

## Comment on Harry J. Holzer: The economic impacts of affirmative action in the US

Bertil Holmlund\*

The bottom line of Harry Holzer's overview is that affirmative action may work, sometimes and under some conditions, so as to achieve its goals. The programs tend to shift employment and university admissions towards minorities and females. What is perhaps most interesting is that efficiency losses, to the extent that they exist, seem to be small. In fact, there is clear evidence of some positive externalities from affirmative action in some sectors.

I find Holzer's survey most useful and it should give pause to exaggerated claims, also voiced in Sweden, that affirmative action is both unfair and costly. I will spend the rest of these comments on discussing affirmative action in Sweden against the background of some recent Swedish court cases. I will also offer a few more general remarks regarding affirmative action policies.

### 1. Affirmative action in Sweden

There are interesting differences and similarities between Sweden and the US concerning affirmative action policies. In the US, affirmative action seems to be largely driven not by federal legislation but rather by presidential executive orders and court rulings. In Sweden, the role of courts has up to recent years been marginal. We have, however, a number of institutions in place which are introduced by parliamentary legislation. This legislation is mainly designed so as to prevent discrimination and foster *equality of opportunity*. There are, however, formulations in some laws that might be interpreted as allowing affirmative action, in the sense of emphasizing *equality of outcomes* and not only equality of opportunities.

Racial quotas are unheard of in Sweden, and we have no counterpart to the US institutions that audit hiring practices among employers engaged as government contractors. However, the Swedish legislation on gender equality involves some auditing of workplace gender composition and other aspects of gender equality.

\* Bertil Holmlund is Professor at the Department of Economics, Uppsala University.

Student admissions to higher education have almost always been color blind and gender blind in Sweden. Recent exceptions from that rule have been contested in court and been declared illegal; more on that later. However, criteria based on meritocracy have not been exclusively used in the admissions. Credit has been given for work experience; being a successful athlete has been helpful in some places; and who knows what really matters when admissions to some selective educations are partly based on interviews?

### 1.1. The Tham chairs

The past ten years or so have seen a number of controversial efforts to affect recruitments and student admissions in Swedish universities. The so-called Tham chairs in the mid-1990's are probably the earliest example. The government's goal was to increase the number of female professors at Swedish universities. To that end, the minister of education, Carl Tham, introduced a number of university chairs reserved for the under-represented sex. It was stated that a candidate belonging to the under-represented sex with sufficient qualifications should be granted preference over a candidate of the opposite sex who would otherwise have been chosen. However, such "positive discrimination" should not be applied where the difference between the candidates' qualifications was so great that such application would give rise to a breach of the requirement of objectivity in the making of appointments.

The Tham chairs were contested in the European Court of Justice (ECJ). In 2000, the court ruled that preferential hiring of under-represented sex is not allowed. ECJ ruled:

EC preclude national legislation under which a candidate for a public post who belongs to the under-represented sex and possesses sufficient qualifications for that post must be chosen in preference to a candidate of the opposite sex who would otherwise have been appointed.

But the court also stated:

Thus, it may be decided that seniority, age and the date of last promotion are to be taken into account only in so far as they are of importance for the suitability, qualifications and professional capability of candidates. Similarly, it may be prescribed that the family status or income of the partner is immaterial and that part-time work, leave and delays in completing training as a result of looking after children or dependants in need of care must not have a negative effect. The clear aim of such criteria is to achieve substantive, rather than formal, equality by reducing *de facto* inequalities which may arise in society and ... to prevent or

compensate for disadvantages in the professional career of persons belonging to the under-represented sex.

My reading of these statements is that although “direct” affirmative action of the Tham chair variety is illegal, there may be “indirect” ways to achieve the desired goal to improve opportunities for the under-represented sex. The option of prescribing that “leave and delays in completing training as a result of looking after children or dependants in need of care must not have a negative effect” may seem innocuous but may well make a substantial difference if implemented in practice in Swedish university recruitments. When recruitment committees evaluate the applicants’ performance, it is the rule rather than the exception that productivity measures are crude (output divided by years since Ph.D., say). The idea of refining the productivity measure by looking at effective labor input, and thus deducting time for parental leave, is probably rarely practiced. If one follows this ECJ-sanctioned route towards more accurate productivity measurements, women would almost certainly benefit.

### **1.2. Student admission**

Affirmative action regarding student admission has been practiced in some cases. In 2003, Uppsala University introduced a policy of preferential treatment of applicants to law school who had a foreign background (two foreign-born parents). In 2005, the universities of Örebro and Karlstad practiced preferential admission of males in educations with a substantial overrepresentation of females. However, the Swedish Supreme Court ruled in December 2006 that the Uppsala policy was illegal according to Swedish antidiscrimination legislation. Based on this decision, district courts have subsequently declared the policies of Örebro and Karlstad to be illegal as well.

All in all, it thus seems as if affirmative action in Sweden is now severely restricted by current antidiscrimination legislation and by the decisions taken by Swedish courts and the European Court of Justice. This is surely greeted with enthusiasm in some circles. But is there really a strong case against affirmative action? I do not think so, although the implementation of affirmative action in practice is a difficult and controversial enterprise.

## 2. Varieties of affirmative action

Affirmative action appears in many guises. We can distinguish between at least three categories, from “mild” to “tough” measures. A first category involves information dissemination targeted at under-represented groups so as to encourage their applications (so-called outreach efforts). A second possibility is to use affirmative action as a tie-breaker when the formal qualifications among several applicants are identical or close to identical. The third category is the most controversial and entails the use of quotas and preferential hiring (or admission) of some groups.

The first two categories may seem uncontroversial relative to the third one. But the borderlines between the categories are fuzzy. For example, using affirmative action as a tie-breaker violates equality of opportunity since it loads the dice in favor of one group and against others. And the effective enforcement of anti-discrimination legislation may, in practice, have quota-like effects under some plausible informational assumptions. As emphasized by Fryer (2004) and Fryer and Loury (2005), the possibility that anti-discrimination agents are less well informed than potentially discriminating employers (or education institutions) may influence hiring (or admission) policies in ways that are observationally equivalent to quotas. The argument runs as follows. The government’s objective is to enforce anti-discrimination by auditing hiring practices among employers. Employers differ in their inclination to discriminate and in the fraction of qualified minorities that apply for jobs in their firms. Assume further that the auditor can observe the rate at which minorities are hired in the various firms, but not the employers’ inclination to discriminate or the characteristics of the applicants. Observed low hiring rates for minorities may reflect either outright discrimination or lack of applications from the minorities. Since the auditor will be unable to distinguish between the two cases, some non-discriminatory employers will sometimes be punished (and some discriminating employers will sometimes go unpunished). The non-discriminatory employers will respond to the risk of being punished by changing their hiring practices in the direction of accepting more minorities. In fact, they will behave as if they faced an “implicit quota” by sticking to self-imposed hiring targets. Such an outcome comes close to an explicit quota with explicit hiring targets for minorities.

There is thus little reason to draw a sharp distinction between quotas and less explicit forms of affirmative action. In my view, affirmative action in the form of hiring quotas, or admission quotas in education institutions, should not be ruled out as a matter of principle. Such measures may well be ruled out for various practical reasons, but this should be determined on a case-by-case basis.

“Diversity” is a widely appreciated goal<sup>1</sup> but its practical implementation requires a stand on the dimensions of diversity. Affirmative action on basis of such an elusive concept as “race” is unthinkable in Sweden. But there are other dimensions that might be considered, such as gender, ethnicity or social class. Among these dimensions, gender is probably the least problematic whereas affirmative action based on ethnicity or social class raises controversial issues regarding the appropriate demarcation lines. However, when diversity is a legitimate social goal, the use of affirmative action measures, including hiring or admission quotas, should not be ruled out at the outset. Rigid and universal representation rules should certainly be avoided. But if we fall into anti-discrimination absolutism, we also exclude some potentially useful instruments to achieve increased diversity in occupations where the social value of diversity is beyond reasonable doubt.

## References

- Fryer, R. (2004), Implicit quotas, manuscript, Department of Economics, Harvard University.
- Fryer, R. and Loury, G. (2005), Affirmative action and its mythology, *Journal of Economic Perspectives* 19, 147-162.

<sup>1</sup> President Bush is not known as a great friend of affirmative action policies but he strongly endorses diversity: “I think that it’s very important for all institutions to strive for diversity, and I believe that there are ways to do so”. (Cited in Fryer and Loury, 2005.)

