

BOOK REVIEW

Joel Feinberg, *Offense to Others: The Moral Limits of the Criminal Law*, Vol. 2 (New York: Oxford University Press, 1985), xix + 328 pp., \$29.95.

This second volume of Feinberg's four-volume work on the moral basis of criminal law defends the offense to others principle. Feinberg's liberal position is that the principles of offense and harm to others (defended in the first volume)¹ are the only acceptable grounds for criminal legislation. The subsequent volumes will address principles that Feinberg rejects. The offense principle supports criminal legislation that is probably necessary and effective in preventing conduct that causes serious offense to others. According to Feinberg, proper application of the offense principle by use of mediating maxims supports laws against public nudity, obscene billboards, and the public display of swastikas in Jewish neighborhoods such as Skokie, but not laws prohibiting obscene books, films, or language over the airwaves. The discussion of obscenity and pornography is one of the best, and longest, in the philosophical literature.

In reviewing *Harm to Others*, I commented at length on Feinberg's methodology and assumptions.² Two of my complaints were that Feinberg argues from intuitions about particular cases and uses an ethical concept of harm. Those same points apply to this volume as well. The main argument rests "on the intuitive force" (p. 25) of a series of examples of revolting and disgusting bus passengers whom one cannot escape without great incon-

¹ Joel Feinberg, *Harm to Others* (New York: Oxford University Press, 1984).

² Michael D. Bayles, *Law and Philosophy* 4 (1985): 423-432.

venience (pp. 10–13). Feinberg argues that the only way to convince another that something is worthy of disgust is to get that person to share one's reaction (p. 106). However, it is not the only way to convince another that offensive conduct is worthy of criminal prohibition.

In *Harm to Others*, Feinberg claimed that the sense of 'harm' appropriate to the harm principle is 'wrongful setback of interests'. The same approach is followed with the offense principle; the relevant sense of 'offense' is any of a set of disliked mental states "caused by the wrongful (right-violating) conduct of others" (pp. 1–2). One might thus expect an extensive analysis of rights to establish which disliked mental states one has a right not to be caused. Feinberg avoids such an inquiry, because "there will always be a wrong whenever an offended state (in the generic sense) is produced in another without justification or excuse" (p. 2). Thus suggests that people have a right not to be offended. A justification, then, should have to do more than show that the offending actor's interests outweigh the other person's offense, for the offended person's right must be overcome. Feinberg never provides such an analysis; instead, he balances the interests of the parties involved. (Technically, offense does not violate an interest as Feinberg defines 'interest'.)³ The result is that the moral sense of offense is largely irrelevant; it is trivially satisfied by the right not to be offended, and the arguments never give any independent weight to the right as opposed to the amount of nonmoral offense.

Nevertheless, the requirement of an individual right plays a major role in Feinberg's argument. A central problem for a liberal is how to prevent the offense principle justifying prohibition of conduct in private when the bare knowledge of its occurrence causes offense to others. For example, suppose two lesbians, Ann and Beatrice, move into the apartment next to Charlie, and he is offended by the bare knowledge that homosexual activity is occurring next door. Feinberg's chief response is to pose a

³ Feinberg, *Harm to Others*, pp. 49–50.

dilemma: the argument for prohibition rests on either the principle of legal moralism or the offense principle (pp. 67–68). A liberal rejects legal moralism, and the offense principle does not apply. Even if lesbianism is morally wrong, Ann and Beatrice do not violate a right of Charlie's. His objection is an impersonal one; he is not a victim; his personal rights are not violated any more than those of any other opponent of homosexual conduct.

Feinberg allows three possible exceptions to the rejection of bare knowledge offense: (1) bare knowledge offense might be personal as when one's late spouse's corpse is mutilated, (2) repulsive public advertising of private offensive conduct, and (3) purposeful displays of offensive symbols such as swastikas. The last two exceptions raise questions about Feinberg's conception of free speech and the criminal law. Because freedom of speech is involved in type (2) cases, Feinberg does not support total prohibition of such advertising, but he does contend that even nongraphic billboards and neon signs advertising cannibalism and so forth can be prohibited. They are detrimental to a public interest in the public ambience (p. 71). Provocative displays of swastikas in Jewish neighborhoods or the KKK in black ones do not even involve suppression of freedom of speech. Symbols such as the swastika have no function but to offend, and because of their association with historical barbarity, are deeply offensive (p. 95). However, these claims about swastikas pull in opposite directions. Surely the historical association of swastikas with repulsive genocidal policies give them political significance and meaning. The profound offense they cause is due to their reference to specific policies; were they not expressive of such views, they would not cause such offense. A new symbol would not be as meaningful a sign to Nazis or anti-Nazis. Consequently, Feinberg is wrong to deny them the status of protectable speech.

More importantly, cases of both types (2) and (3) suggest that the criminal law can concern wrongs to the public as well as individuals. Feinberg restricts all criminal conduct to that which violates the rights of individuals. Accumulative public harms, such as air pollution, are not criminally prohibitable, although the harm

principle along with fairness supports a regulatory system.⁴ Yet, the effect of offensive signs on the public ambience is an accumulative bad as much as air pollution. Either criminal prohibition of offensive signs is not appropriate, or criminal legislation against air pollution is appropriate. Moreover, Feinberg's requirement of violation of individual rights does not easily comport with the extant criminal law's emphasis on crimes as public wrongs. The state, not the individual, is the complainant in criminal cases. Granted, Feinberg could develop instrumental reasons for the public enforcement of the criminal law, but his fundamental conception is one of private, not public, wrongs.

The offense principle is to be applied by balancing factors identified by mediating maxims. There are two sets of maxims based on tort law considerations for determining nuisances. One set assesses the seriousness of the offense, the other the reasonableness of the offending conduct. The seriousness of offense is to be determined by its magnitude (intensity, duration, and extent), avoidability, voluntary assumption, and dependence on abnormal susceptibility (p. 35). Although conceptually distinct, it might be possible to include the reasonable avoidability of offense under voluntary assumption. If an offense is reasonably avoidable, then it is reasonable to assume that one who incurs it does so voluntarily. Of course, if one is ignorant of the likelihood of an offense, then one cannot voluntarily assume it even if it is reasonably avoidable. However, anyone who continues to experience a readily avoidable offense in effect does so voluntarily. Feinberg takes abnormal susceptibility as a ground for discounting the seriousness of an offense (pp. 26, 33, 35). In doing so, he claims to be following the law, but the law takes a different approach. It uses normal susceptibility as the benchmark for harm and offense. If conduct would not harm or offend a person of normal susceptibility, then there is no wrong.⁵ However, if conduct would harm or offend a

⁴ *Ibid.*, p. 244.

⁵ See *Nova Mink, Ltd. v. Trans-Canada Airlines*, [1951] 2 D.L.R. 241 (N.S. Sup. Ct.) (negligence); *Foster v. Preston Mill Co.*, 44 Wash. 2d 440, 268 P.

person of normal susceptibility, then compensation must be for the full extent of the harm even though it would have been much less but for the abnormal susceptibility. One takes one's victims as one finds them. Were Feinberg to follow this legal approach, he would have an additional argument against bare knowledge offense, for often bare knowledge offense is due to the abnormal susceptibility of the offended person. By only discounting offense due to abnormal susceptibility, Feinberg allows the possibility of prohibiting conduct due to the moral squeamishness of observers.

Feinberg uses the following factors to determine the reasonableness of offending conduct: its personal importance and social value, its involving freedom of speech, alternative opportunities for satisfactory conduct, its being done from malice and spite, and the character of the neighborhood in which it occurs (p. 44). According to Feinberg, to have a claim to protection offending conduct must be reasonable, but offense need not be. His two main reasons for not requiring offense to be reasonable are (1) that it would be partly redundant of the extent requirement, for if most people would be offended, the offense is probably reasonable; and (2) it would give legislators the dangerous power of determining the reasonableness of emotional reactions (p. 35). Offense and harm are parallel, he contends; and superstitious people should be protected from harm (p. 36). Perhaps he has in mind psychological shock or even death from a superstitious belief in voodoo.

These contentions are not entirely satisfactory. First, Feinberg finds support in *Everett v. Paschall*.⁶ In that case, homeowners were awarded damages from a tuberculosis hospital in the neighborhood because they feared catching the disease, even though the court concluded that there was no scientific foundation for the

2d 645 (1954) (strict liability); *Impellizzeri v. Jamesville Federated Church*, 104 Misc. 2d 620, 428 N.Y.S. 2d 550 (Sup. Ct. Onondaga Co. 1979) (intentional).

⁶ 61 Wash. 47, 111 P. 879 (1910); see Feinberg's indirect reference p. 293, n. 12.

fear. However, more recent courts have gone the other direction, for example, finding that a halfway house in the neighborhood, which caused homeowners unfounded apprehension was not a nuisance.⁷ Second, Feinberg puts too much weight on the extent standard, in effect assuming the universality standard which he previously held but has now abandoned (pp. 27–32). On his present view, offense need not be taken by nearly everyone. In the end, my disagreement cannot be settled by Feinberg's method. He simply intuitively finds it plausible to protect many people from irrational offense, while I do not. If a substantial number of people in a society are offended by public graphic depictions of people eating pork, Feinberg would support criminal penalties for the displays.

There is a further ambiguity about the mediating principles. Feinberg's usual metaphor is one of balancing the reasonableness of conduct against the seriousness of offense. However, at one point he suggests that some cases fall so clearly under a standard that there is no doubt how to apply the offense principle (p. 45). He cites the *Volenti* standard which denies protection to offense voluntarily incurred. At another point, he seems to treat the reasonable avoidability and free speech standards as separate from balancing. He writes that displays of offensive symbols, such as swastikas, can be prohibited "provided of course that 'reasonable avoidability' requirements are violated, that free expression values are not centrally involved, and the other balancing tests are scrupulously applied" (p. 91; see also pp. 138 and 168). Although 'other balancing tests' implies that avoidability and free speech are balancing tests, the thrust of the sentence is to treat them as necessary conditions.

⁷ *Nicholson v. Connecticut Half-way House*, 153 Conn. 507, 218 A. 2d 383 (1966); see also *McMillan v. Iserman*, 120 Mich. App. 785, 327 N.W. 2d 559 (1983) (deed restrictions on state licensed group homes contrary to public policy) and *Glennon Heights, Inc. v. Central Bank & Trust*, 658 P. 2d 827 (Colo. 1983) (upholding statute permitting group homes for mentally disabled in neighborhoods zoned for single families).

Another model for the use of the mediating maxims might be more appropriate. Some of the maxims state necessary conditions for application of the offense principle. If offense is voluntarily risked or easily avoidable (or unreasonable?), then the offense principle does not apply. Even though voluntariness and avoidability are matters of degree, for practical purposes there is a cutoff point; if the offense is at least that voluntary or avoidable, the offense principle does not apply. One then need not consider how intense, long, or widespread the offense is. If the offense was less voluntary or avoidable, then voluntariness and avoidability are to be balanced against other factors.

A large part of *Offense to Others*, almost two-thirds, is concerned with obscenity. The ostensible reason is that Feinberg takes obscenity to be an extreme form of offensiveness. However, much of the discussion has little bearing on legislation, let alone criminal legislation. He claims that the standard use of 'obscene' in judgments is to express, predict, and endorse a response of disgust, although it can be used without one of these elements. Feinberg disagrees with the Supreme Court's restriction of obscenity to pornography and argues that prohibitions of obscene books and films to adults is unjustified. Essentially, the offense is voluntarily incurred and reasonably avoidable. He also rejects the claim of some women's advocates that pornography causes harm to women. His doubts center on the closeness of the causal connection, since the voluntary conduct of, say, a rapist intervenes between the distributor of pornography and the harm to the victim.

'Obscene' can also be used descriptively to denote four-letter words. Feinberg devotes two chapters to the primary and derivative uses of obscene words. Although this is an interesting, plausible, and enjoyable account, it contributes little to social policy. The penultimate chapter on "Obscene Words and Social Policy" is a discussion of whether an effort should be made, and if so how, to eliminate obscene words (at least their offensiveness) from the language. Feinberg contends that they have valuable functions. Of course, all of this has nothing to do with criminal legislation. The final chapter does return to issues of criminal law. In it, Feinberg

holds that the offense principle cannot support the prohibition of obscene words in public places, but he does endorse the *Model Penal Code's* harassment provision⁸ modified to include any harmful or offensive or alarming conduct. He also rejects the Supreme Court's decision in *F.C.C. v. Pacifica Foundation*⁹ upholding an F.C.C. position against stations playing records with obscene language during times children might normally listen to the radio. Of course, since freedom of speech is involved and one can easily turn off the radio (the offense is easily avoidable), the offense principle does not apply.

Overall, the offense principle is the weakest link in Feinberg's liberalism. Many liberals will want to reject it, and many conservatives will seek to extend it to prohibit conduct liberals wish to allow. Feinberg has done an impressive job delineating a principle and mediating maxims that avoid the persuasive counterexamples of conservatives while allowing most of the freedom liberals (and libertarians?) desire. It thus fits the intuitions of moderate liberals. Moreover, the arguments for the position are as strong as one is likely to find. Nonetheless, one is left with a nagging doubt that one is inclined to accept it simply because it fits the emotional responses one has assimilated from one's liberal academic culture.

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⁸ Sec. 250.4 (Proposed Official Draft 1962).

⁹ 438 U.S. 726 (1978).

BOOK REVIEW

Bernard Boxill, *Blacks and Social Justice* (Totowa, NJ: Rowman and Allanheld, 1984), vi + 251 pp., \$34,50.

In a just society all people would flourish or would come to do so in the fullness of time. If over successive generations a people should fail to flourish or lag considerably behind others, then that should be a cause for concern. Most people accept as fact that black Americans have been the victims of gross injustice. However, what should be done in light of this fact is a matter of considerable controversy, as is evidenced by the fact that philosophers with common points of departure (such as Rawls's principles of justice) have managed to go in opposite directions.¹

Boxill's book is the latest philosophical contribution to the debate. Here I focus only on Boxill's contribution to some of the key themes concerning racial equality. There is much of impor-

* In writing this review, I have profited from the instructive comments of Thomas Hill, Jr., Irving Thalberg, Susan Wolf, and, especially, Bernard Boxill himself. Charles Beitz played a major role in helping condense my essay.

¹ Cf. Alan H. Goldman, *Justice and Reverse Discrimination* (Princeton: Princeton University Press, 1979) and Robert K. Fullinwider, *The Reverse Discrimination Controversy: A Moral and Legal Analysis* (Totowa: Rowman and Littlefield, 1980). For some the term reverse discrimination suggests that blacks are being favored over whites in the way that, in the past, whites were favored over blacks. Only someone with a very skewed view of American racism could maintain this. As Irving Thalberg, in "Themes in the Reverse-Discrimination Debate," *Ethics* 91 (1980), observes, following Justice Brennan in his Bakke opinion: "... no white is "stamped inferior" by RD [reverse discrimination]. Neither the intended nor the probable effect of RD upon whites compares with the effect of Jim Crow and tokenism upon everyone else" (138).

tance and interest in Boxill's book which I shall not touch upon, including a look at the legacy of Booker T. Washington, a discussion of Marxism in conjunction with black progress, and an account of the nature of insults (which is part of an assessment of Ronald Dworkin's views on busing).

1. THE RELEVANCE OF COLOR?

This position has a certain intuitive appeal: the practice of considering race when hiring employees and admitting students was wrong in the past and must be wrong now. The fact that the race receiving preferential treatment is now black rather than white does not make the practice any less wrong.

Boxill thinks otherwise. He does not attempt to show that giving preferences to blacks does not make opportunities unequal for whites. Nor does he insist that, under the present circumstances, redressing past wrongs simply requires that whites be disadvantaged for a period of time. He writes:

I concede that color-conscious policies giving preference to blacks place an insurmountable obstacle in the path of whites, and since such obstacles reduce opportunities, such policies may make opportunities unequal. But this gives no advantage to the advocates of color-blind policies. For giving preference to the competent has exactly the same implications as giving preference to blacks. It, too, places obstacles in the paths of some people, this time the untalented, and just as surely makes opportunities unequal (17).

... adopting a color-blind principle entails adopting a talent-blind principle, and since the latter is absurd, so also is the former. Or, in other words, differences in talent, and differences in color, are, from the point of view of justice, on a par. ... Color-conscious policies can conceivably be just, just as talent-conscious policies can conceivably be — and often are — just. It depends on the circumstances (18).

This argument from analogy is fascinating but I do not find it convincing. Talent-conscious policies are not intended to be corrective ones. They are intended to serve the ends of excellence rather than of justice. Although such policies place obstacles in the path of the untalented, a policy that does this is not there-

by a corrective one intended to serve the ends of justice.

By contrast, color-conscious policies of the sort Boxill has in mind are intended to be corrective (for past injustices), and thus are pressed in the service of justice. With talent-conscious policies the question is: Are they permitted as a means to attaining excellence? With color-conscious policies, the question is: Are they permitted as a means to attaining a just end (correcting for past injustices)? An affirmative answer to the first question does not commit us to an affirmative answer to the second one. The two policies are not analogous in the respects in which Boxill would like them to be.

Among the staunchest supporters of the view that color-conscious policies are unjust are devotees of the free-market system, that is, capitalism. These people consider the system to be something of a wonder drug for eliminating racist hiring policies, if not for curing employers of racist beliefs. The idea is that it is most profitable to hire the most qualified person. Hence, racist hiring practices will tend to bow to the capitalist's concern to maximize profits, if such practices stand in the way of maximizing profits — and it is assumed that such practices do. Among those who have gained considerable notoriety for advancing this line of reasoning are Walter Williams and Thomas Sowell.² They maintain, in particular, that a free-market system will serve to eliminate black subordination and that government enforced color-conscious policies, which are not in keeping with such a system, have the effect of perpetuating black subordination rather than eliminating it.

One reason why Boxill's *Blacks and Social Justice* makes such a significant contribution to the literature is that he subjects their views to a very penetrating critique (chapter 2). Boxill makes it clear that there is nothing inherent in capitalism that would make

² For representative writings, see Walter Williams, *Manhattan Report on Economic Policy*, vol. 2, no. 8 (New York: Manhattan Institution for Policy Research, 1982) and *The State Against Blacks* (New York: McGraw-Hill, 1982); Thomas Sowell, *Ethnic America: A History* (New York: Basic Books, 1981) and *Markets and Minorities* (Oxford: Basil Blackwell, 1981).

it resistant to racist hiring policies. Whether it is in the interests of an employer to have racist hiring policies is not independent of public preferences and tastes (26–39). If the dislike of blacks is so widespread that most of the public would not patronize a business which hired blacks, then capitalism, far from floundering in the face of racist hiring policies, flourishes as a result of them. It would not be in the self-interest of an employer to hire blacks regardless of her own feelings and beliefs about them. As Boxill writes: "... precisely the same argument that Sowell and Williams use to show that the free market compels employers not to discriminate can be used to show instead that the free market compels employers to discriminate" (29). Capitalism would cure racism only if the disease has already been made to loosen its grip on the mind of the public.

2. AFFIRMATIVE ACTION

As Boxill quotes Michael Kinsely as saying, "No single development of the past fifteen years has turned more liberals into former liberals than affirmative action" (147). Boxill does not offer his own view on the topic but undermines various criticisms of the backward- and forward-looking arguments for affirmative action.

Three concerns occupy Boxill: (a) Does affirmative action compensate the wrong group of blacks, namely middle-class blacks who can measure up in the first place? (b) Does affirmative action benefit middle-class blacks at the expense of lower-class whites? (c) Will affirmative action, in fact, make for a better society? To (a), Boxill's response is that while middle-class blacks may be deserving of less compensation than disadvantaged blacks, it by no means follows that the former are deserving of no compensation at all. He writes: "Because I have lost only one leg, I may be less deserving of compensation than another who has lost two legs, but it does not follow that I deserve no compensation at all" (148). Boxill's contention is not that all blacks have been debilitated by racism, but that all have been wronged by society in so far as society has forced them to live with the threat of not having

their rights respected. Here, a powerful, if not unwitting, ally would seem to be Robert Nozick himself who maintains that people should not have to live in fear of having their rights transgressed and that they are owed compensation for having so to live.³

As to (b), Boxill's response can be put quite simply: affirmative action may very well benefit middle-class blacks at the expense of lower-class whites, but this is no more or no less unfair than a practice which allows a dean of a school to select five admittees each year without reference to the screening process, as was the case at the Davis Medical School, it being invariably the case that those who benefit from the policy are not lower-class whites, but those whites who already enjoy so many of society's amenities.

Turning to (c), Boxill reminds us that this question cannot be answered a priori. His suspicions are that affirmative action would make for a better society if for no other reason than that it would result in blacks receiving more and better services, since white professionals are more likely to serve the affluent white than black professionals (168). The reason for this need not be that blacks are altruistic, but that racism is a bar to black professionals thriving among whites. Here Boxill echoes Ronald Dworkin's position.⁴

Conservatives are opposed to color-conscious policies (which include affirmative action), even in the case in which color is used simply to break ties. This is the least troublesome case of affirmative action, but if a case can be made for it, then some progress has been made. Here Boxill manages to at least put conservatives on the offensive although his argument that talent-conscious and color-conscious policies are analogous fails.

Boxill allows that discriminatory practices can be an affront to the self-respect of persons (151, 196, 89–95); for example, they may perpetuate negative stereotypes about the group in question. Thus, a society forces a people to live with the threat of not

³ Robert Nozick, *Anarchy, State, and Utopia* (New York: Basic Books, 1974: pp. 73–78.

⁴ Ronald Dworkin, *Taking Rights Seriously* (Cambridge: Harvard University Press, 1977): pp. 232 ff.

having their rights respected, and Boxill thinks that people should be compensated for this. The negative stereotypes under which all blacks presently labor are the result of past injustices.⁵ The stereotype that blacks do not have as much intellectual capacity as whites affects all blacks, not only the “ghetto” blacks. Racists do not check to see if a black is from the ghetto before questioning his intellectual abilities.

Consider the following scenario. Two people, Xb and Yw, apply for the only position at Small College, and they are identical with respect to all professional qualifications. The only difference is that X is black and Y is white. It clearly follows from Boxill’s views that Xb morally ought to be hired over Yw; and the argument is purely a compensatory one. Society owes it to blacks to dismantle the negative stereotypes which have been put in place as a result of the many years of discrimination which blacks have suffered. It is something that blacks can claim that society should do on their behalf.

The account can be made institutionally relative. Suppose that we have Xb, Yw, and Z, and that both Xb, Yw are equal with respect to all professional qualifications, but both are inferior to Z, who is the best person on the job market. Some universities have the practice of hiring a person only if she is a Z-type, in which case they may pass over Xb- and Yw-types. But needless to say, this is not the policy of all universities. Very little hiring would get done if it were. So, if there is a Yw whom the university is prepared to hire, though it realizes that Yw is inferior to Z, then if there is an Xb who is equal to Yw, then universities morally ought to hire Xb over Yw. (Z’s ethnicity is irrelevant.)

⁵ To appreciate the power of stereotypes notice that Polish jokes invariably fail to be funny when Jews are substituted for Poles. The explanation for this is very simple: While Jews may get to be many things according to the stereotype – parsimonious, shrewd, and so on, they do not get to be dumb. Hence, Polish jokes are not as innocuous as many would like to believe. The humor of such jokes rides on the assumption that Poles are dumb. If stereotypes can have a bearing on whether or not we laugh, it is not unreasonable to suppose that they can have a bearing on our behavior in other ways.

The Boxillian account offered is compensatory precisely because the very point of affirmative action on this account would be to correct for the wrongful misconceptions under which blacks labor and which are the result of past wrongs, among them being that blacks are not as intellectually capable as whites. Conservatives must acknowledge this much about the prevailing stereotypes. Had academies across the U.S. not engaged in racially biased admissions and hiring policies, it is unlikely that blacks would now be laboring under the stereotype that they are not the intellectual equal of whites.

Boxill makes it clear that whether some blacks have flourished in spite of this and other negative stereotypes fostered by racism does not detract from the fact that these stereotypes have been an obstacle in their development. In the case of ties between job candidates, it might be supposed that the only fair way to proceed is to flip a coin. By hypothesis, such cases have to be decided by some nonacademic consideration. Flipping a coin is, of course, one fair way to proceed; however, there is surely no reason to think it is the only fair way.

The Boxillian account speaks to his concerns (a)–(c) mentioned above. (a) While it may be that middle-class blacks, as opposed to poor ones, benefit the most from affirmative action, it may be that the former are best able to dismantle the negative racial stereotypes that have been in place for so long. (b) Affirmative action is not at the expense of lower-class whites even if society has also perpetuated negative stereotypes about them. For, being lower class is not something immediately apparent. With the right clothes, hairstyle, and speech, one would never know that a white is from the lower class. Needless to say, these things would not render invisible the fact that one is black. It follows, then, that lower-class whites do not suffer under negative stereotypes about them in the same way or to the extent that blacks do. (c) Clearly, blacks are better off if the negative racial stereotypes are broken down, and presumably whites are no worse off for it; hence, society is better off for it.

Finally, let me note that the account offered addresses the kind

of concern Thomas Nagel has with affirmative action. This is that the self-esteem of those who are hired under the aegis of affirmative action is threatened (199).⁶ The black hired is as qualified as the white whom the university is prepared to hire; so there is no reason for the black to feel that his own merit did not win him the position. The black should feel no more threatened than if his obtaining the job had been determined by the flip of a coin. What is more, if the self-esteem of whites is not threatened when they know that they are admitted under a policy which allows a university official to select five admittees each year without reference to the screening process, then surely the use of color to break ties should not threaten the self-esteem of blacks.

3. INTEGRATION AND FLOURISHING

As I said at the beginning, in a just society all people would come to flourish in the fullness of time. One of the great contributions of Boxill's work is that it enables us to see clearly that the yardstick by which human flourishing should be measured is not the satisfaction of interests, where that is tied simply to the satisfaction of desires or wants. Instead, the yardstick must be an ideal of human nature (95–106).

It is in connection with busing that Boxill indirectly discusses the interests conception of flourishing as he discusses the interests conception of harm. According to this view, "... a person is harmed when his interests are invaded, and he has an interest in something if he stands to gain or lose depending on its condition or outcome" (95). Interests here are to be understood in terms of wants or desires.⁷

⁶ Thomas Nagel, 'Equal Treatment and Compensatory Discrimination', *Philosophy and Public Affairs* 2 (1973): 349–363.

⁷ Boxill focuses primarily upon Joel Feinberg's view. As far as I can see, Feinberg embraces the idea that a person flourishes when his interests are satisfied. See Joel Feinberg, 'Rights of Animals', in *Rights, Justice, and the Bounds of Liberty* (Princeton: Princeton University Press, 1980). See pp.

It is an untoward consequence of this view that segregation does not harm minority children even if it results in their having deep feelings of inferiority. This is because such children do not have an interest in not feeling inferior. Adults may be able to see that any child will be worse off should he come to have feelings of inferiority but innocent children do not see that. Hence, in terms of their present wants and desires it cannot be explained that their having feelings of inferiority are contrary to their interest.

The move to make, of course, is to refer to the future interests of children. But as Boxill sees, once the dust has settled, this move gets one nowhere for the kinds of interests children will come to have in the future is tied to what is done to them in the present (96). There are few future interests that children will come to have independently of what is done to them. So, if it is one of our considered judgments that children are harmed by practices which cause them to have deep feelings of inferiority, then we shall have to capture that judgment by appeal to something other than the interests conception of harm. For it can deliver that judgment only if certain interests are posited independently of wants or desires. But then interests are no longer explained in terms of wants or desires, and we have a different theory from the one with which we started.

Boxill's objection to an interests conceptions of harm and flourishing is "not merely that they fail to provide us with a rationale for attacking segregation" (100), but that "they have no ideal of human nature" (100). He assumes that "there is a normal and proper way for children's minds and bodies to function and grow, and a normal and proper way for adults' minds and bodies to function" (101). He invokes what he calls a Platonic conception of harm, since this conception makes reference to essentials of growth and functions. He writes:

... a harm is defined as something blocking, diverting, or interrupting a child's proper and normal mental or physical growth, or as something impairing the

ability or capacity of an adult's or child's body or mind to function in a normal and proper way (101).

Armed with these considerations, Boxill rightly takes it to follow straightaway that parents are not free to do with their children as they please; in particular, "... parents cannot have the complete right to choose their children's education" (108). As he observes, it also follows that "... the freedom of communities to control schools should be restricted" (109). The upshot is that we have a very powerful argument against, on the one hand, blacks who think that black communities should be free to control the school systems in their area and, on the other, against those on the right who, for quite different reasons, insist on this. Children should not be the pawns of political ideology.

For Boxill, whether busing is inimical to the flourishing of black children is an empirical matter. More generally, he considers it an empirical matter whether separation or assimilation is inimical to the flourishing of black people. Offhand, it may seem that to say this is to come dangerously close to playing into the hands of racists. But not quite. The racist objects in principle to racial (or ethnic) integration; he has a stake in its being the case that at least one race, namely his own, is the worse off for doing so.⁸

However, when racial integration involves a dominant culture and a people who have been victims of considerable oppression, the concern over whether or not integration is a good thing for the latter need not in any way amount to an in principle objection to it. When such are the circumstances, racial integration can have an adverse affect upon the self-esteem and self-identity of the oppressed group.

For instance, it turns out that the self-esteem of lower-class black children who attend lower-class black schools is higher than the self-esteem of those who attend predominantly upper-class

⁸ Here I follow Robert Nozick's illuminating characterization of a racist in *Philosophical Explanations* (Cambridge: Harvard University Press, 1981): 325 note.

white schools, even though the scholarly performance of the latter surpasses the former.⁹ The explanation is quite simple: self-esteem is based on comparison. In attending lower-class black schools, the lower-class black child compares himself with children the majority of whom are similar to him. However, in attending an upper-class white school, the black child compares himself with many children who are economically much better off than he is. To be sure, he may very well learn more, but is the gain in knowledge worth the costs to his self-esteem?

Racial (or ethnic) integration can be inimical to the self-identity of an oppressed group if its members must adopt the values of the dominant culture at the expense of their own cultural and historical identity. This may result in deep feelings of self-alienation. Black separationists have argued that the integrationist movement of the 1960s had this effect.¹⁰ They think that the movement nursed rather than healed the wounds of black self-hatred. Although integration may provide great financial gains, these gains do not justify integration's negative affect on the black self-concept.

If there is a moral to the foregoing considerations, it would seem to be this: Integration is good in that it can truly contribute to the flourishing of the group which is integrating itself, but only when integration does not pose a threat to the cultural and histor-

⁹ See Morris Rosenberg, *Conceiving the Self* (New York: Basic Books, 1979). His conclusions are based upon his study of black children in Baltimore public schools. See pp. 100–112 and 172–174. At one point he writes: The data show that it is much more easier for blacks attending segregated schools to believe that their race is viewed favorably by “most people in America” than it is for blacks attending desegregated schools” (111).

¹⁰ Cf. e.g., Stokely Carmichael and Charles V. Hamilton, *Black Power* (New York: Random House, 1967) and Malcolm X's views in *Malcolm X Speaks* in G. Breitman (ed.), (New York: Grove Press, 1966). For insights throughout this discussion, I am indebted to Howard McGary, Jr., ‘Racial Integration and Racial Separatism: Conceptual Clarifications,’ in Leonard Harris (ed.), *Philosophy Born of Struggle* (Dubuque: Kendall/Hunt Publishing Co., 1983): 199–211.

ical identity of the integrating group. Integration is least likely to do this when the integrating group has a way of sustaining its cultural and historical identity independently of the social institutions of the dominant culture. In this regard, Thomas Sowell does not appreciate an important difference between blacks and his favorite comparison group, the Jews.¹¹

It is one of the fundamental principles of psychology that the ease with which individuals can cope with a new and/or hostile environment is directly proportional to their having a secure sense of worth.¹² If, as is reasonable to suppose, having a secure sense of their cultural and historical identity significantly contributes to members of a given group having a secure sense of worth, then my preceding remarks suggest that in this regard blacks have been at a greater disadvantage than Jews.

Religion has sustained the cultural and historical identity of the Jews.¹³ (This is not the only way this identity can be sustained.¹⁴) Whether the history of the Jews was taught in the public schools, the Jewish religion has kept the Jews very aware of their history. As Charles Siberman writes:

And the Jews, far from trying to erase the memory of slavery, have made it central to their religion: every Jew is enjoined to recall the fact that "we were slaves to Pharaoh in Egypt." The pronoun "we" is used because each individual is to imagine that he himself, not just his ancestors, had been enslaved.¹⁵

¹¹ Thomas Sowell, *Markets and Minorities*, ch. 2.

¹² Cf. Rosenberg, *Conceiving the Self*, and Stanley Coopersmith, *The Antecedents of Self-Esteem* (San Francisco: W. H. Freeman and Company, 1976).

¹³ One only need to read, e.g., Chaim Potok's *The Chosen* (New York: Simon and Shuster, 1967) to appreciate this fact.

¹⁴ For other ethnic groups, language has played a crucial role in the members sustaining their cultural and historical identity.

¹⁵ Charles Siberman, *Crisis in Black and White* (New York: Random House, 1964): 78. If my memory serves me correctly, the predominantly Jewish junior and senior public high schools (classes virtually came to a halt during the high holidays) which I attended did not teach any black — then, Negro — history; but Jewish history was not taught either.

The Jewish religion and the Jewish culture are so inextricably intertwined that having one without the other is extremely difficult. What is more, because both are linked to a strong lineage condition, namely, being born of a Jewish mother, neither can be easily appropriated by other cultures.

The history of Jews in America shows that, even when a group has an independent vehicle which sustains its cultural and historical identity, it is still difficult to flourish in a hostile environment.¹⁶ A fortiori, then, this must be so when a group is without such a vehicle. American blacks constitute one such group.

Boxill is somewhat pessimistic about blacks ever reaching their potential in America (226–228).¹⁷ The preceding remarks point to why that pessimism might be warranted. Surprisingly, the

¹⁶ See, e.g., Bruce Kuklick, *The Rise of American Philosophy* (New Haven: Yale University Press, 1977). Chapter 24 contains a most interesting discussion of the plight of Jews at Harvard from 1920–1930. For instance, Henry Austryn Wolfson was appointed an assistant professor at Harvard with “... the understanding that he would not be permanent and that he would receive only such salary as “interested persons could contribute”” (457). More generally Kuklick writes:

Although the philosophy department invited Jews to study there, it made it difficult for them to later find jobs. Perhaps it is fairer to say that the philosophers did the best they could for men whose names would have invited discrimination in any circumstances, but in the references written for Jews there is the unmistakable flavor of Lowell-like [a former president of Harvard] distaste for an unassimilated minority. Perry wrote of candidates that they were Jews without “the traits calculated to excite prejudice,” having “none of the unpleasant characteristics which are supposed to be characteristic of the race”; Woods, that a candidate’s Jewishness was “faintly marked and by no means offensive”; Hocking, that a man was “without pronounced Jewish traits”; and Lewis, that a young philosopher “of Jewish extraction” had “none of the faults which are sometimes expected in such cases” (456).

Lowell nicely captures Harvard’s attitude toward the difference between blacks and Jews, in the 1920s with the following remark: “Cambridge could make a Jew indistinguishable from an Anglo-Saxon; but not even Harvard could make a black man white” (407).

¹⁷ See, also, ‘How Injustice Pays?’, *Philosophy and Public Affairs* 9 (1981): 359–370.

problem may be akin to the criticism that utilitarianism fails to take seriously the separateness of persons,¹⁸ namely the failure to take seriously the separateness of ethnic or racial experiences. The black experience is not the Jewish experience, nor conversely. In claiming that any group can start at the bottom and, through hard work and dent of will, rise to become fully accepted members of society, Sowell is guilty of tunnel vision. He has fixed upon the economic ladder. What he seems to ignore is that getting on that ladder and staying on it, let alone climbing it, requires tremendous spiritual (that is, emotional) resources. Economic success is not – indeed, it cannot be – a substitute for those resources, any more than parental wealth, however generously distributed, can be a substitute for parental love. There are goods upon which money cannot obtain a purchase and without which economic gain, and more generally, life itself means precious little. Among them are dignity and self-respect. Boxill's *Blacks and Social Justice* is a powerful and eloquent reminder of this fact.

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¹⁸ Rawls, *A Theory of Justice*: 187.

BOOK REVIEW

Kent Greenawalt, *Discrimination and Reverse Discrimination* (New York: Alfred A. Knopf, Borzoi Books, 1982), 222 pp. + xvii, US\$8.00.

Kent Greenawalt, a distinguished jurist, has written a short and juicy book for use in college courses dealing with discrimination, direct and reverse. Philosophical arguments, of all kinds on all sides, are here explained and appraised. Legal arguments and documents pertaining to this family of controversies are here compiled, organized, and commented on. From a great tangle of material and dispute, Greenawalt has pulled the main threads as he sees them; with these he has woven a provocative essay and a fine book.

Essay and book must be distinguished. Just under two-thirds of the book is devoted to a compilation of authoritative materials — judicial, Constitutional, statutory and administrative — which give the substance of American law in this sphere. This compilation is a distinguishing feature of the volume; there is only one other volume like it extant.¹ The author has brought together the key passages from the key documents, and with them has constructed a teaching tool of great usefulness. Keen intelligence lies behind

¹ *Federal Civil Rights Law: A Sourcebook*; U.S. Government Printing Office, Washington, D.C., 1984, 143 pp. This volume, prepared by the Senate Subcommittee on the Constitution, in conjunction with the Congressional Research Service of the Library of Congress, is also very useful. In the statutory, administrative, and Constitutional spheres it is up to date, authoritative, and (as the Greenawalt volume could not be) complete. The Supreme Court cases, however, are merely listed in the Senate volume, with the references and a short summary given for each.

the preparation of this body of materials. I sketch its content here:

It includes extensive excerpts from the Supreme Court opinions in almost all the major cases dealing with discrimination or preference by race or sex:

(a) the 19th century cases on discrimination (*Yick Wo*, *Plessy*, and others);

(b) the modern cases on discrimination (*Korematsu*, *Shelley*, *Brown (I and II)*, *Swan*, *Loving*, and others);

(c) the recent cases on preferential programs, or reverse discrimination (*DeFunis*, *Bakke*, *Weber*, and *Fullilove*).

It includes extensive excerpts from U.S. Federal statutes:

(a) the Civil Rights Acts of 1866 and 1875;

(b) Titles III, IV, and VII of the Civil Rights Act of 1964;

(c) the Civil Rights Act of 1968.

It includes passages from three major Supreme Court cases dealing with discrimination by gender (*Reed*, *Frontiero*, and *Craig*), and from one major case dealing with reverse discrimination by gender (*Kahn*); and it includes the proposed Equal Rights Amendment to the U.S. Constitution.

It includes Executive Orders 11246 (1965) and 11375 (1967), pertaining to equal employment opportunity, and the 1975 Regulations of the Department of HEW on nondiscrimination, which sought to implement Title VI of the Civil Rights Act of 1964.

It includes (of course) passages from the original *U.S. Constitution*, and from its Amendments: XIII (1865), XIV (1868), XV (1870), XIX (1920); and it includes one classic sentence from the *Declaration of Independence*.

It would be difficult to gather, in 140 pages, a more comprehensive set of documents. In his Preface the author says that his book is intended for use in college courses in philosophy and government. "It is meant [he writes] to illustrate similarities and differences of moral and legal reasoning ... to serve as a basis for reflection about the proper role of the courts when they interpret authoritative constitutional and statutory standards of varying

specificity.” [p. vii] These objectives are achieved. The compilation essential to their achievement is the great strength of this book.

The 80-page essay that precedes the compilation attempts to compare moral and legal judgments; to review the history of the prohibition of racial discrimination in this country; and to appraise the arguments for and against reverse discrimination. The first two of these aims are accomplished systematically and successfully. But in its handling of racially preferential programs (of which the author cautiously approves) the essay is flawed. There is inevitably tension between the demands of a balanced explication of conflicting claims and arguments on the one hand, and the evaluation of the positions of the conflicting parties on the other hand. Greenawalt openly seeks to achieve both of these objectives. Another less apparent purpose is also his: the *defense* of racially preferential programs. In the pursuit of this end his efforts to be impartial in explication are undermined.

Greenawalt gives his own position in the final pages of his essay: “The utilitarian reasons for [racial] preference are great enough, in my judgment, to include members of deprived minority groups who are not themselves deprived.” [p. 69] Regarding the pains such programs may inflict upon innocent persons who are displaced from positions they would otherwise have got, but for the fact that they are white, Greenawalt writes, “If, however, [racial] preferences are a necessary part of a remedy or other important social good, the impact of the burden is not a strong reason for rejecting them.” [pp. 62–63]

In short, Greenawalt is an advocate – thoughtful and guarded but an advocate still – of racially preferential programs in professional school admissions and in employment. I do not share that position, but I honor its thoughtful defense. No one will quarrel with the appropriateness of an essay aiming to provide that defense. In this essay, however, the author’s convictions so penetrate his exposition of the arguments on the several sides that evenhandedness is sacrificed. The student for whom this book is intended, unfamiliar with the cases and the arguments, is in no position to

detect the imbalance. The prospective teacher-user of the book is put in an awkward position.

Some illustrations of this difficulty here follow, taken from the ninth and culminating chapter of the essay, dealing explicitly with reverse discrimination.

The *Bakke* case, addressing racial preference in medical school admissions, is the legal context of his discussion; much of his critical analysis is devoted to the several opinions written in that case, which resulted in the striking down of a racially preferential program at the University of California at Davis. The opinion of four justices, finding the Davis Program *unlawful* because it violated Title VI of the Civil Rights Act of 1964, Greenawalt recounts in one paragraph. For them, he says, the legislative history of the statute, “coupled with the language of the statute, which seems on its face to bar racial categorization” was sufficient to bar reverse discrimination.” This is not entirely accurate. What the language of the statute bars is not racial categorization (which most will think appropriate in some contexts) but “discrimination under any program or activity” — that is, preference on racial grounds. The statute doesn’t “seem” to bar that, it does so explicitly and unambiguously.²

Greenawalt goes on to say that the other five justices “rejected that conclusion.” This is technically accurate but very misleading; the conclusion rejected by all five of them was the *sufficiency* of the statute; one of those five, Justice Powell, finds that the preferential program is to be condemned on *constitutional* grounds, and that the statute must be interpreted in the light of the Fourteenth Amendment to the Constitution, which it implements. A student would have to scrutinize Greenawalt’s account very carefully to learn that the preferential program at Davis was thrown out by the Court, and that Bakke was ordered admitted to that medical

² “No person in the United States shall, on the ground of race, color or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance.” (Civil Rights Act of 1964, Title VI, #2000d).

school. Greenawalt is pained by these facts; he appears reluctant to say that Bakke won the case.

When Greenawalt turns to the discussion of the Constitutional issues in the Bakke case, the opinions of the Court's minority are discussed not in one paragraph but in four sympathetically framed pages [pp. 79–81]. An unsophisticated reader might find it difficult to see how it was possible for Bakke to have won.

The pivotal opinion in the case, that of Justice Powell, Greenawalt thinks seriously mistaken. He reports it briefly, but does so using words that are sure to color the judgment of any reader who has not studied Powell's long and detailed analysis. Powell (Greenawalt tells us) "...creates a sharp dichotomy between...", "...talks of legislative findings of discrimination...", "...does not clearly indicate whether..." and so on. Powell's position is recounted in language that fails to convey what he (Powell) actually said in his *Bakke* opinion.

Item: Greenawalt writes [p. 71] "Justice Powell... [insists] that generally the law must treat blacks and whites equally and that, from this perspective, most arguments for reverse discrimination advanced by the university were insufficient." That report is correct – but only because Powell finds *all* arguments for reverse discrimination insufficient, and finds reverse discrimination itself to be totally unacceptable under the Constitution. It would be hard to get that point from Greenawalt's account.

Item: Greenawalt writes "He [Powell] thus concluded that universities can take race into account in deciding whom to admit." [p. 71] That too is correct but race may be taken into account *only* for the purpose of achieving the intellectual diversity that Powell finds central to university study, and *not* for other reasons. Powell forcefully rejects racial preference to give compensation, or to advance social goals, etc. as flatly unconstitutional. Taking into account the race or other features of applicants to insure diversity in the student body is not "reverse discrimination". An impartial account of the outcome in the *Bakke* case must emphasize the very narrow limits within which that decision permits a university to use race in admissions.

Item: Greenawalt writes "But since this justification [achieving diversity in the entering class] would not by itself support the allocation of a fixed number of places for members of minority groups, he [Powell] declared the Davis program to be illegal." [p. 71] This report is also technically correct but its wording makes it appear that Powell's rejection is based upon the fixity of the numbers, which it certainly is not. Powell states explicitly that the distinction between fixed "quotas" and "goals" is of no consequence here; it is preference on the basis of race, whatever the structure of the program, that he finds constitutionally unacceptable.

Item: Greenawalt registers a series of objections to Powell's opinion in *Bakke* – all of which may be countered in ways he does not mention. One illustration will exhibit the spirit of the attack. Greenawalt points out [p. 82] that *if* Justice Powell's principles were followed conscientiously (race being used, if at all, only for the purpose of achieving greater student diversity), some of the preferences given by some universities to some minority group members could not be honestly justified, and a thorough reexamination of all such racially preferential policies would be called for. He is dead right in this. Greenawalt then continues:

It is unlikely that many universities would undertake this reexamination; and the result would be that programs entered into mostly for one set of reasons, and tailored to those reasons, would be continued intact although now legally supportable only for another, originally subsidiary, reason, to which those programs are not well tailored. This is a prospect of hypocrisy that is disturbing for institutions of higher education. [p. 82]

The possible hypocrisy of some universities is thus presented as an objection to the principles those hypocrites unlawfully evade. There is indeed much hypocrisy in professional school admissions, where the force of the strict limitations upon the permissible uses of race, laid down in *Bakke*, is (or ought to be) fully understood. Such hypocrisy ought to end. But the possible misconduct of hypocrites determined to achieve their objectives is no good reason to abandon the principles of equal treatment they knowingly fail to respect.

Item: When Greenawalt first mentions the *Bakke* case, in the opening paragraph of his culminating chapter, he gives a summary report of its opinions. He writes there: "...but in *University of California Regents v. Bakke*, four justices said that preferences were not legally appropriate, four said that they were appropriate even if a fixed number of places was set aside for minority group members, and one justice said that only more flexible preferences were appropriate." [p. 50] One who had not yet read the *Bakke* decision would be very likely to infer from this report, incorrectly, that the four who found the program "inappropriate" did so because the number of places set aside was "fixed". They did not. And one would surely infer from this wording that the single justice referred to (Powell, of course) was quite prepared to accept racially preferential programs if only they were "more flexible" than that used at the University of California. He was not. The technical accuracy of Greenawalt's language here is arguable but there is little doubt that it would lead to some erroneous conclusions by even very careful readers.

Final item: Within the culminating chapter there is a subsection on moral arguments based on utility. At this point the author's own position has not yet been expressly revealed. The subsection begins with the statement that there are strong utilitarian arguments in favor of reverse discrimination and against it; one is led to expect an evenhanded treatment of the two sides. One after another the utilitarian arguments in favor of reverse discrimination are explained with sympathetic vigor. But when the author turns to the arguments against reverse discrimination, the tone changes markedly. The terms used by the critic of racial preference are put in quotation marks whose only function is to cast doubts upon those arguments (e.g., "qualified applicant", and "drag down" the level of instruction, etc.). Much of Greenawalt's text in these paragraphs is in fact devoted not to the presentation of the utilitarian arguments against reverse discrimination, but to the critique of those arguments [pp. 66, 67] and in one case even rejection, based on an "assumption of most educators in professional schools." [p. 68] The third argument against reverse discrimination, (only

three are given) is presented in six lines — followed by Greenawalt's remark that the point is sensible, but does not much apply to the defense of racial preference he would support. In the presentation of the arguments in favor of reverse discrimination no such rejoinders are inserted.

The imbalance of Greenawalt's account is revealed on careful inspection. That imbalance would be difficult for many student readers to detect, and (where noting it would require reference to portions of judicial opinions not included in the compiled materials) very difficult to defend against.

I have two final comments. First, it is regrettable that Greenawalt's essay (its ninth chapter, chiefly) has the features noted above. Yet the book as a whole has merits that outweigh these faults. It is clear and well written. It brings intellectual order into territory that has known little of that. These virtues, combined with the collection of source materials earlier described, make the book a useful teaching tool. That is what Kent Greenawalt wanted it to be. In the largest sense, therefore, he did succeed.

Finally, the Supreme Court decision in *Memphis Fire Department v. Stotts*, (1984), came down after this book was published. Had it come earlier, it would have been included, of course, and might have had substantial impact upon Greenawalt's exposition. In this important case the Supreme Court declares, with ineluctable clarity, the unconstitutionality of the position Greenawalt defends. The majority opinion in this case includes the following passage, quoted from the Court's own decision in an earlier employment case:

If individual members of a plaintiff class demonstrate that they have been actual victims of the discriminatory practice, they may be awarded competitive seniority and given their rightful place in the seniority roster ... however [it is] also ... clear that mere membership in the disadvantaged class is insufficient to warrant a seniority award; each individual must prove that the discriminatory practice had an impact on him.

Then, referring to Section 706g of Title VII of the Civil Rights Act of 1964, which forbids discrimination in employment, the Court went on to say that the indisputable policy of that statute

is “to provide make-whole relief only to those who have been actual victims of illegal discrimination...”

Kent Greenawalt has written a provocative book. But the reverse discrimination he defends is, happily, not now permitted under the law of our land.

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