expense required to defend a complaint of discrimination under the law. As a practical matter, it is more likely that such complaints will be more seriously pressed by Negroes than by whites, even though the laws themselves prohibit discrimination against any race.

Leon Myart, a Negro, applied for a job at Motorola, Inc., the radio, television, and electronics firm. He was denied employment when he failed the general ability test which the company gives to all applicants. Mr. Myart, on July 29, 1963, complained to the Illinois Fair Employment Practices Commission that he was refused the job on account of his race. The Commission's hearing examiner, Robert E. Bryant, also a Negro, ordered Motorola to hire Myart as an analyzer and phaser regardless of whether he could pass the ability test, and he also ordered the company to stop using the test altogether on the ground that it did not take into consideration the handicaps of "culturally deprived and disadvantaged groups." The examiner stated, "The employer may have to establish in-plant training programs and employ the heretofore culturally deprived and disadvantaged persons as learners, placing them under such supervision that will enable them to achieve job success." The author of the test, Dr. Philip Shurrager, head of the department of psychology and education at Illinois Institute of Technology, testified that the test had been in use since 1949 by many large firms and that it was

not discriminatory. On appeal to the full Commission and the Illinois courts, the hearing examiner's prohibition of the test and his order that Motorola hire Myart were reversed.⁷³ But the incident is instructive in showing the regrettable tendency of nominally impartial compulsory fair employment laws to gravitate toward preference of the race intended as the primary beneficiary of those laws. The federal government, for example, requires contractors doing government work to agree that they "will not discriminate against any employee or applicant for employment because of race, color or national origin." Yet the form which the government requires the contractors to submit contains a special column to show how many Negroes are employed by the contractor in the skilled, semi-skilled, and unskilled categories. No specific report is required as to the members of any other race, religion, or nationality. Naturally, the effect of this on the contractors, who desire future federal contracts, is to impel them to hire Negroes because they are Negroes.⁷⁴ Similarly, Secretary of Labor Wirtz recently suggested that federal agencies consider using racial designations on their personnel forms, to ensure compliance with antidiscrimination laws.⁷⁵

Of course, there may be a need for some adjustments in the interpretation of intelligence tests when given to children to measure raw learning ability, they are less accurate when given to low-income minority-group children than when given to middle-class white children.⁷⁶ But this is probably a reflection of cultural rather than racial differences and of the imprecision of such tests in general. An effort must be continually made to develop and maintain tests that will measure the ability of applicants of whatever race and background as accurately as a test can. Two University of Ottawa psychologists, for instance, have re-

cently developed a technique by which they claim to be able to measure basic human intelligence by timing the brain's response to a flash of light.⁷⁷ But once a test is given, no handicap should be given to anyone taking it. Not only would such be grossly unfair, but it would be unreliable as well. If the psychologists cannot devise a test that is equally applicable to all how can they be trusted to decide with precision the number of bonus points to be given to the applicants belonging to a particular race? The preferential system is even more indefensible when the test is, as most are, one of achievement, knowledge, and skill rather than raw ability. If a man does not possess the degree of knowledge required for a job, he ought not to get it, on account of his race, ahead of another applicant who does possess that knowledge.

In a related vein, punitive fair employment laws encourage the development of a quota system on the part of both the employers and the administrators of the law. Some civil rights groups have frankly urged the institution of employment quotas. In the construction of the Harlem Hospital in 1963, civil rights leaders sought to have Negroes and Puerto Ricans comprise 87 per cent of the work force.⁷⁸ At about the same time, The Congress of Racial Equality (CORE) sought to impose a racial quota on merchants during the Christmas shopping season at the Roosevelt Field Shopping Center on Long Island.⁷⁹ With reference to the construction of a housing project, Richard Hildebrand, then president of the New York branch of the NAACP, was quoted as saying that he did not believe in a "25 per cent quota" in hiring Negroes, "One hundred per cent" non-white employment on the project would be a "fair share" to make up for the "long years of discrimination," he was reported as saying.⁸⁰ One department of Ag-

riculture official frankly promotes a 23 per cent Negro quota in the hiring of employees in the more than 1,350 southern offices of the Agricultural Stabilization and Conservation Service of which he is administrator.⁸¹ And other examples could be cited.

If quotas are to be the rule, as many critics have pointed out, why not a quota for Mexican-Americans, Indians, Italians, Irish, etc.?⁸² Or is the quota to work only to the benefit of the most "disadvantaged" group? If so, who determines which group it is, and what of the individual rights of the persons in the other groups? *The New York Times* addressed itself editorially and well to this aspect of the quota problem:

New York City is doing some hard and needed thinking these days about how to give the Negro his equal opportunity in every way—education, jobs, housing, everything. That is good. But the Negro, equally with the white man, should be wary of easy solutions, quick remedies that seem to promise instant success. One of these is inherently unjust and inhumane. It is the quota system.

It has the temptation of surface plausibility. If the population of the city is 15 per cent Negro, why shouldn't the Negro have 15 per cent of the jobs? If the population of Manhattan is 25 per cent Negro, then he should have 25 per cent of the jobs in Manhattan. Easy, isn't it. But go on from there.

If this reasoning were valid, the quota should be immediately applied in every business, in every industry and on every level—whether there were qualified applicants or not. And it would apply to religions, nationalities—and how many other kinds of divisions? Every floor in every office building would have to have its quota of shade of color, race or whatnot. To state the proposition is to show its absurdity and also its inherent evil.⁸³

The least desirable feature of compulsory fair employment laws is their tendency, through their accentuation of race in pursuit of equality of opportunity, to sharpen color consciousness and to impede, ironically, the development of that voluntary color-blindness which alone can ensure the growth and endurance of equal opportunity in a free society. At the same time, however, there is a real need for improving the employment opportunities of Negroes, and government, particularly on the state and local levels, has an interest in promoting that improvement. What is needed is a real inquiry as to whether the public could not well be served by fair employment commissions with no power to compel or to seek court orders and confining themselves to conciliation and appropriate publicity of their activities. At least it is worth a try in those states where compulsory laws have failed so far to solve the nagging problems of discrimination in employment.

But a more basic approach is required on the level of personal attitudes and relations, where the law cannot reach. Here a technique such as that of the National Urban League is constructive and useful. Rather than expend its energy demonstrating in the streets, the League attempts to deal with the nuts and bolts of the employment problem.⁸⁴ Its National Skills Bank brings qualified Negro applicants to the attention of business enterprises and, in 1964, it placed 5,320 of 33,692 Negro applicants in jobs in 56 cities.⁸⁵ Relatively few of the placements were in the unskilled category.⁸⁶ Currently, with funds supplied by HARYOU-ACT, the federal and city anti-poverty program, the League is operating a job-counseling center for high school dropouts in Harlem.⁸⁷ Other activities of the League have been constructive and successful in the areas of housing and family reconstruction as well as employment.⁸⁸

Unfortunately, the National Urban League advocates what its director, Whitney M. Young, Jr., calls a program of "conscious preferment" of Negroes, "where Negroes have not been employed in the past at all levels."⁸⁹ The League does not favor the imposition of racial quotas, but obviously the concept of preferment could readily lead to the tacit recognition of quotas. We ought, on the contrary, to recall the advice of former President Eisenhower:

Those who advocate "over-compensation in opportunity" for past neglect, or who seek to impose arbitrary racial quotas on employers, are actually weakening the cause of the Negro, in my view. . . . Common sense should tell us that when assured of exactly the same rights as other Americans, no more and no less, our Negro citizens will find paths for advancement in our social structure, just as have other groups in the past.⁹⁰

The policy of preferential treatment of any race involves necessarily the sharpening of color consciousness and, when the preferment becomes governmental policy, it bears an odor of totalitarianism. Stanley H. Lowell, then Chairman of the New York City Commission on Human Rights, said, in advocating preferential treatment for Negroes, that "The time has come when color consciousness is necessary and appropriate." And, he continued, "The protection of human rights needs the fist of government."⁹¹ In that remark, Mr. Lowell revealed the latent reliance upon compulsion which is the doctrinaire liberal's answer, in the last resort, to all social problems.

It would be far better to proceed on more constructive paths and to encourage color blindness, rather than color consciousness, in employment as in other fields. There are encouraging signs that

the necessary improvement in the Negro's employment position is under way. Negroes are increasingly obtaining higher-paying jobs in government service.⁹² Private corporations are making successful efforts to find and hire qualified Negro and Puerto Rican employees.⁹³ And, importantly, serious efforts are being made by private and governmental agencies, to assist Negro and Puerto Rican small businessmen.⁹⁴ Through these and other means we have discussed, there is reason for optimism that Negroes and Puerto Ricans⁹⁵ can make themselves qualified to take advantage of existing and potential job opportunities.⁹⁶ And this can be done, through private and appropriate governmental action, while maintaining the character of a free society without which mere material gains are useless.

One final point is critical. It must be conceded that the "civil rights revolution" has focused needed attention, in a number of areas, upon substantial inequalities of opportunity. It has, moreover, energized the conscience of the white community and has served to promote an ethical redirection of law and policy in some respects. But in one important way, at least, that revolution has been deficient and even harmful in its impact. It has unduly concentrated upon the alleged prejudice of "the white power structure," a prejudice which, according to the civil rights liturgy, is inflexibly presumed to exist, however artfully it may be concealed. This concentration upon the sins of whites naturally tends to absolve Negroes of responsibility for their predicament and, it follows, of the duty to elevate themselves. And when the agitators add to their extravagant vi-

sion of white hostility the claim that integration is essential to Negro elevation, they also feed among the weak and gullible of their race the delusion of their own worthlessness. For the morbid insistence on integration as a prerequisite to Negro advancement carries with it the concession that, of themselves, Negroes are inadequate and that whites possess some superior quality which the Negroes must, at all costs, draw to themselves by osmosis if they are to advance.

The time is long past for plain talk on this point. As a newly-appointed pastor in a Harlem church put it, "race can no longer be used as a crutch." "If we are going to be judged without discrimination," he said, "then we will be judged also without pity."⁹⁷ If the Negro is to achieve his proper place in the economic life of the nation, he will do so primarily by his own efforts. While the enslavement of his ancestors and the resulting destruction of the Negro family, go far to explain the Negro's difficulties today, they do not absolve him of the duty to curb the free and easy irresponsibility which impedes the restoration of that family unit and to exert himself more than he has in the past. One Negro business leader, S. B. Fuller, has declared that Negroes should blame their own "lack of initiative, courage, integrity, loyalty and wisdom" for their lack of progress. In urging Negroes to control retail selling in their communities and to pool their capital for Negro-owned business ventures, Mr. Fuller observed that if the Negro would acquire a better understanding of the capitalist system he would realize "there is a world of opportunity right in his own backyard."⁹⁸

⁹²Hayes, "A Century of Change: Negroes in the U. S. Economy, 1860-1960," *Monthly Labor Review*, Dec. 1962, pp. 1364-65.

⁹³*Ibid.*, p. 1364.

⁹⁴Bulletin S-3, *The Economic Situation of Negroes*

in the United States, U. S. Dept. of Labor, 1962, p. 32.

⁹⁵Kessler, "Economic Status of Nonwhite Workers, 1955-62," *Monthly Labor Review*, July, 1963.

⁹⁶*Ibid.*

⁶See the address by President Johnson at Howard University, *New York Times*, June 5, 1965.

⁷Newman, "The Negro's Journey to the City," *Monthly Labor Review*, May-June, 1965, p. 504.

⁸Kessler, *op. cit.*, pp. 2, 8. See also *Employment and Earnings* (U. S. Dept. of Labor, Bureau of Labor Statistics, Aug. 1965).

⁹See *New York Times*, June 13, 1965.

¹⁰Bulletin S-3, *The Economic Situation of Negroes in the United States*, U.S. Dept. of Labor (1962), p. 4.

¹¹See *U. S. News & World Report*, Dec. 13, 1965. The figures are from the U. S. Department of Labor and are seasonally adjusted.

¹²*New York Times*, June 5, 1965.

¹³Kessler, *op. cit.*, p. 3.

¹⁴See *New York Times*, Aug. 12, 1964.

¹⁵*U.S. News & World Report*, Nov. 29, 1965.

¹⁶See *America's Future*, July 9, 1965.

¹⁷*New York Times*, Sept. 3, 1965.

¹⁸See Hill, "Racial Inequality in Employment: The Patterns of Discrimination," *The Annals of the American Academy of Political and Social Science*, January, 1965, pp. 30, 31.

¹⁹See, *Unemployment: The Nature of the Challenge* (U. S. Chamber of Commerce, July, 1965).

²⁰See *New York Times*, Nov. 7, 1964.

²¹*New York Times*, April 25, 1965.

²²See Conway, "Labor Looks at Automation and Civil Rights," Seminar on Manpower Policy and Program, U.S. Dept. of Labor, February 1965; Clague, *Automation—The Economic Perspective*, U. S. Dept. of Labor, Sept. 17, 1963; Michael, "Cybernation and Social Change," Seminar on Manpower Policy and Program, U.S. Dept. of Labor, April, 1964; Madden, *Automation, Technology and the Economy*, Chamber of Commerce of the United States, Sept. 23, 1965; Rose "Why Automation?" *The Freeman*, July, 1965, p. 3; column of Victor Riesel, *New York Journal-American*, Nov. 19, 1965; and see generally, Terborgh, *The Automation Hysteria* (1965).

²³See Clague, *Effects of Technological Change on Occupational Employment Patterns in the United States*, U. S. Dept. of Labor, Dec. 8, 1964.

²⁴*Congressional Record*, July 20, 1965, p. 16861.

²⁵*New York Times*, Aug. 25, 1965.

²⁶See *U. S. News & World Report*, Aug. 23, 1965.

²⁷See *Study Guide, The War on Poverty—Part I* (The Free Society Association, Aug. 1965).

²⁸*New York Times*, Jan. 8, 1966.

²⁹See generally, Trace, *Reading Without Dick and Jane* (1965).

³⁰Wirtz, *The Challenge of Automation*, U.S. Dept. of Labor, April 3, 1963.

³¹See United States Commission on Civil Rights, *Report on Employment*, Washington, D.C. (1961); State Commission for Human Rights v. Farrell, 264 N.Y.S. 2d 489 (1st Dept., 1965).

³²See column of Barry Goldwater, *New York Herald-Tribune*, Jan. 2, 1966.

³³*New York Times*, Nov. 19, 1963; *New York Journal-American*, Nov. 14, 1963.

³⁴*New York Times*, Sept. 4, 1964.

³⁵*New York Times*, Nov. 10, 1963.

³⁶*New York Times*, Feb. 2, 1966.

³⁷See *New York Herald-Tribune*, April 13, 1965, recounting a dispute between union and civil rights leaders over the fairness of a court-ordered test given to apprenticeship applicants by the Sheet Metal Workers' Union. One Negro applicant out of 20 passed the test and he defended the test, saying that the union "doesn't want any idiots in there."

³⁸See *Task Force Study on Right-to-Work Laws*, by Prof. Sylvester Petro, American Conservative Union, 1010 Vermont Ave., N. W., Washington, D. C. 20005.

³⁹*New York Times*, May 29, 1965; column of Victor Riesel, *New York Journal-American*, Nov. 15, 1965.

⁴⁰*New York Times*, Sept. 4, 1964; *New York Times*, June 20, 1965.

⁴¹See *The Wanderer*, April 1, 1965.

⁴²*U. S. News & World Report*, Nov. 1, 1965.

⁴³See *U.S. News and World Report*, March 8, 1965.

⁴⁴*New York Journal-American*, Nov. 16, 1965.

⁴⁵Release, New York City Department of Welfare, Jan. 4, 1966; *New York News*, Jan. 5, 1966.

⁴⁶*U.S. News and World Report*, March 8, 1965.

⁴⁷*New York Herald-Tribune*, September 14, 1964.

⁴⁸*U. S. News and World Report*, March 8, 1965.

⁴⁹*Wall Street Journal*, July 18, 1962.

⁵⁰*New York Herald Tribune*, June 21, 1965.

⁵¹Press Release, New York City Department of Welfare, December 28, 1964.

⁵²Section 165 of the New York State Social Welfare Law enacted in 1965, to coordinate the New York State program with the federal poverty programs, is designed to permit such a flexible adjustment.

Notwithstanding any other provision of law a public welfare official may, in his discretion, authorize a recipient of home relief to work and retain the income derived therefrom without any diminution or with partial diminution of home relief where such an arrangement would in his opinion, lead to elimination of the recipient from the relief rolls in a reasonable length of time. The commissioner shall promulgate rules and regulations to effectuate the purpose of this section. Added L. 1965, c. 1015, eff. July 20, 1965.

⁵³*New York Herald-Tribune*, May 24, 1965. Section 164 of the New York State Social Welfare Law permits a county, city or town to institute such "work relief" programs under certain circumstances.

⁵⁴See *New York Times*, Dec. 19, 1965.

⁵⁵*Wall Street Journal*, July 18, 1962.

⁵⁶78 Stat. 255.

⁵⁷Sec. 703 (2) (1).

⁶⁸Sec. 703 (e) (2).

⁶⁹See 703 (f). The Supreme Court is likely to negate this clause; see *United States v. Brown*, 381 U.S. 437 (1965).

⁷⁰Sec. 703 (g).

⁷¹Sec. 703 (h).

⁷²Sec. 703 (h).

⁷³Sec. 703 (h).

⁷⁴Sec. 703 (j).

⁷⁵Sec. 705.

⁷⁶Sec. 706 (e) (f) (i).

⁷⁷Sec. 707 (a).

⁷⁸Sec. 706 (g), Sec. 1101.

⁷⁹Sec. 701.

⁸⁰See *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 24, (1964); *Katzbach v. McClug*, 379 U.S. 294 (1964).

⁸¹See Report, *Freedom to the Free*. U.S. Commission on Civil Rights (1963), p. 134; Bulletin S-3, *The Economic Situation of Negroes in the United States*, U.S. Department of Labor (1962), p. 16.

⁸²See *Highland Park v. FEPC*, 111 NW 2d 797 (Mich. 1961).

⁸³See *New York Times*, March 6, 1965; *Human Events*, December 5, 1964; *Human Events*, January 30, 1965.

⁸⁴See column by David Lawrence, *New York Herald-Tribune*, April 12, 1965.

⁸⁵*New York Times*, Oct. 29, 1965.

⁸⁶See "Guidelines for Testing Minority Group Children," *Journal of Social Issues*, April, 1964; *New York Times*, July 19, 1964; *New York Times*, Aug. 15, 1965, describing a study, "Productive Thinking in Education," released by the National

Education Association and the Carnegie Corporation of New York.

⁸⁷*New York Times*, Oct. 30, 1965.

⁸⁸*New York Journal-American*, Nov. 13, 1963.

⁸⁹*New York Times*, Nov. 21, 1963.

⁹⁰*New York Journal-American*, July 29, 1963.

⁹¹*New York Times*, May 23, 1965.

⁹²See *New York Times*, Nov. 15, 1963.

⁹³*New York Times*, July 18, 1963.

⁹⁴See *New York Times*, Aug. 3, 1965.

⁹⁵See Report, *Investment in Futures*, National Urban League (1965).

⁹⁶*New York Times*, June 21, 1964.

⁹⁷*New York Herald-Tribune*, March 2, 1965.

⁹⁸See *New York Times*, Aug. 20, 1965.

⁹⁹Young and Haselden, "Should There Be 'Compensation' for Negroes?" *The New York Times Magazine*, October 6, 1963.

¹⁰⁰*New York Times*, October 13, 1963.

¹⁰¹*New York Times*, October 28, 1963.

¹⁰²*New York Times*, Dec. 21, 1964.

¹⁰³See *New York Times*, Aug. 16, 1964; *New York Times*, May 30, 1965.

¹⁰⁴*New York Times*, Aug. 1, 1964; *New York Times*, Aug. 11, 1964; *New York Times*, Nov. 7, 1964.

¹⁰⁵See *New York Times*, March 21, 1965, recounting the considerable progress made by Puerto Ricans in New York City.

¹⁰⁶See Newman, "The Negro's Journey to the City," *Monthly Labor Review*, June 1965.

¹⁰⁷See generally, Counsel, *Reclaiming the American Dream* (1965).

¹⁰⁸*New York Times*, July 6, 1964.

¹⁰⁹*New York News*, Dec. 7, 1963.

Mr. Wilson at Half Term

H. G. NICHOLAS

Nel mezzo del cammin di nostra vita,
Mi ritrovai per una selva oscura

THOSE MEMBERS of Mr. Wilson's administration who turn to Dante for their after-hours reading will be bound to recognize that they are in like plight with the poet. On any reasonable calculation the Labour government is halfway through its life span. Established in October 1964, it was fortified and extended in its mandate by the victory of April 1966. It is unlikely that it will hang on to the last hour permitted by the Parliament Act, April 1971; the autumn of 1970 is a far more probable time for a general election. Thus in the autumn of 1967 it stands almost evenly poised between its inception and its dissolution. And at this point there can be no doubt that, in the language beloved of the translators of Dante, it finds itself "in a darkling wood."

For governments, as for men, the middle years can be a period either of fulfillment or of frustration, according as the potentialities of infancy are being realized or not. For a government assembled under the

banner of the reforming Left this is particularly true. For Mr. Wilson's government the testing time has certainly arrived, but it is too soon to say with confidence which way the trial will go. What is very certain is that he and his colleagues now find themselves confronted by problems whose peculiar intractability derives from their very shadowiness, from their imprecision even more than from their complexity.

In the first "hundred days" and for some considerable time afterwards the challenge, severe enough, was nonetheless clear-cut. There were successive balance of payments crises, the pound had to be "saved." There was a Rhodesia crisis; Rhodesia could not be "saved," but at least dramatic action could be taken and the United Nations could be mobilized to dramatize Britain's good intentions. There were industrial troubles—a seamen's strike to be contained, a doctor's walk-out to be prevented. There was mutiny in the ranks, as over the nationalization of steel; the mutineers had to be bought off until reinforcements of reliable voting fodder could be provided by the electorate at the polls.