people of color. The developing world similarly did not give high priority to social rights for the poor, or at least the American poor, and therefore Soviet propaganda on poverty in America did not threaten the State Department or White House as did propaganda on American racism. While there were efforts in the Roosevelt administration to define aid to the poor or the unemployed as part of national-security policy, no subsequent administration sustained those efforts.

In part, the case regarding social rights highlights the contrast between the politics of social provision and the early politics of regulation: advocates for the poor met with stronger resistance than did those advocating the more successful cases. This brought into play an array of political institutions that made it difficult to pass comprehensive social-rights legislation. Equally important was that arguments about preventing Communist expansion did not have the same force—these legions of powerful critics could plausibly say that social rights *were* Communism. Establishing guaranteed jobs, income, and health care to win the war against Communism would be a Pyrrhic victory—an America with such rights guarantees would not really be America at all.

For the most part, the cases of national-security meanings or categorizations of black civil rights and immigration reform exemplify the development of "difference-blind" minority rights and liberal citizenship. The United States moved in step with the world in the development and institutionalization of difference-blindness and equality of ethnic and racial groups. As America prohibited discrimination in public accommodations, employment, schooling, housing, and immigration in the 1960s, its guiding principles were as much the world's as its own. In the same period of American reform, the UN made similar declarations, and over a period of years European nations relinquished control of their colonies. American reform was thus linked to world reform in an interactive process. Minority rights took on national-security meanings in light of the global culture of world rights that America did much to create.

Because these reforms were classically liberal, however, the new laws did not identify any particular minority groups. The initial civil rights gains of blacks, for example, in fact protected *any* and *all* Americans. These were simple nondiscrimination provisions. The following chapters explore the question of how America went beyond the general reach of these reforms to specifically identify minority groups and recognize their rights in special policies and programs. The key dynamic of this development was hinted at above in the late stages of immigration reform: the initial gains of the black civil rights movement created opportunity for advocates of other groups.

4

"WE WERE ADVANCING THE REALLY REVOLUTIONARY VIEW OF DISCRIMINATION": DESIGNATING OFFICIAL MINORITIES FOR AFFIRMATIVE ACTION IN EMPLOYMENT

Who are America's minorities, and how were they decided upon? The designation of official minorities was a consequence of affirmative action, which makes it the most important policy in the minority rights revolution. In the regulations of affirmative action America formally moved away from "difference-blind," classically liberal policy toward an approach that specifically divided America into the majority and the minorities, the privileged and the oppressed.

Affirmative action developed in three main domains in the United States—employment, business ownership, and university admissions. Since African Americans were at the vanguard of the minority rights revolution, both because of their own mobilization and the national-security implications of their subjugation, policies to ensure equality in all three domains were first developed to accommodate blacks, but all quickly expanded to include Latinos, Asian Americans, American Indians, and women of all backgrounds. It happened first in employment and the primary goal of this chapter is to explain how and why it happened there. I give a brief overview of the origins of employment affirmative action for African Americans. I then focus on how some other groups became America's official minorities, implicitly equal and implicitly sharing similar backgrounds and disadvantages.[1]

In the period of the minority rights revolution, there were two efforts at affirmative action in employment. First, there was the vague but expansive pressure from the Equal Employment Opportunity Commission (EEOC), created by the Civil Rights Act of 1964. Second, there were the regulations for government contractors administered by the Office of Federal Contract Compliance (OFCC) of the Labor Department as well as the Department of Health, Education and Welfare (HEW), the enforcement agency for educational institutions. Both expanded to include the same four ethnoracial blocs plus women.

A significant theme in this chapter, as in the chapters that follow, is that the policies that developed for groups other than African Americans are policy legacies of the effort to protect the rights of African Americans. In every case, the prior creation of rights for blacks greatly eased and accelerated policy development for other groups. Without the efforts of the black civil rights movement and the policy responses to that movement, affirmative action for other groups would not exist.[2]

The chapter describes two main factors to explain affirmative action's expansion. First, the expansion was made possible because government officials and bureaucrats as far back as the late 1940s saw some groups as analogous to blacks; in the language of 1965, "Spanish Americans," "Orientals," and "American Indians" had meanings that were similar to "Negroes." The Eisenhower administration, with nudging from some minority advocates in Congress and in advocacy groups, established the first survey form implicitly declaring these groups to be America's minorities. While the forms were not part of any major program at that time, they mattered because the 1960s civil-rights agencies copied them and institutionalized them as part of affirmative-action employment policy. The EEOC would collect and analyze data on discrimination against these official minorities. This form's collection of data was absolutely necessary for affirmative action to develop because it revealed the varying representation of minorities throughout the nation's workforce. The form made some inequalities more real and others invisible. It reinforced whatever notion already existed that Latinos, Asian Americans, and American Indians were indeed minorities—like blacks—and sent a different message regarding groups that were not deemed official minorities. For these reasons I explore the form's inclusion of groups beyond blacks in some detail.[3]

The second major factor allowing rapid expansion of affirmative action is that after the EEOC had established it as an effective and efficient means to enforce black rights, affirmative action became part of an administrators' policy repertoire to attend to the demands of other groups—regardless of the content of those group advocates' demands. Affirmative action was a cheap, easy, and available way to appeal to and appease the EEOC-designated official minority lobbying groups, whatever their grievances. It became a part of a policy and public relations repertoire to preempt or assuage quickly developing minority constituencies and to quiet criticism.

If the analogy with blacks allowed bureaucrats to expand affirmative action, it did not mean that it was equally easy for all groups to have affirmative action enforced. The EEOC tended to neglect Asian Americans and American Indians, but these groups did not make an issue of it. The EEOC neglected Latinos at first, but after a few nudges, Latinos gained the EEOC's

attention. Women had the most difficulty in getting the black analogy to work for them. Advocates for women faced the barrier of simply not being taken seriously—they were ridiculed and their "alleged" inequality was ridiculed. Beyond this barrier, there was another problem. Many government officials rightly or wrongly believed that women were simply different from men and from other minorities in the sort of jobs they would seek, whereas black, Latino, Asian American, American Indian, and Euro-American men would all share identical career preferences and aspirations. Women's advocates, both within and without the government, had to fight hard and persistently push the black analogy in their efforts to be treated seriously by the EEOC. They did not have to fight long, however, before the commission began to include women in affirmative-action policies. In the OFCC's contract compliance program in the Labor Department, where the nonblack minorities were immediately included in affirmative action, women's advocates also had to lobby in the face of strong resistance to be included in the regulations governing affirmative action. In a few years, they were successful.

This chapter is divided into four main sections. It first defines affirmative action and then briefly describes the origins of employment affirmative action for blacks. Next, it examines why and how the EEOC expanded "minority" to include Latinos, Asian Americans, American Indians, and women, showing that these groups were not significant players in the struggle for Title VII or the Civil Rights Act as a whole, and also presenting the origins of the EEOC's EEO-1 form and the reasons it included groups other than blacks. The third section shows how some of these nonblack groups lobbied to have their government-granted official minority status be respected with better treatment by the EEOC, and how they won affirmative action without making a priority of this policy. The last section examines affirmative action in the government contract compliance program, showing how the OFCC included the official minorities from the beginning, and also showing the greater struggles of women to be categorized as a minority like blacks and win a place in affirmative action regulations.

African Americans and Affirmative Action's Beginnings

A defining characteristic of affirmative-action policies is that they bestow a positive meaning on some noneconomic group difference. This distinguishes them from both welfare programs for the poor of any race, gender, ethnicity, and so forth, and also from policies that bestow negative meanings to racial differences in order to segregate, deny opportunity, or stigmatize some group. Another hallmark of affirmative action is the attempt to achieve proportional representations of certain groups in economic, educational, or po-

litical endeavors. In this sense, affirmative action first developed in two government organizations: the EEOC and the OFCC.[4]

Title VII of the Civil Rights Act of 1964 created the EEOC.[5] Section 703(a) of Title VII states that "it shall be an unlawful employment practice for an employer to fail or refuse to hire or to discharge any individual, or otherwise discriminate against any individual" regarding terms of employment "because of such individual's race, color, religion, sex, or national origin." It was also unlawful for an employer "to limit, segregate, or classify his employees in any way which would deprive any individual of employment opportunities or otherwise adversely affect his status as an employee, because of such individual's race, color, religion, sex, or national origin." The title covered employers with at least one hundred employees (later reduced to fifteen), employment agencies, and unions. Title VII assigned to the EEOC the job of investigating complaints of discrimination, but allowed it only the power to investigate and attempt to conciliate if it found discrimination. Failing this, the EEOC could refer the case to the attorney general.

Congress created a weak EEOC to make Title VII palatable enough for passage. In 1964, advocates for African American civil rights wanted an agency with cease-and-desist authority, the legal power to enforce its own rulings. They continued to press for this as the EEOC stumbled along in its first few years. Another problem for the EEOC was the legally mandated difference-blind model of justice. Given the small staff and budget, the operating procedure required time-consuming and cumbersome investigations into the intent of an accused firm. Since people are routinely denied jobs or promotions due to inadequate qualifications, lack of fit, or a lack of openings, rooting out denials based on discrimination was (and is) extremely difficult. To make matters more challenging for the EEOC, the agency was immediately overwhelmed with complaints of discrimination. A backlog of unexamined cases quickly developed that soon reached more than ten thousand, and the average time of investigation far exceeded the legally defined limit of two months, sometimes extending to two years. Civil-rights leaders demanded something be done, though they did not offer any policy alternatives other than demanding for cease-and-desist authority for the EEOC. Meanwhile, African American unrest, often on a massive scale, erupted in cities across the nation (see Chapter 2). All of this added to pressure on the EEOC and OFCC.

The most far-reaching developments first occurred in the EEOC, where officials, behaving like typical American bureaucrats, decided to rationalize the enforcement process, first by developing quantitative indicators of the discrimination problem of blacks. The goal was to attack the discrimination problem in the most effective and efficient strategy possible. To this end, the EEOC developed the EEO-1 form, a way for employers to send information regarding the racial makeup of their workforces so the government could focus attention on the most serious discriminators: employers who hired almost no blacks. This also would free the EEOC from having to wait for complaints to come from individuals (more on the EEO-1 form below).

This process occurred in the years 1965–66. The EEOC used this data for an important development for the establishment of affirmative action, the 1966 agreement with the Newport News Shipbuilding and Drydock Company, which the EEOC believed discriminated against blacks. The agreement featured the first remedy for discrimination that sought a more proportional representation of blacks.[6] By 1967, the EEOC had collected and analyzed information from thousands of employers. In January of 1967, it expanded the affirmative action approach, meeting with representatives from the textile industry in North and South Carolina. The region had very large numbers of blacks and a strong textile-manufacturing base, but almost no black textile workers. The EEOC confronted industry representatives with statistics showing the low underutilization of blacks in the workforce, and demanded an explanation. The commission then used this "forum" technique with other industries and regions. Notice was served: employers—if they wanted to avoid such unpleasant encounters with the federal government—should hire percentages of qualified blacks that came near to their proportions in the population.

Through a similar process of administrative pragmatism, the Labor Department's OFCC also came to affirmative action for African Americans. Beginning first with a trial project for government construction contracts in St. Louis in 1966 (the St. Louis Plan), and continuing through further refinements in the San Francisco Bay Area Plan and the Cleveland Plan, the administrators in the OFCC finally developed a winning civil-rights enforcement formula for a set of Philadelphia construction contracts—the Philadelphia Plan. Its distinguishing feature was the "goals-and-timetables requirement": a contractor had to promise to try to hire certain predetermined percentages of minorities at specified occupations in specified time periods. After a few legal snags in 1968, Nixon's Labor Department resurrected in 1969 what they then called the Revised Philadelphia Plan, complete with the goals and timetables requirement. From these origins in plans to provide equal opportunity for African Americans in the construction business, the OFCC then expanded this affirmative-action model from construction to all contracts of at least $50,000 in its terrifically obscure but important Order No. 4.

How Did the EEOC Decide to Recognize Some Groups as Minorities?

Though the first efforts at affirmative action focused on African Americans, the EEOC would come to add Latinos, American Indians, women of all ethnicities and races (*qua* women), and to a lesser extent Asian Americans to their enforcement efforts. This minority selection process was not based on mass mobilization but more on a simple understanding of which groups were analogous to blacks.

"The Bill Has a Simple Purpose": Title VII and Discrimination against African Americans

One simple hypothesis is that the EEOC chose as the official minorities the groups that lobbied the most for the Civil Rights Act, and were thus the original targets of the law. In this view, grassroots mobilization established in the early 1960s the identities of America's minorities.

The problem is that all available evidence indicates that Congress and President Lyndon Johnson intended Title VII and the entire Civil Rights Act of 1964 for black Americans. From the 1940s through the middle 1960s, advocates for groups other than blacks were a minor part of the civil-rights struggle. Discrimination on the bases of national origin and religion were part of that law only because of early elite support and generally their being taken for granted in civil rights legislative proposals. And the law came to prohibit discrimination on the basis of sex only through a bizarre sequence that underscored the unique meaning of women even while women's advocates took advantage of the opportunities afforded by law designed for blacks.

Nonblack groups and civil-rights advocacy

Officially classified as white for the purposes of naturalization law, Mexican Americans, the largest Latino group, nevertheless sometimes experienced economic discrimination, segregation in schools and limitations on political rights.[7] This varied considerably in kind and severity within and between the southwestern states where they were concentrated.[8] Latinos were a very minor part of the pre-1964 struggle for equal employment opportunity, but they had some high-profile support (especially in Congress) that likely helped reinforce the importance of fighting national-origin discrimination and the notion that Latinos, or at least Mexican Americans, were a minority in federal politics. Only on rare occasions did Mexican American leaders testify to the wartime Fair Employment Practices Committee (FEPC) or, after urging from Truman's President's Committee on Civil Rights, in hearings for a permanent FEPC after World War II.[9] Some Mexican advocacy groups did

emerge before the 1960s. For example, The League of United Latin American Citizens (LULAC) formed in 1929 and the GI Forum, an organization of Mexican American veterans, formed in March of 1948. They fought for classical liberal goals like the black civil-rights groups.[10] Both groups, however, were small and concentrated on local issues.

There was hardly mass unrest among Latinos regarding the employment discrimination they suffered. Mexican American citizens were not mobilizing to use the legal protections afforded by the FEPC, though this may have been in part due to geographical concentration of Mexican Americans in rural states.[11] Mexican American senator Dennis Chavez (D-NM) was nevertheless a strong defender of the program.[12] He and a Roosevelt administration official tried to organize a Latino pro-FEPC lobby, but found among that population little knowledge of the FEPC or enthusiasm for the idea of forming a lobbying group. Chavez would later complain that he received no letters at all from Mexican American constituents on the subject.[13] Without backing, Chavez still worked to ensure that Latinos were a part of the national discrimination picture in the 1940s.

Chavez had significant help in establishing Mexican Americans as a minority group from Truman's President's Committee on Civil Rights (PCCR), described in Chapter 2. While the final report of the committee, *To Secure These Rights*, dealt mostly with black rights, it also briefly discussed other groups that the PCCR considered "distinctive." The PCCR recognized that rights violations occurred in all regions of the country and to "practically every group." It downplayed differences in treatment between blacks and other minority groups, defining "minority" as "a group which is treated or which regards itself as a people apart," based on physical or cultural characteristics. Though there were white ethnic groups from eastern and southern Europe who had experienced severe discrimination in the past and during World War II (see Chapter 9), except for a brief discussion of Jews, *To Secure These Rights* ignored these groups. It gave most attention to blacks, Mexican, Chinese and Japanese Americans, and American Indians, and officially sanctioned a norm for the later development of affirmative action: Latinos, Asians, and American Indians were analogous to blacks.

The PCCR distinguished blacks from other groups explicitly only in terms of size. While being ambiguous, the report also gave official sanction to the notion that Mexican Americans were a distinct race. It explained that "groups whose color makes them more easily identified are set apart from the 'dominant majority' much more than are the Caucasian minorities" (there was no discussion of the fact that many Latinos are white Caucasians). "Our other racial minorities are all much smaller than the thirteen million Negroes," the report continued. "But these groups, identified by physical ap-

pearance, unique culture traits, or both, are often geographically concentrated. As a result, irrespective of their small number in the population, theirs are the predominant civil rights problems in particular localities" and were in "particular danger."[14] By separating "unique cultural traits" from "physical appearance," the committee seemed to suggest that Mexican Americans were a white national-origin group. By then classifying them as a racial minority, it simultaneously undermined this notion. There were occasional mentions of discrimination against Jews (and two mentions of Jehovah's Witnesses), and one mention of a medical school admissions officer who testified that he was prejudiced against Irish Catholics.[15] But otherwise a line was drawn that separated the report's minorities "of physical appearance or culture or both" from everyone else.[16]

Implicitly, the PCCR indicated that blacks had the worst or most important problems by devoting the vast majority of space to them. But given the lack of mobilization and lobbying by Mexicans, Indians, and Asians, it is notable these groups received any attention at all. *To Secure These Rights* described denial of jury duty to Mexican Americans and American Indians, the wartime evacuation and loss of property suffered by the Japanese, citizenship limitations on Chinese and Japanese, limitations on the voting of Indians, school segregation of Mexican American and Indian children, restrictive covenants against a variety of groups, and statistics indicating poor health care for Chinese, Indian, Japanese, and Mexican Americans.[17]

To Secure These Rights helped establish the need for federal civil-rights laws, but it did not provoke widespread activity from nonblack pressure groups on employment civil rights. At the level of the federal government, there was little visible politics from nonblack minorities in the 1950s, but Mexican Americans, as voters and as organized pressure groups, made their presence known in the 1960 election. In a close election with Richard Nixon, John F. Kennedy and his running mate, Texas senator Lyndon Johnson, made a targeted effort to win the Mexican American vote. Mexican American members of Congress and Kennedy campaign officials created the "Viva Kennedy" program to aid the campaign. Senator Chavez and Representative Henry González (D-TX) actively shaped "Viva Kennedy." As Juan Gómez-Quiñones has written, "Mexican American voters seemingly responded to a candidate who appeared to take them seriously, was charismatic, addressed issues in Latin America, shared with most of them a Roman Catholic religious heritage, and had a wife who spoke to them in Spanish."[18] Kennedy won 85 percent of the Mexican American vote.[19]

The political activity during the 1960 election did not mean that Mexican or Latino groups were fighting for their civil rights alongside African Americans. In their massive study of Mexican Americans undertaken in the mid-

dle 1960s, Leo Grebler and his colleagues found group leaders quite unconvinced of the black analogy. To many leaders interviewed in 1964, the Grebler team's labeling of them as a "national minority" "seemed threatening," since it seemed "to classify all Mexican Americans with the least acculturated people in the group," "to slight traditional Mexican culture," and "implied unsettling comparisons with Negroes and their new militant tactics." Grebler wrote, "Indeed, merely calling Mexican Americans 'a minority,' and implying that the population is the victim of prejudice and discrimination, has caused irritation among many who prefer to believe themselves indistinguishable white Americans."[20]

Not surprisingly, the sociologist Paul Burstein found that only 9 of 433 witnesses at congressional hearings for employment civil rights from 1940 to 1972 represented national-origin groups (see Table 4.1).[21] Still, Title VII and all parts of the Civil Rights Act of 1964 prohibited discrimination on the basis of national origin. It had been prohibited in Franklin Roosevelt's executive order creating the wartime FEPC, and nearly all FEPC bills sponsored in Congress continued to prohibit national-origin, race, and religious discrimi-

Table 4.1 Pro- and anti-rights interest group activity, 1940–1972

Type of group or organization	Number of witnesses testifying before Congress on EEO	
	Pro	Anti
Black	69	0
Other racial	2	0
Jewish	37	0
Catholic	7	0
Nationality	9	0
Women	6	1
Protestant or nondenominational	27	0
Employers	11	11
Employment agency	1	0
Labor	54	2
Public interest	33	1
EEO	14	0
Federal government	103	41
Other government	48	8
Other covered organizations	2	0
Other	10	2
Total	433	66

Source: Paul Burstein, *Discrimination, Jobs and Politics* (Chicago: University of Chicago Press, 1998 [1985]), p. 106. © 1985 by the University of Chicago Press.

nation from 1941 through 1964. Executive orders designed to create equal employment opportunity among government contractors signed by Presidents Truman, Eisenhower, and Kennedy all routinely included national origin (plus race and religion) as forbidden grounds of discrimination. Possibly from the early efforts of Chavez and the good fortune of having national-origin discrimination included in the first executive order, it was a taken-for-granted part of civil rights, a part of the repertoire of civil rights policy. It is unclear if Latinos were significant intended beneficiaries as their inclusion was almost never discussed. Early state-level antidiscrimination laws, such as New York's 1945 State Law against Discrimination, also continued the familiar protections, and other states and cities followed suit.[22] Therefore, a meager showing at hearings or in lobbying groups simply did not matter. Antidiscrimination laws prohibited discrimination on the basis of national origin as standard operating procedure.

If Latinos were low-profile players in the struggle for civil rights, Asians and American Indians were even less visible. American Indian and Asian American representatives were virtually absent: only two witnesses for race groups other than African Americans appeared (see Table 4.1). Much more active in the employment civil-rights struggle, but left out of affirmative action, were religious groups. Representatives of Jewish organizations were major players, arguing for nondiscrimination as a moral principle and also stressing their concern, supported with statistics, for discrimination against Jews.[23] According to Paul Burstein's research, from the 1940s to the early 1970s, 37 of 433 witnesses in hearings on discrimination in employment were representatives of Jewish organizations, while seven witnesses representing Catholic groups appeared. Twenty-seven Protestant or nondemominational witnesses also appeared, primarily arguing that discrimination was morally wrong.

In summary, Latinos, Asian Americans, and American Indians did not become involved in affirmative action because they "earned" a place through grassroots mobilization for the Civil Rights Act. Instead, concern for discrimination against them had elite support (in the case of Mexican Americans) and a taken-for-grantedness. If mobilization for Title VII was the source of inclusion in affirmative action, then Jews and Catholics would have been included before any of the groups other than African Americans.

Discrimination against women

Women's groups also were absent in lobbying for Title VII. Discrimination against women was actually gathering more attention by 1964 than discrimination against Latinos, Asians, or American Indians. But sex discrimination was a concern running on a separate track. One factor keeping women's rights separate was the conflict over the so-called protective legislation, which had splintered the women's lobby for decades. Many states had passed laws mostly during the Progressive Era that limited job possibilities and maximum hours women could work. The public justifications were that women were weaker than men and that their health should be maintained for their important roles as mothers.[24]

Many women supported these laws because they helped prevent exploitation of working-class women. Others opposed them on the principle that the law should treat women and men equally, and because they believed many laws were passed to eliminate women from job competition. This conflict was most obvious in the struggle over the Equal Rights Amendment (ERA), first proposed in 1923, which would have struck down all laws denying rights on the basis of sex.

These factions, and the lack of national-security meanings of women's rights (see chapter 3), kept women's equality off the political agenda. However, after President Kennedy broke with the tradition of courting women's support with job appointments (he preferred a search for the "best and the brightest" as part of his "New Frontier" campaign theme), he found himself under significant pressure from women's advocates in the Democratic Party (including the vice president, Lyndon B. Johnson) and in the press to do something for women.[25] Kennedy responded by creating the President's Commission on the Status of Women (PCSW). The PCSW's widely read and publicized report, *American Women,* came out just six months after Betty Friedan's best-selling protofeminist book, *The Feminine Mystique.* It took a step toward unifying women's leaders by delicately avoiding the conflict over the ERA and protective legislation even while suggesting a progressive agenda of equal employment opportunity, equal pay for equal work, and other causes.[26] The commission's report also led to an executive order for women's equality in government jobs, and helped in passage of the Equal Pay Act in 1963.[27] The states immediately formed their own commissions. By 1967, *all* states had a women's status commission.[28] But the PCSW mostly denied the categorization of sex with race discrimination, explicitly stating that "discrimination based on sex . . . involves problems sufficiently different from discrimination based on the other factors listed to make separate treatment preferable." For example, *American Women* demonstrated the complexity of sex discrimination by asking whether it was discriminatory for a firm to give more training resources to men on the assumption that "women will not be in the workforce continually."[29] And though its discussion had hints of gender consciousness, its recommendations did not directly lead to the development of affirmative action.

Shortly after *American Women* appeared, Kennedy created the Citizen's

Advisory Council on the Status of Women. He also created an Interdepartmental Committee on the Status of Women, made up of federal officials. Both would serve as institutionalized sources of advocacy for women's opportunities. Before any further action took place, however, Kennedy was assassinated. His successor, Lyndon Johnson, did not pursue the PCSW's agenda or any women's rights legislation. Instead, he chose the traditional strategy of seeking the support of women's advocates in early 1964 through government appointments, promising to appoint fifty women in thirty days.[30]

Women and Title VII: "Riding the coattails"

For women to gain employment civil rights in 1964, they needed extraordinary circumstances and new political opportunity. They did not need demonstrations and protest, and they needed almost no lobbying. The story of the 1964 addition of sex discrimination to Title VII is well known, but I tell it here to emphasize a less-acknowledged part of the story. The rights of women had a different meaning than Latino rights or rights for other groups. Women's rights, unlike those for other minority groups, encountered a unique resistance. Black rights also encountered resistance, obviously, but it had a different character. Black nondiscrimination rights were simple but threatening. Women's rights were complex but funny. This suggests that when policymakers considered women as a group and the discrimination they faced, the black analogy was less salient than other aspects of the meaning of women. What made women funny is not clear, but was almost certainly based on disparaging stereotypes and the folklore of marriage.

It is the basic plot that is well known: Democratic representative Howard Smith of Virginia offered an amendment to Title VII to add sex discrimination to the bill in hopes of *preventing* passage of the entire bill, thus thwarting African American civil rights. The cynical linkage of sex and race—premised on a sense of their very incongruity—had a long history. Amending civil-rights bills designed to help African Americans with presumably outrageous or incongruous prohibitions of other kinds of discrimination, especially sex discrimination, was a standard practice of legislative sabotage. Thus, in 1945, Howard Smith had tried to kill a Fair Employment Practices bill by seeking a sex discrimination amendment. In 1950, Democrat Dwight Rogers of Florida had successfully added "sex" to a similar bill that passed the House but went on to die in the Senate.[31] Not all such linkages were cynical. In 1962, James Roosevelt, a Democrat from California, had proposed an equal employment opportunity bill that would have protected against both race and sex discrimination, but the NAACP and the Justice and Labor Departments expressed opposition. Edith Green, Democrat representative from Oregon and member of the PCSW, then motioned in the House Committee on Education and Labor to eliminate the sex-discrimination protection.[32]

By the time Smith acted in 1964, there had been previous attempts by another devious southern Democrat, John Dowdy of Texas, to add sex discrimination protections to other titles in what became that year's Civil Rights Act. Attorney General Nicholas Katzenbach had recruited Edith Green to reprise her role as fighter against the mischief. Green believed, with many others, that discrimination against blacks was much more severe than that against women, and was concerned that the sex amendment would kill the bill.[33]

In 1964, other elite Democratic women opposed adding sex discrimination to Title VII. Esther Peterson, director of the Labor Department's Women's Bureau, later recalled, "I myself opposed that at the time—1964—because I was afraid it might endanger the civil rights bill. I just felt as an American woman I didn't want to ride the coattails of an issue that I thought was more important at that time."[34] Mary D. Keyserling, an economist Johnson appointed to head the Women's Bureau after Peterson left, felt similarly. She recalled, "[W]e were so deeply concerned with the problem of larger opportunities, equality of opportunities, on the basis of race—where perhaps the hardest problem has resided—that we did not want to introduce any issue which might impede the progress of the civil rights legislation. It was a deliberate hold-back on that ground, and I think it is a very important aspect of the legislative history."[35] No one believed that grouping national origin and religious origin with race discrimination would "impede the progress" of the bill.

The resistance to the amendment in the House revealed the unique factor affecting women's rights. In contrast to any other group's civil rights, in 1964, women's rights could be very funny. As Jo Freeman has pointed out, "Despite their many disagreements, both Smith and the liberal opponents played the provision for all the laughs it was worth and the ensuing uproar went down in congressional history as 'Ladies Day in the House.'"[36]

On the day the sex discrimination amendment was added, the atmosphere in the House was already less than serious. Southerners were seeking any maneuver to cause delays. One amendment would specifically allow employers to discriminate against atheists. It passed. Texas Democrat John Dowdy suggested adding age as a forbidden ground of discrimination. The eighty-one-year-old Smith said that "this is a right serious amendment for some of us," but it lost, 123 to 94.[37] And it was on this day that Smith introduced his amendment on sex discrimination.

Smith had help from Michigan Democrat Martha Griffiths, who did not share the prevailing view among women's leaders that this was not the appropriate time to push for women's rights. Others played a part. Though

Griffiths had no contact with any lobbying group,[38] the National Women's Party (NWP), upset that Kennedy's PCSW had recommended against the ERA, encouraged Smith. On December 16, 1963, the annual convention of the NWP passed a unanimous resolution declaring that sex discrimination should be a part of the new civil rights bill. In language that a southern opponent of civil rights could understand, the resolution stated that without this addition, the law would not provide "to a *White Woman,* a *Woman of the Christian Religion,* or a *Woman of United States Origin* the protection it would afford to Negroes (original emphasis)."[39] In Congress, however, pressure from the NWP was light at best.[40]

Griffiths let Smith introduce the amendment, explaining later that "to have Smith offer it would guarantee that you would get more than a hundred votes" and southern support might be lost if a woman introduced it.[41] Smith suggested women were entitled to nondiscrimination in employment with a light-hearted, joking style that characterized the day and the treatment of women's issues throughout the decade of the birth of feminism and women's rights. He wanted "to prevent discrimination against another minority group, the women, but a very essential minority group, in the absence of which the majority group would not be here today . . . Now, I am very serious about this amendment." In justifying his amendment, Smith explained that women suffered from employment discrimination, insisted again that he was serious, but then read from a constituent's letter complaining that there were not enough husbands to go around and asked for government action. Smith asked, who was going "to protect our spinster friends in their 'right' to a nice husband and family?" Smith thus introduced women's rights and insulted women at the same time.

Edith Green, joined by Emmanuel Celler (D–NY), led the Democratic resistance to the amendment on the House floor. Celler added to the comic atmosphere with his own knee-slapper. "[W]omen, indeed, are not the minority in my house," he announced, and explained that harmony was maintained there even though Celler himself always had the last two words in his household: "yes, dear." Celler then said he opposed the amendment, reading a letter from the Labor Department quoting Esther Peterson on the PCSW view that sex discrimination "involves problems sufficiently different from discrimination based on the other factors listed to make separate treatment preferable." Celler then raised the utterly irrelevant tangle of complexity that the ERA was supposed by some to produce ("What would become of the crimes of rape and statutory rape?"), and warned that the amendment would strike down women's protective legislation. Edith Green also argued that it jeopardized women's protective laws, pointing out that no group testified in support of it at hearings and repeating several times that "for every discrimination that has been made against a woman in this country there has been 10 times as much discrimination against the Negro of this country." This language indicates that when lawmakers said "woman" they thought "white woman." The message was that race discrimination did not equal sex discrimination, though even in opposition, the analogy was irresistible: Green admitted that she might appear to be "an Uncle Tom—or perhaps an Aunt Jane."[42]

Despite the opposition from many liberal Democrats and the lack of lobbying on the issue, Griffiths, joined by some women legislators, fought hard for passage. The primary foe was the hilarity of women's rights. She later recalled:

> I can remember that just before I went up there, once the amendment had been offered, there was uproarious laughter. Now we had been debating this bill since Tuesday, and this was now Thursday, and Lee Sullivan [Leonor Sullivan, Democrat of Missouri] looked back at me—there had never been any laughter on the rest of the bill, but when the amendment was offered, there was tremendous laughter, there was uproarious laughter—and Lee looked back, and she said, "Martha, if you can't stop that laughter, you're lost."[43]

On the House floor, Griffiths pointed out the significance of the hilarity: "I presume that if there had been any necessity to have to point out that women were a second-class sex, the laughter would have proved it." Griffiths brought up various examples of sex discrimination, argued that the law without the amendment would leave white women unprotected, and that "a vote against this amendment today by a white man is a vote against his wife, or his widow, or his daughter, or his sister." Griffiths and New York Republican Katharine St. George both argued that the so-called protective legislation often was a tool used by men to keep women from some high-paying jobs.[44]

Southern Democratic congressmen, such as George Andrews of Alabama, saw the possibility of racial preference in the bill without the sex amendment. In language that would become familiar in debates over affirmative action, Andrews said, "If a white woman and a Negro woman applied for the same job, and each woman had identical qualifications, the chances are about 99 to 1 that the Negro woman would be given the job because if the employer did not give the job to the Negro woman he could be prosecuted under this bill. Failure to employ the white woman would not subject the employer to such action." J. Russell Tuten of Georgia, Lucius Rivers of South Carolina, Ezekiel Gathings of Arkansas, and Howard Smith all agreed with this preferential logic. Smith said starkly, "[I]f I do not hire the colored woman and hire the white woman, then the Commission is going to be looking down my

throat and will want to know why I did not. I may be in a lawsuit." The amendment passed, 168 to 133.[45]

The entire bill passed the House 290 to 133, and the Senate passed the same bill 73 to 27. There was almost no discussion of the sex amendment in the Senate. One exception was buried in a list of questions submitted to the Democrats by Senate minority leader Everett Dirksen (R–IL). The question was introduced in a jokey manner (Dirksen wrote, "Now I turn to discrimination on account of sex. Frankly, I always like to discriminate in favor of the fairer sex. I hope that the might of the Federal Government will not enjoin me from such discrimination"). Dirksen brought up the potential conflict of Title VII with protective legislation, but then immediately shifted to another issue—whether women could be preferred for jobs requiring manual dexterity, such as building radios. Senator Joseph Clark (D–PA) simply responded that such preferences could continue as a BFOQ, or "bona fide occupational qualification," a loophole that allowed hiring on the basis of religion, gender, or national origin but not on the basis of race. Clark ignored the protective legislation inquiry.[46] Public debate was over, and the final bill included sex among the other forbidden grounds of discrimination.[47]

Title VII: a civil rights law for American blacks

Despite the inclusion of sex, religion, and national origin, the early discussion of other ethnic minorities by Truman's Civil Rights Committee, and the presumably broad meaning of the prohibition on race discrimination, it must be emphasized that American citizens and political elites saw Title VII and the entire Civil Rights Act of 1964 as being a law for African Americans. The model for Title VII and the EEOC grew out of the old wartime FEPC that A. Philip Randolph had fought for in 1941. Civil-rights advocates both in and outside the government had fought for a similar bill ever since. In lobbying Congress, the motive forces for Title VII were the African American civil-rights groups, federal government officials, and religious groups concerned with discrimination against African Americans. The sociologist Paul Burstein found that the *New York Times* reported on almost 3,800 demonstrations in favor of civil rights between 1940 and 1972, and that 95 percent of these were related to discrimination against African Americans. Some protests occurred in the 1940s regarding anti-Semitism, but other groups did not register in the nation's newspaper of record until the late 1960s and early 1970s, and then only barely.[48] Regarding general *Times* coverage of discrimination issues, Burstein sums up: "Beginning in the 1950s . . . an increasing proportion of media attention to civil rights was devoted to blacks, and by 1961 coverage of civil rights and of blacks had become virtually synonymous. At least through the beginnings of the 1970s, neither women nor minorities other than blacks had succeeded in gaining much attention from the *New York Times*."[49]

Other evidence shows the overriding salience of African American issues in the making of civil-rights law. Much of the discussion of the bill in Congress emphasized its targeting of blacks. Senator Hubert Humphrey stated bluntly that "the bill has a simple purpose. That purpose is to give fellow citizens—Negroes—the same rights and opportunities that white people take for granted."[50] Lyndon Johnson only mentioned discrimination on the bases of race and color (naming no nonblack minority groups and making no mention of national origin, sex, or religious discrimination) when he signed the Civil Rights Act.[51] The EEOC shared this perception. Its first annual report, for example, stated plainly, "The chief thrust of the statute was, of course, aimed at discrimination against the Negro."[52] The basic orienting materials gathered for the five new commissioners had only limited references to sex discrimination, and when the new commission started on July 2, 1965, there were no women in the highest "super-grade" level appointments.[53]

Institutionalizing Minority Recognition at the EEOC: The EEO-1 Form

The first step in the expansion of affirmative action was the most important and far-reaching. It was also the easiest and least discussed. The key to the process of group recognition was inclusion in any government analyses of discrimination. This meant deciding which groups were to be counted as minorities for the government's EEO-1 form, which employers used to record the racial, ethnic, and gender breakdowns of their workforces. The EEO-1 institutionalized the prevailing view that Title VII, though formally quite broad, was really about race discrimination. It further erased lines within minority categories, and established the black analogy for Latinos, Asian Americans, and American Indians.

Precursors of the EEO-1

The facts surrounding the origins of the EEO-1 remain hazy, but research by Harold Orlans points to a magnificently obscure bit of political activity during the late 1950s and early 1960s. President Eisenhower had followed Roosevelt and Truman in issuing an executive order to prohibit discrimination by government contractors on the bases of race, national origin, and religion. The order established the President's Committee on Government Contracts to oversee the program. In 1956, this committee began using a survey requiring contractors to count their "Negro," "other minority," and "total" employees. If there were many "other minority" employees, the sur-

vey added that "the contractor may be able to furnish employment statistics for such groups" including "Spanish-Americans, Orientals, Indians, Jews, Puerto Ricans, etc." Except for the inclusion of Jews, the enigmatic "etc.," and the inexplicable separation of Puerto Ricans from the seemingly broad "Spanish-Americans" category, these administrators in 1956 quietly established the official minorities for the rest of the century and beyond.

They also established the principle—in contradiction to discrimination law, if not logic—that the problems of blacks should be privileged. There were "Negroes," to be counted by every government contractor, and then there were "other minorities." Noticing the hierarchy, some Mexican American groups demanded that they be promoted from "other minorities" and placed on every form, along with blacks. The League of United Latin American Citizens (or LULAC, a mostly Mexican American group that had campaigned to have Mexicans labeled as Caucasians in the 1930s),[54] the GI Forum (a group of Mexican American veterans), the Mexican-American Political Action Committee (MAPA), and Alienza, a group based in Arizona, argued that Mexican Americans had suffered discrimination on a par with blacks. They worked with Mexican American legislators Edward Roybal (D–CA), Henry Gonzales (D–TX), and Joseph Montoya (D–NM). Accordingly, the broad and ambiguous "Spanish-Americans" category was elevated to the standard form.[55]

Through the efforts of advocates for Japanese and Chinese Americans, the administrators of President Kennedy's more active agency, the President's Committee on Equal Employment Opportunity (PCEEO), similarly elevated the entire category of "Orientals." The Japanese American Citizens League asked for equal attention, and when Hawaii became a state in 1959, its congressional representatives, Senator Hiram L. Fong (R–HA) and Representative Daniel K. Inouye (D–HA), supported inclusion of a category for Orientals. In response, David Mann, the director of surveys for Eisenhower's committee and Kennedy's replacement, added the broad and ambiguous "Oriental" category in 1962.

Mann went ahead and added American Indians to the form as well, though Indian advocates had not lobbied. He later recalled believing that they suffered discrimination and suffered from a "woeful economic state." On the other hand, black groups objected to the inclusion of Jews because Jews had done relatively well economically. Jewish groups did not press the matter, and Mann had them removed from the form (see Chapter 9). Though the categories were blunt and unscientific, in Mann's view they had the virtue of simplicity. America's official minorities were born.[56]

While some lobbying played a role in this process, it is easy to overstate its importance. The form was created for blacks. The administrators, apparently

on their own, then created a list of "other minorities." This prior development made it very easy for other groups to be placed next to blacks after just a few meetings—or none, in the case of American Indians. *They were already designated as minorities.* The taken-for-grantedness of America's minorities, even in the 1950s, was the crucial factor in this process. There was something self-evident to administrators about the plausibility of these particular groups. They did not see any need for independent studies of relative discrimination. The groups included in the 1950s were also the groups given the most prominent mention in the 1947 report of the President's Committee on Civil Rights, as described above. While lobbying played a role, it is by no means certain that other groups could have successfully lobbied. As I show in Chapter 9, some of the groups left off of the later EEO-1 form tried to be included, but did not succeed.

It should also be underscored, however, that the Eisenhower committee paid most attention to blacks, at least as shown by public-relations documents. For example, "Five Years of Progress," a report on the Eisenhower committee's activities for 1953–58, almost completely ignores the "other minorities." The report included twenty-four photos of successful minority employees in their work environments. While embarrassingly patronizing from a contemporary perspective, it is worth noting that twenty-three of the photos depicted only black men and women at work (often with apparently satisfied white supervisors watching them). Only one photo included some Asian American women together with a Latina employee. A section of the report on "Compliance Surveys" and "Areas Opened to Minority Group Members" mentions only "Negroes." The broader inclusiveness of the program was only suggested by some of the descriptions of "Records of Progress," in which a few companies presented statistics of their "other minorities," including numbers for Spanish-Americans, Orientals, Indians, and Jews.[57]

If the first listing of minorities occurred during the Eisenhower administration, the full equal billing on a government form occurred on Kennedy's PCEEO's "Standard Form 40." The PCEEO used Form 40 for monitoring purposes but did not integrate the form into enforcement activities. An identical form, the "EEO-10," was used by Plans for Progress, a parallel program, in which certain mostly large employers worked with the government on a voluntary basis to improve job opportunities for African Americans. The government used Form 40 and EEO-10 simply to measure the levels of minority hiring by government contractors or by Plans for Progress firms. Neither program used the forms for anything except information gathering. It is not clear what the program officials did with the information, if anything, but both forms went beyond the then-prevailing concern for discrimination against African Americans only. They included—under the heading "Minor-

ity Groups"—categories for "Negro," "Spanish American," "American Indian," "Oriental," as well as gender breakdowns for each race. Form 40 included a category for women, even though the PCEEO had no jurisdiction over sex discrimination.[58] The EEO-1 was basically Form 40 with a different name.

Congress and the EEO-1

What did Congress have in mind regarding minority counting forms? Though it intended the Civil Rights Act for black Americans, as described above, it is possible that Congress offered some guidance on which groups should be counted. Title VII of the Civil Rights Act of 1964 specifically empowered the EEOC "to make such technical studies as are appropriate to effectuate the purposes and policies of this title and to make the results of such studies available to the public."[59] In addition, the law stated that the EEOC "shall, by regulation, require each employer, labor organization, and joint labor-management committee subject to this title . . . to maintain such records as are reasonably necessary to carry out the purpose of this title."[60] While some in Congress appeared to have had in mind monitoring of the racial composition of workforces, the focus of the debate was so focused on African Americans that no one thought about which groups should be included. In their interpretive memo, Senators Joseph Clark and Clifford P. Case barely hinted at something like the EEO-1:

> Requirements for the keeping of records are a customary and necessary part of a regulatory statute. They are particularly essential in title VII because whether or not a certain action is discriminatory will turn on the motives of the respondent, which will usually be best evidenced by his pattern of conduct on similar occasions.[61]

Everett Dirksen raised possible reporting forms in his own memorandum, showing both a concern and expectation that the form would go beyond race to include religion:

> What of the conflict between State and Federal record requirements? Illinois prohibits any reference to color or religion in employers' records. Title VII would require this information to be kept. Are we now to force an employer to violate a State law in order to comply with a Federal statute, each of which has the same purpose?

Clark replied that state laws "would yield to the supremacy of the federal law, since it is necessary to have this data to determine if a pattern of discrimination exists." Dirksen pressed again, asking why the bill did not specifically state what the forms would be like, and suggesting that Congress and not a federal agency should create them. Clark deflected, saying vaguely that "Congress cannot set definite recordkeeping requirements and should not try to write them in the statute, because it is not yet known what records will be needed."[62]

Members of Congress seemed aware that some kind of designation of minorities would be required. But there is little evidence Congress was passing the buck to avoid making a difficult decision. There was no real decision here. With the focus of the civil-rights debate squarely on African Americans, Dirksen never questioned which groups should be on the forms, and neither Clark nor Case, nor anyone else, showed much interest, at least not in the public record.

Expert opinion on counting official minorities

The idea of race-reporting forms was, in short, hardly discussed during congressional lawmaking and the issue of which groups were to be counted and designated as America's official minorities was not discussed at all. Still, the leading analysis of the Civil Rights Act's Title VII, provided by the Columbia University law professor Michael I. Sovern, predicted the use of race-counting forms. Sovern pointed out that some unnamed critics found them "reminiscent of Hitler's Nuremberg Laws," "unwholesome," and "potentially divisive." But on balance he approved of them, and said it was "a good guess" that the EEOC would require reports like Form 40.[63]

Why? Sovern argued that such a form supplies information that is of "incalculable value," since it showed firms and the government where firms were likely discriminating: "A report that shows no Negroes above the level of unskilled labor may not be the report of a discriminator, but it is suggestive enough to warrant further checking." Such reports could also show that African Americans are available to be hired. "For example," he explained, "a contractor can hardly continue to maintain that no qualified Negroes are available when the reports of other contractors in the area show Negroes doing comparable work." Sovern admitted that "the risk that companies will engage in quota hiring in order to impress government officials that they are not discriminating is less easily dismissed." However, since a company with "about the 'right' proportion of Negroes" is "virtually invulnerable to a charge of discrimination," Sovern argued that this type of "insurance" was a part of any equal opportunity program regardless of race statistics forms, and "[f]air administration" was needed to minimize the quota-hiring defensive tactic. For all of these reasons, "expansion of compliance reporting seems inevitable."[64]

What was remarkable about Sovern's otherwise thoughtful analysis was the complete absence of attention to the number or nature of the groups on the

existing form, and the inclusion of gender statistics. Though his book reprinted Form 40 so that it accompanied his analysis, it was as if the three other ethnoracial groups and the male and female categories were not even there. His discussion only mentioned "Negroes." He did approve of the omission of religion ("The limitation to race means . . . that companies need not inquire into their employees' religion—a subject that many of us firmly believe to be no one's business but our own"). But he did not explore the legal or moral implications of the elimination of one ground of discrimination from an agency's "incalculably valuable" tool for fighting discrimination. Also ignored was that the form was *not* limited to race. It included gender. Moreover, no biology books stated that "Spanish American" was a race—it was an extremely complicated national-origin grouping that spanned the globe and included arguably three races and various mixtures. Sovern's myopia was broadly shared, even by Form 40's creators. The PCEEO, which collected Form 40, only used it to create "zero lists" of firms with no African American employees, and "underutilization lists" of firms with very few African American employees.[65]

The very easy process of declaring America's official minorities

The EEOC soon came to the same view as Sovern. The reporting system would be a valuable tool in measuring progress in the eradication of discrimination, and by identifying firms that were likely discriminators, it would make the most efficient use of the EEOC's limited personnel and resources. Rather than being limited to federal government contractors, the EEOC had jurisdiction over all firms with more than one hundred employees. In developing what became the EEO-1 form, however, EEOC officials simply copied Form 40, making only minor changes. When the proposed regulation that would require the form was printed in the *Federal Register,* allowing Americans who happened to read the new regulation to respond with their comments about it, an explanatory note stated that the form was nearly identical with Form 40.[66] This meant that it retained the four official minority groups, plus male and female categories for all groups.

This similarity was strategic. According to Herbert Hammerman, the EEOC's chief of reports, and Charles Markham, the director of research and reports, the EEOC wanted to keep its form as much as possible like the one already used in the established (and very obscure) practice. Changing the forms risked adding controversy where there had been none. As Markham recalled, "Basically we decided that this is what employers are used to, let's just stick with it."[67]

In addition, everyone "knew" that, despite the wide scope of Title VII, race discrimination was the key issue and Form 40 matched the EEOC administrators' view of which groups were American minorities and which suffered the most discrimination. Markham recalled later, "We just felt the thrust of the problem was black, Hispanic, and Native Americans."[68] In his interview with me, Markham made no mention of Asian Americans, a group that the EEOC included apparently because they had previously been included. There was brief discussion of dropping them from a later form (see below).

In addition to publishing the regulation in the *Federal Register,* EEOC officials had some other roadblocks and veto points to navigate, including Congress, the Bureau of the Budget, and the civil-rights groups. It was not the issue over who would be counted as minorities that was most troubling; EEOC officials were more concerned about having the legal authority to require employers to fill out the forms in states that already had antidiscrimination agencies. The law was ambiguous on this point.[69] They sought to clear the new form with Dirksen, the Senate minority leader and a major figure in getting Title VII passed. Charles Markham recalls visiting Dirksen's office along with EEOC chair Franklin Delano Roosevelt Jr. and general counsel Charles Duncan, "and he [Dirksen] didn't make any loud objections and so we went ahead with it."[70]

Markham and Herbert Hammerman also met with African American civil-rights leaders, including representatives of the Leadership Conference on Civil Rights and Marion Barry of the more radical Student Non-Violent Coordinating Committee. In a meeting in the EEOC office, Markham quickly convinced the dashiki-clad Barry that the form was needed. Other civil-rights leaders were more difficult to persuade. For instance, Washington NAACP lobbyist Clarence Mitchell had spoken against color-conscious methods, arguing that "the history of the reason why we do not include [racial identification] is sadly and surely proven, that the minute you put race on a civil service form, the minute you put a picture on an application form, you have opened the door to discrimination and, if you say that isn't true, I regret to say I feel you haven't been exposed to all of the problems that exist in this country." For Mitchell of the NAACP, "keeping racial statistics" was "the crevasse which has no bottom."[71] Those who opposed the EEO-1 resisted the idea of maintaining official firm-level statistics of African American employment. Some suggested alternatives, such as an occasional "audit" of a firm's minority hiring.

There is no record of civil-rights leaders addressing the issue of which groups to include on the form, except for handwritten notes made on a copy of the EEO-1 in the files of the Leadership Conference on Civil Rights (LCCR), an umbrella group of civil-rights organizations. The notes apparently were made after a meeting with Markham and Hammerman. They

describe the reason for the form ("in absence of a charge, we [EEOC officials] have no right to get any evidence"), offer suggested alternatives ("can commission send investigators in for routine checks?"; "universal reporting v. sampling"), and include a very rare expression of the form's scope. The LCCR official noticed a curious omission. "Catholic," the note taker wrote; "doing nothing about *creed*" (original emphasis).[72] But the issue was dropped. The absence of religious discrimination from the chief enforcement tool was a point not pursued by the LCCR or any other group. Black groups similarly did not seek to restrict scope to blacks.

Within the EEOC itself, there is no record of discussion of who was to be included on the EEO-1. Hammerman recalls the focus was simply on obtaining maximum information while not being overly complex, and that "minority groups, sex data, and job categories were carried over from Form 40 without discussion."[73] Markham recalls EEOC vice chairman Luther Holcomb bringing up the issue of native Alaskans, and wondering where they might fit. No one at the time raised the issue of adding religious groups to the form, and no one questioned inclusion of all four groups. A representative of Polish Americans asked that a category of "Polonians" (the term used by Polish leaders to refer to Polish Americans) be added, but the EEOC held firm on their EEO-1 minorities (see Chapter 9).

Instructions for the EEO-1 stated that employers were not to ask employees to which group they belonged, but rather were to rely on visual identification. The importance of relying on visual surveys came as a result of consultations and compromise with African American civil-rights groups. Hammerman later stated:

> I recall vividly a group conversation with the [NAACP's] Washington representative, Clarence Mitchell. He angrily declared that he had fought the tendency of employers to ask applicants for employment to state or write their race for several years and was not about to change his mind now. We were at a crossroads. With the opposition of the NAACP, the EEO-1 would be dead. It also seemed obvious to me that it made sense for employers to identify minorities in the same way that they were discriminated against, by observation. After all, employers were not sociologists.[74]

Appeasing the NAACP by relying on a visual basis for minority categorization had important consequences. Perhaps most important, it meant government policy would mirror basic social patterns of discrimination. It meant reinforcing the "one-drop rule" by which Americans have long categorized African Americans. Anyone who looked remotely black was black. Thus, as Hammerman has commented, "there could be no discussion of interracial or

interethnic marriages," including American Indians or Asian Americans, two groups not normally subject to the one-drop rule, but that have high rates of intermarriage with Euro-Americans. Employers might use the one-drop rule for making minorities of persons of any combination of mixed ancestry, or they might not categorize them as minorities (though it would be in their interest to count them as minorities to increase the minority percentages in their work forces).

There was also no clear way of identifying the "Spanish-Americans," who might be of any race. This suggests that the policymakers—if they thought about it at all—had in mind a distinctly racialized prototype with the category, and presumed the nonsociologist employers could discern a Spanish surname from sometimes similar Italian or Portuguese surnames. Visual identification reinforced the exclusion of white ethnics and religious groups from the form (see Chapter 9). Visual identification, reliance on surnames, and the form categories also erased any differences on the basis of national origin within minority groups: a white Cuban would be grouped with a dark brown Mexican *indio* as Spanish Americans; a Japanese American would be grouped with a Laotian; and an immigrant from Jamaica or Kenya would be grouped with an American descendant of slaves.

These sorts of issues were invisible in 1965, since massive discrimination against African Americans was such an obvious and urgent priority and immigration policy and global developments had not yet allowed great numbers of Latinos and Asians to come to the United States. The intermarriage issue came up only when Markham received letters from South Carolina arguing that there had been considerable black–white racial mixing there in the past, and this made it difficult for employers to fill out the EEO-1. Markham, who with Hammerman had helped devise the method of determining group classifications, simply pointed out that the South Carolinians could rely on the method that they had been using for decades to segregate and discriminate against the African Americans—simply looking at them.[75]

After these initial consultations, on December 16, 1965, the EEOC held public hearings on the race-reporting system. Support for the system was strong, especially among those involved in civil-rights administrative enforcement. Like Professor Sovern, these individuals felt that the form would help administrators measure progress toward equal opportunity.[76] Again, in the hearings, there was almost no discussion of the EEO-1's level of inclusiveness.

The lack of discussion on inclusiveness is especially remarkable regarding women, as few administrators at the time had any idea of what the expected level of female employment should be. The issue of counting women only came up only once, and then in jest. Willis Bullard, representing the Kelly

Girls temporary employment service, gave testimony that showed the overriding emphasis on African Americans: "I have no comment to make upon sex. I think I am the first one today to have used that three-letter word. We do of course, when we send out a Kelly Girl, it is going to be a real shock to some customer when he finds a man appearing as a Kelly Girl!"[77] The EEO-1 passed the scrutiny of the public hearings intact and unmodified.

These decisions, if they could be called that, were of great importance. The EEO-1 was a public, if implicit, federal declaration of the nation's minorities. The EEO-1 made certain types of underrepresentation more visible, more discernible, and more outrageous than others. On paper, discrimination against women of all groups, Latinos, Asian Americans, and American Indians was the same as blacks, and all became, with no debate, eligible for affirmative action. With these groups, discrimination would be measured and assessed. The rest of the population collapsed into a monolithic "white male" category.

From the EEO-1 to Affirmative Action

Being listed on the EEO-1 was a crucial prerequisite for benefiting from a difference-conscious justice. But it was perfectly possible for the EEOC to gather statistics on many groups, but pay most attention to only one. This is indeed what happened, as EEOC officials focused their attention almost exclusively on African Americans. They simply neglected Latinos, Asian Americans, and American Indians and treated gender discrimination as a nuisance.

African Americans were emphasized because the Civil Rights Act, and thus the EEOC, was created for blacks. But the EEO-1 also quickly showed that the different minorities were not equal. The 1966 *Equal Employment Report No. 1*, a nationwide analysis based on the new EEO-1 data of forty-three thousand employers and 26 million workers, generally revealed that minority-group workers were concentrated in lower-paid occupations, with African Americans and Spanish-surnamed men and women doing generally the worst. Assuming that all disparities were the result of discrimination, however, the EEO-1 showed a clear hierarchy of group exclusion: "A male Oriental has a little better than half as good a chance of becoming a manager or official as an Anglo; the American Indian's prospects are slightly lower than the Oriental's; the chances of a man with a Spanish surname are only one fifth as good as that of a member of the majority group; and for Negroes, the figure is one twelfth."[78]

But group inequality and minority status were not this simple. The reports showed that while underrepresented in managerial positions, other measures showed Asian American men and women on average had a higher occupational standing than did Euro-Americans: "More than 1 out of every 4 Oriental men is a professional compared to 1 out of 11 Anglos (and 1 out of 100 among Negroes)." Asian American women also did better than Euro-American women on the occupational scale.[79] The EEOC's own data, then, told them that blacks had the worst of it.

Officially identified as victimized minorities but then neglected, lobbies for the two largest groups—women and Latinos—developed to join African Americans in pressuring the EEOC. None of the groups, however, made affirmative action or any kind of difference-conscious hiring a priority. As described previously, African Americans focused on simply more effective enforcement (cease-and-desist power), and the EEOC responded with an affirmative action model of justice. As I describe below, women primarily fought for classically liberal goals and for the inclusion of more women on the EEOC staff and elsewhere in policymaking positions. Latinos wanted similar increases in staff representation. These groups would not be completely satisfied, but they would get relatively quick and positive responses. The EEO-1's official minorities could now make policy gains by focusing attention on a civil-rights bureaucracy and not complex, democratically elected branches of government. EEOC administrators, some of whom were themselves activists in rights organizations, could respond to the pressure with the ready-made policy of affirmative action.

"Boos from Lady Fans"

Many members of Congress and even some women's leaders understood gender discrimination as a lesser priority, and women were an almost absent force in lobbying for the Civil Rights Act. Nevertheless, there were a surprisingly large number of sex discrimination complaints. In 1966, for example, the EEOC received 2,053 charges of sex discrimination (34 percent of all complaints), compared to the 3,254 charges of race discrimination (56 percent of all complaints).[80] Such a large number of complaints required immediate, if reluctant, attention.

Early controversies in women's equality

If the EEOC was to act on women's rights, it would do so without support from the liberal media. For the *New York Times,* discrimination against women was a low priority—and an opportunity for jokes. In an editorial titled "De-Sexing the Job Market," the *Times,* smug and satisfied, brought up "the bunny problem," the general label for such burning issues as "the quandary of how you rule if a man applies for a job as 'bunny' in a Playboy club." Misinterpreting the law and misusing words like a stumbling drunk-

ard, the nation's newspaper of record predicted that "everything has to be neuterized," that "the Rockettes may become bi-sexual, and a pity, too" and concluded its inquiry with mock indignation: "Bunny problem, indeed! This is revolution, chaos. You can't even safely advertise for a wife any more."[81]

The conservative *Wall Street Journal* echoed the same take on the issue, though treated women with a bit more respect. In an amazingly prescient article, Monroe Karmin predicted on October 13, 1965 that the EEOC would "draw cheers from Negroes, boos from lady fans, and cries of 'foul' from conservatives." Karmin foresaw for African Americans a "two-fisted barrage against almost any suspected discrimination, aiming for an early knockout," and this effort would call for preferential treatment. "On behalf of the ladies," however, the EEOC would only offer "a succession of light jabs against unchivalrous treatment, just enough to qualify as effort though far short of enthusiasm." One commissioner told him, "We're not going out on our charger to overturn patterns [of sex discrimination]." The *Journal* highlighted a few sex discrimination issues (such as protective legislation and whether companies would have to provide women's restrooms) where the EEOC was keeping "an open mind," and declared "the 'Bunny' is safe."[82]

Commission chairman Franklin Roosevelt Jr. seemed unsure how to approach the issue of sex discrimination. At his first press conference in July 1965, he said sex discrimination was a "terribly complicated" issue.[83] In Roosevelt's letter to President Johnson concerning the first one hundred days of the new commission, he said implementation of the sex discrimination prohibition was "particularly challenging" and "continues to occupy a great deal of the Commission's time and effort."[84] On the other hand, Roosevelt showed an early belief that the commission's responsibility in prohibiting sex discrimination could be a vehicle for gaining new allies. In December of 1965, he asked fellow commissioner Richard Graham for ideas regarding review of "existing state 'protective' legislation." "I realize this is a pretty big undertaking," Roosevelt continued, "but I think that it would be one which would give the Commission great status as a leader in this field and, of course, I am confident that the women's groups would enthusiastically endorse such an effort."[85]

It is typical for a government agency to behave in ways meant to secure its legitimacy and value to a particular constituency.[86] There is evidence, however, to suggest a level of resentment among EEOC administrators at having to trouble themselves with sex discrimination. Most showed little interest in gaining political support from women's groups. The bizarre circumstances of the sex discrimination amendment led many to view that provision as illegitimate.[87] Consequently, most EEOC administrators viewed women's rights as a low priority or a distraction.[88] Though Title VII and the commission's

own EEO-1 form suggested otherwise, most EEOC officials did not at first believe that sex discrimination was analogous to race discrimination. In a line often quoted by historians of women's rights, EEOC executive director Herman Edelsberg said in 1966 that the sex discrimination protection was a "fluke . . . conceived out of wedlock," implying the law had no legitimate standing. Showing brazen contempt for the idea of women's rights, he declared that "men were entitled to female secretaries."[89]

Many EEOC staffers shared this low regard for women's rights. The commission staff attorney David Zugschwerdt recalls, "Given that . . . sex discrimination came in as essentially a ploy by the opponents to try to derail the legislation, it is quite understandable that it was not . . . even on the radar."[90] Women who worked in the EEOC in those early years complained of the lack of priority or respect given to women's rights. Sonia Pressman Fuentes, an EEOC attorney, recalled that the commission's general counsel (and African American) Charlie Duncan "called me a 'sex maniac' because I was interested in enforcing the prohibition against sex discrimination. That made me a sex maniac at the commission." She later remembered "walking on the street to my car, and the tears would be rolling down my face because I felt like . . . I was battling the whole commission, basically, except for the few people who felt as I did."[91] Another staff attorney, Susan Deller Ross, similarly recalled later that "the people [at EEOC] viewed it as an agency whose only serious mission was really to work on black civil rights . . . I think there was an overtone of hostility with some as much as it was not having thought out the issues."[92]

In September 1966, Aileen Hernandez, an African American woman married to a Latino and the lone female EEOC commissioner, had enough of the negative attitude. She sent letters to the other commissioners and EEOC counsel Richard Berg, explaining "I am well aware that there is a difference of opinion within this agency as to the extent and kind of discrimination against women . . . That brings me to our long-range responsibility—assuming the role of attitude changer." She reminded them that they were not bound by "conventional wisdom" on race questions, and should take a similar attitude on gender. "Just as in the race question," she pointed out, "we can start the change in attitude, by forcing a change in behavior."[93]

The message did not get through. As late as March 1967, a progress report of an EEOC Task Force on Staff Relations, Efficiency and Morale commented that "morale is low, and evidence indicates that it is declining" but it was unclear why. To help, the task force suggested, among other things, an orientation program that would give a history of the civil rights movement and its current status, but no mention was made of women's rights or any other minority group.[94] Also in March, when Berg received a letter from a

woman's group demanding some action, he passed it on to Pauli Murray, an African American woman and fellow counsel at EEOC, with a small note attached saying, "Why don't you answer this? They're *your* friends" (original emphasis).[95]

Meanwhile women were sending in complaints around three main issues: women's protective laws (about which Title VII said nothing), the airlines' desire to hire women as stewardesses while forcing them to resign when they married or reached a certain age (varying between thirty-two and thirty-five), and sex-segregated classified advertisements for job openings.[96]

These were complex issues because there was, of course, no tradition at all of laws intended to protect African Americans from long work hours or dangerous occupations. There also were no companies that cared about the age or marital status of black employees. And whereas the EEOC ordered that classified advertisements segregated by newspapers on the basis of "white jobs" and "black jobs" were immediately (and uncontroversially) illegal, advertisements that separated male and female jobs appeared sensible and continued after Title VII went into effect. To the EEOC administrators these issues seemed different from race discrimination, and they were unsure how to handle them.

Not much interested in the question of protective legislation for women, the EEOC flip-flopped on the issue, though the courts were beginning (in 1968) to get involved, mostly striking down the laws.[97] It also flip-flopped on the stewardess problem. Alfred Blumrosen recalled that "when the stewardesses first came to the EEOC, in the form of two very attractive women, it struck me that the staff was probably more interested in their attractiveness than the nature of their complaint."[98] After three years, the agency finally agreed that customer preferences did not justify the discrimination.[99]

It was the EEOC's position on sex-segregated advertisements that would attract the most attention. This controversy was significant because it highlighted the tenuousness of the black–woman analogy, and because it came to dominate the women's agenda, keeping issues like affirmative action a much lower priority.

The main problem was that the EEOC believed blacks and women were different.[100] Blumrosen recalled that "if you had asked the senior staff 'is it okay to have "help wanted-white,"' they would have thrown up their hands in horror. But when the question was can we have help wanted male and help wanted female, they said we better call a conference of the newspaper publishers."[101] The EEOC's initial position on sex-segregated job advertising was the product of a special committee appointed to consider the issue, consisting of thirteen men and four women, and including ten representatives of newspapers or advertising agencies.[102] On September 22, 1965, the EEOC ruled that "for the convenience of readers" the practice was acceptable as long as the advertisement itself stated the job was open to both sexes and a disclaimer notice was placed on every other page stating "Many listings in the 'male' or 'female' columns are not intended to exclude or discourage applications from persons of the other sex." Still, the American Newspaper Publishers Association (ANPA) complained, fearing lost revenue from firms that preferred the segregated advertisements, and because the disclaimer notice took up ad space. The EEOC responded by revising the policy, removing the need for any disclaimer.[103]

The change in policy came as a result of political pressure, but the perceived reasonableness of sex-segregated ads, and an assumption that race and sex discrimination were essentially different, made the pressure effective. The EEOC commissioner Luther Holcomb (who assumed the position of acting chair when Roosevelt resigned) told Lyndon Johnson's aides James Jones and Marvin Watson on March 25, 1966 that "few times in their entire history have they [ANPA] been as disturbed as they have been by the [EEOC] interpretation" and confided that "this has been my most delicate undertaking since coming to Washington." However, Holcomb—apparently unconcerned about the views of women—announced that "I am glad to be able to report to you that the task has been accomplished to the complete satisfaction of the Publishers." Holcomb reported that Stanford Smith of ANPA "feels that this is going to be of great significance in creating a new climate of goodwill for President Johnson and the Administration," and recommended that Johnson speak at the upcoming annual meeting of the association, since "the way has been cleared now for the Administration to really cinch some mileage with an all important group." Though Johnson could not attend the meeting, Jones and Watson expressed their satisfaction at Holcomb's actions.[104]

The double standard outraged Congresswoman Martha Griffiths, who had stood up to a laughing House of Representatives in 1964. On May 19 she wrote to Holcomb, pointing out that Section 704(b) of Title VII states: "It shall be . . . unlawful employment practice for an employer . . . to print or publish . . . any notice or advertisement relating to employment . . . indicating any preference, limitation, specification, or discrimination, based on race, color, religion, sex, or national origin." Griffiths added that "I assume you will agree that advertisements under the heading 'white' or 'Negro' or 'Protestant' would be prohibited by the statute, and therefore I have difficulty seeing how advertisements under the headings of 'male' and 'female' could be in compliance with the very clear prohibitions of section 704(b)."[105]

Holcomb responded on June 1, explaining that "it is primarily the reading habits of job seekers which presently dictate the placement of ads," and denied the race–sex analogy:

> We do not regard the classification of help wanted advertising by sex as completely analogous to such classification by race. While some job categories are and are likely to remain of particular interest to members of one sex or the other, this cannot be said of job classifications by race, and accordingly where an advertiser places his ad in a column classified to one race we would be compelled to the conclusion that his purpose is to exclude applicants of other races.[106]

Griffiths printed both letters in the *Congressional Record,* accompanied by her own scathing indictment of the EEOC. She compared the ads to "colored only" signs in the waiting rooms of bus and train stations, and pointed out that the Citizens' Advisory Council on the Status of Women declared that the sex-segregated ads should be illegal. Griffiths cited a law review article by Pauli Murray and Mary Eastwood—"Jane Crow and the Law"[107]—on the "obvious fact that the rights of women and the rights of Negroes are only different phases of the fundamental and indivisible issue of human rights." She also claimed the support of the UN Charter, the Universal Declaration of Human Rights, and the US Constitution. Griffiths described the attitude of the EEOC toward sex discrimination as "specious, negative, and arrogant," accused it of "shilly-shallying" and "wringing its hands," and said its policies on the airline stewardess issue were so foolish that the EEOC headquarters should be called "Fantasyland."[108]

This was powerful women's rights advocacy coming from within the government. Griffiths was urging the analogy between blacks and women, though she did so in a classically liberal, difference-blind formulation.

Women's groups and the EEOC

It was clear that the EEOC would respond to interest-group pressure. By 1966, African American civil-rights groups and ANPA had pressured the agency to some effect.[109] But what about women's groups? The National Women's Party, remotely involved with the effort to include sex discrimination protection in Title VII, was not organized and had no interest in a sustained lobbying effort to ensure that the newly created EEOC honored and enforced the law.[110] Other women's groups, such as the League of Women Voters and the American Association of University Women, were similarly not interested in a sustained fight for women's rights—and earning the dreaded "feminist" label—despite urging from EEOC commissioner Richard Graham.[111] But as former EEOC commissioner Aileen Hernandez has written, many women saw the agency as "the enemy," and "in a very real sense, therefore, government agencies can bear some of the responsibility for stimulating the growth and development of the 'second wave of feminism.'"[112] New groups emerged to fill the void.

The dynamics of this process could be seen at the third National Conference of State Commissions on the Status of Women in 1966. State commissions had sprouted up all over the country, following Kennedy's lead with his PCSW, and the national conferences were a chance for women's advocates from across the nation to assemble and compare notes. At the 1966 conference, twenty-eight delegates expressed concern about the lack of a lobbying group for women.[113] The fires of discontent were stoked when copies of Griffiths's blistering floor speech denouncing the EEOC were distributed to delegates.[114] Sympathetic EEOC officials, especially Commissioners Richard Graham and Aileen Hernandez, teamed with Mary Eastwood of the Justice Department and Catherine East of the Citizens' Advisory Council on the Status of Women to encourage formation of a new women's group; they recruited Betty Friedan to be its head. At the conference, Friedan and Kathryn Clarenbach, of the Wisconsin commission, along with thirteen other women, met over two tables at a conference luncheon. There they formed the new women's rights group, penning its name on a paper napkin—National Organization for Women (NOW).[115]

NOW quickly became the pressure group for women that many had desired. NOW's leaders, many from within the government, clearly understood the dynamics of administrative politics and the need to establish women as an audience to judge the EEOC. Betty Friedan described NOW's first order of business as making "clear to Washington, to employers, to unions and to the nation that someone *was* watching, someone *cared* about ending sex discrimination" (original emphasis).[116] NOW's leaders immediately sent telegrams asking the EEOC to reappoint Graham to the commission (his term was soon to expire), and mailed letters asking the EEOC to cancel its directive on "help wanted" listings in the newspaper.[117]

NOW's official stated purpose was "to take action to bring women into full participation in the mainstream of American society now, assuming all the privileges and responsibilities thereof in truly equal partnership with men." NOW vowed opposition to "all policies and practices—in church, state, college, factory, or office—which, in the guise of protectiveness, not only deny opportunities but also foster in women self-denigration, dependence, and evasion of responsibility, undermine their confidence in their own abilities, and foster contempt for women." If Griffiths in Congress and the commissioners in the EEOC provided the immediate spark for the organization, the African American civil rights movement provided the model. NOW would be

a "civil rights movement for women" that would create a "fully equal partnership of the sexes, as part of the world-wide revolution of human rights now taking place within and beyond our borders."[118]

NOW rapidly became *the* voice of women's rights, patterned after the African American civil rights movement. But did NOW pressure the EEOC to promote affirmative action? On November 11, 1966, representatives of NOW sent a letter to the EEOC commissioners with a list of eight demands. Complaining of a lack of serious effort by the agency, the letter called for (1) limiting EEOC appointments to those who "recognize the legal mandate" to fight sex discrimination; (2) an EEOC statement prohibiting many airlines' policy of mandatory retirement of stewardesses who marry or reach the age of thirty-two; (3) revision of the EEOC sex-segregated advertising policy; (4) comprehensive guidelines on maternity leave with financial compensation through insurance; (5) a legal statement nullifying women's protective legislation; (6) guidelines on retirement and pension plans that discriminate on the basis of sex; (7) public conferences with civic organizations on the topic of sex discrimination; and (8) a vague demand that the EEOC "develop, in conjunction with other agencies such as the Department of Labor, affirmative action programs and technical assistance projects to bring women into the mainstream of employment opportunities."[119]

The call for affirmative action, last on the list of priorities, was not soon followed up. Later communications with the EEOC stressed the segregated advertising issue and the need to rule women's protective legislation illegal under Title VII. Protest activity also focused on issues other than affirmative action from the EEOC. NOW drafted a Bill of Rights for Women in 1967, advocating increasing societal responsibility for child care, child care centers to allow more employment and education, extension of maternity leaves, social security benefits, tax deductions for child-care expenses, legal birth control, and abortion on demand for control over reproductive lives.[120] In 1967, it held a national day of picketing against the EEOC for allowing the sex-segregated ads, with demonstrations in New York City, San Francisco, Pittsburgh, Washington, D.C., and Chicago. NOW also organized pickets and demonstrations (and filed a formal complaint) against the *New York Times* for printing sex-segregated want ads. NOW lobbied to get sex added to Executive Order 11246 (see below), and continually put pressure on EEOC to responsibly do its job.[121]

NOW was successful. On May 2–3, 1967, the EEOC held hearings on what were considered by the new chairman Stephen Shulman to be "quite controversial" areas of sex discrimination, including protective laws and the segregated advertisements. Shulman told President Johnson that "any decision the Commission might make on any one of these issues will doubtless be wrong in the eyes of many," but "the hearings will enable us to say that all views were at least considered."[122] The hearings attracted women's groups, labor, and business representatives.[123] On August 6, 1968, the EEOC finally ruled that sex-segregated advertisements were in conflict with Title VII.[124] By 1969, the EEOC ruled that the protective laws were also in conflict with Title VII,[125] after which they gradually faded from the states' statute books.[126]

The focus of NOW's work as a pressure group was on eliminating any relevance of perceived sex differences and equating sex discrimination with race discrimination. Major support would be given to the capstone of feminist classical liberalism, the Equal Rights Amendment, which stated simply that "equality of rights under the law shall not be denied or abridged by the United States or any state on account of sex." Though women became beneficiaries of EEOC affirmative-action policies, it was not because they applied significant or consistent pressure for these policies.

"We Are America's Invisible Minorities": Latinos and the EEOC

Unlike women, there was never any question that discrimination against Latinos, under either the category of national origin or race, would be covered by the Civil Rights Act. Like women, they were not a significant presence in lobbying for the law. Title VII was the sort of law they wanted, however. Latino organizations and Latinos in Congress had traditionally supported the difference-blind justice of the Civil Rights Act.[127]

Though there was no question that discrimination against Latinos would be covered by the Civil Rights Act, few perceived that law as directed in any significant way at Latinos, and the EEOC and others mostly ignored Latinos and their discrimination problems. As mentioned above, Lyndon Johnson made no mention of Latinos or national-origin discrimination when he signed the Civil Rights Act, and the otherwise prescient *Wall Street Journal* article that analyzed EEOC politics ignored this group entirely. Like the case of women, this dismissive treatment helped mobilize a new Latino lobby.

It was easier to ignore Latinos because their advocates in Congress were not speaking up as Griffiths did for women. In another contrast with women, the Latinos were simply not filing discrimination complaints in any significant numbers. In fiscal year 1966, for example, only 2 percent of complaints were based on national-origin discrimination, or 131 of 6,133.[128] Of the first 3,773 complaints earmarked for investigation, only 25 were from Mexican Americans (0.66 percent). None were identified to be from Puerto Ricans.[129] Furthermore, Latinos had no organized groups helping individuals in the complaint process at the local level. The EEOC administrator Alfred Blumrosen recalled that his first complaint to investigate came from a Mexi-

can American in Corpus Christi, Texas. Instead of meeting the person in the offices of a local civil-rights group such as the NAACP, as was typical with complaints from African Americans, Blumrosen met the complainant in a doctor's office. The Latino rights movement in Corpus Christi consisted of one doctor who saw both patients and the occasional person with discrimination problems.[130]

Despite this lack of appeals or complaints made to the EEOC, a Latino lobby quickly developed. It focused demands on what is probably the most traditional identity politics in America: group representation in government. For example, Johnson administration officials invited Mexican American delegates to a 1965 White House Conference on Equal Employment Opportunity even though the conference was almost totally devoted to the problems of African Americans. The angry delegates later demanded "fuller utilization of the talent resources of qualified Mexican Americans in government service today."[131] When EEOC officials eventually met face to face with Mexican American leaders, their demands were similar.

Like activists for women's rights, Latino leaders felt they were not being treated seriously by the EEOC, but much more than the women's groups, they demanded changes in EEOC personnel rather than specific policy changes. They felt that the 1966 lineup of the five EEOC commissioners—consisting of three Euro-American males, an African American male, and an African American female (Aileen Hernandez, who was married to a Latino)—could not understand Latino discrimination problems.

As he did with women, EEOC chairman Franklin Roosevelt Jr. showed early interest. On December 24, 1965, he told Herman Edelsberg that he was concerned about an anticipated manpower shortage in the United States, and he wanted a memo on what the EEOC was doing for the Spanish-speaking population. "This should include not only a method of education with regard to complaint filing procedures, but also an affirmative action program (what are we doing, for example, about the 800 companies in the southwest who employ minimal numbers of Spanish-speaking citizens)." Roosevelt wanted Puerto Ricans involved in any advisory committees, and wanted to identify the Puerto Rican leadership in New York and Chicago to discuss their special problems.[132] In early 1966, Roosevelt also arranged for creation of a Spanish-language poster explaining how to use the new civil-rights agency.[133]

But these were rare gestures of concern for this group. Edelsberg, the EEOC official who had expressed annoyance at women's demands, did the same with respect to Latinos at a March 18, 1966 meeting in San Francisco with the Mexican American Political Association (MAPA), a group organized in 1959 specifically for political empowerment.[134] MAPA's San Francisco

chapter president, Robert E. Gonzales, asked Edelsberg what the EEOC was doing about Mexican Americans' language barrier. According to MAPA's account, Edelsberg responded that little was being done for their special problems, including those regarding language difficulties, but blamed Mexican American "disorganization" for the problem. He pointed out that up until that time the EEOC had received only twelve complaints by Mexican Americans, arguing that this showed "Mexican Americans are basically distrustful of agencies." He explained to the leaders that their culture did not seem to understand the proverb "the wheel that squeaks the loudest gets the grease."[135] Though MAPA felt insulted by Edelsberg's comments, taken another way they were a government invitation and a strategy outline for Latino lobbying and protest. To get something done, make some noise.

It was not long before Latinos would take Edelsberg up on his suggested strategy. George Sánchez, an education professor at the University of Texas and former president of LULAC, wrote to Chairman Roosevelt complaining about the Edelsberg comment, saying "the number of complaints, and the ratio of Negro to Mexican-American, is a very lame and illogical excuse for inaction. By this line of reasoning we would render public health service only to those who called in a doctor!"[136] Later that month, at a conference in Albuquerque with EEOC commissioner Richard Graham and other agency officials, Mexican American delegates representing several groups (LULAC, the Latin-American Civic Association, the Political Association of Spanish-Speaking Organizations, and the American G.I. Forum) were angry and confrontational. Apparently confident of their status as analogous to blacks, they instead emphasized their differences. One Mexican American leader, Luis Garcia, complained of neglect by the EEOC, and claimed that Roosevelt himself had stated, "Spanish-speaking minority groups suffer some of the nation's highest unemployment rates and live in the most abysmal housing, perpetuated by an educational system that makes no provision for the unique problems and the unique needs of this different ethnic group." At the conference, the leaders demanded the appointment of a Latino to the EEOC who would bring, in the words of Augustin Flores, national president of the G.I. Forum, "his special insight into the unique employment problems of our bilingual, bicultural group."[137] The Mexican American leaders then marched out before sixty minutes had passed.

They later sent a list of eight demands to President Johnson. Instead of emphasizing greater enforcement or attention to Latino employment problems, their overwhelming interest was for increased Mexican American representation or participation in government. The activists clearly believed that co-ethnic representation was necessary for any successful advocacy. They demanded no specific policy rulings or legal interpretations. The final two de-

mands, however, did call for affirmative action, with the eighth specifying the policy by name though limiting it to government. The Latino leaders demanded:

1. That at least one Mexican American, with full understanding of the unique employment problems of America's second-largest minority, be appointed to the five-member Equal Employment Opportunity Commission.
2. That staff hiring practices of the EEOC—an organization which should serve as a model for all of our nation's employers, be investigated and changed to eliminate current ethnic imbalances which work against the Mexican American.
3. That the Commission send knowledgeable representatives to any future conferences involving federal agencies and the Mexican American community.
4. That regional offices of the EEOC be relocated into areas where employment discrimination is most severe.
5. That the entire program of the EEOC be reoriented, and new procedures be established to reach the Mexican-American community.
6. That the Mexican American be allowed full participation in the upcoming June White House Conference on Civil Rights, and in all other civil rights programs and activities engaged in or sponsored by the federal government.
7. That the EEOC take immediate steps against some 800 major national companies in the Pacific Southwest which have more than 600,000 employees on their payrolls, yet hire no Mexican Americans.
8. That the hiring practices of all governmental agencies be reviewed and that affirmative action be taken to rectify present imbalances against Mexican Americans and all other ethnic minorities.[138]

These low-priority demands for affirmative action would soon be eclipsed almost totally by the demands for political representation and patronage. The Mexican American leaders were unhappy with new EEOC acting chairman Luther Holcomb, who assumed the lead after Roosevelt resigned. Holcomb met with the GI Forum attempting to mend relations. Senator John Tower (R–TX), who only a few years earlier had voted against the Civil Rights Act, kept up the pressure, proposing a bill to expand the EEOC board of commissioners by two to allow Latinos to have a voice. Commissioner Dick Graham offered to resign and said in an April 14 letter to the White House, "I am increasingly convinced that this commission should have a Mexican-American Commissioner." Graham's family even joined Mexican Americans in picketing the White House on Easter Sunday in an act of solidarity with the striking National Farmworkers Association.[139]

Poor treatment by the EEOC and lack of representation on the agency staff (only 3 of 150)[140] continued to be the focus of Mexican American lobbying. On April 28 and 29, two hundred Mexican American leaders in Los Angeles held a "Mexican American Unity Conference" in Los Angeles. The purpose, according to a Johnson administration observer, was to "(a) honor the 50 who walked out on the Equal Employment Opportunity Commission at Albuquerque, New Mexico, (b) plan action regarding an upcoming White House Conference on "black" civil rights, and (c) press for a meeting with the President." The group considered a march on Washington to protest "exclusion of Spanish-Americans from the White House Conference," but the idea was dropped "because it was feared that such action would be interpreted by the press as anti-Negro." Still, they planned "to continue the agitation as leverage for a similar conference for Spanish-speakers." They sent a telegram to President Johnson urging a meeting and filed a formal complaint with the Civil Service Commission charging discrimination against Mexican Americans by the EEOC.[141]

In May 1966, Johnson met with leaders from the G.I. Forum, LULAC, and MAPA. They complained about EEOC treatment, asked for a Mexican American White House aide and for inclusion in White House conferences, and extracted from Johnson a promise to help (see Chapter 7 for discussion of the White House conference).[142] LULAC's new, more radical leader, Alfred J. Hernández, sponsored a banquet in honor of the Albuquerque walkout where he declared, "In spite of our number we are America's invisible minority. Because we have not demonstrated, because we have not cried out when we have been abused and exploited, we have been ignored."[143]

By October, the demands were similar, but there was a new rationale. Rudy Ramos of the G.I. Forum sent a letter to the White House that was passed on to the EEOC with a demand for an explanation. Ramos made the familiar charges, mostly about the lack of Mexican Americans at the EEOC, and argued that the lack of complaints filed with the agency (he cited thirteen complaints from Latinos out of the first three thousand received) showed that the "complaint procedure is not geared to solution of Mexican American discrimination in employment problems." Was a policy of affirmative action for Latinos the answer? Ramos suggested no clear policy preference. He demanded "at least one Mexican American commissioner to be appointed," more representation at the EEOC, and "revamping of EEOC procedures so that they are more conducive to correcting Mexican American discrimination in employment problems, considering that the present procedures and poli-

cies have ended in utter disaster and failure."[144] In others words, Latino leaders demanded that their problems be solved, but did not offer a solution.

Despite such concerns and activity, Latinos remained a lower priority for the EEOC. As late as November 1966, a report on "Mexican Americans in the United States" by Lamar Jones, an economist at the Virginia Polytechnic Institute, all but told the EEOC to give low priority to Latino problems because blacks and Latinos were very different. The report (containing a note warning it "*should not be circulated outside of the Commission* [original emphasis]), declared that "equal employment opportunity is greater" for Mexican Americans than for blacks, a statement it supported with statistics. For example, even with lower education, Latinos had higher incomes than blacks. Jones also reported, apparently to preempt any political strategizing, that Mexican Americans did not vote in blocs and tended to vote according to the personalities of candidates. Should any administrators still feel *something* should be done, Jones had another argument: most of the problems for this group resulted from illegal aliens who were willing to work for almost nothing. In other words, Mexican American problems were the result of immigration policy, not discrimination.[145]

Still, the Mexican American groups were to obtain their sought-after representation, as President Johnson appointed G.I. Forum member and Texas Democrat activist Vicente Ximenes to be EEOC commissioner in June of 1967. Johnson also appointed Ximenes to chair a new Inter-agency Committee on Mexican American Affairs. By 1970, the EEOC also appointed a Latino, Eliseo Carrasco, to be "Special Assistant to the Chairman" for Latinos and American Indians. To respond to the issue of few complaints from Latinos, the EEOC established new district offices in places that had high Latino concentrations, such as Denver and Phoenix, recruited investigative personnel fluent in Spanish, and printed EEOC literature, charge forms, and instruction booklets in Spanish.[146]

The EEOC Takes Affirmative-Action Policy beyond Blacks

The EEOC responded to all the various minority group demands with a blanket strategy. In answering the basic and general demand from African Americans for more effective enforcement, *all* official minority groups could gain—they would gain a new legitimate vehicle for fuller participation in the economy and a politics of identity. The government would henceforth pressure private firms to hire more African Americans, Latinos, and women *qua* African Americans, Latinos, and women. After already using the "forum" technique to pressure firms to hire more blacks, it was cheap and easy to expand this policy to the other groups. This affirmative-action approach was

simply part of the EEOC's tool kit, and since women and Latinos were already designated as minorities, and their advocates made some noise on other issues, they won the policy without asking for it. EEOC officials began to pay attention to the proportional underrepresentation of Latinos and women, and at the forums where they showed their data to industry representatives, they began to focus the firms' attention on that proportional underrepresentation—sometimes including Asian Americans and American Indians, too.

The EEO-1 form made this wonderfully effortless and natural: right there alongside the racial hiring statistics were the female hiring statistics, as well as Latino hiring statistics. Thus a 1967 report from the EEOC Office of Research and Reports, "White Collar Employment Opportunities for Minorities in New York City," focused on African Americans and Puerto Ricans. It was also able to give "special attention . . . to women, regardless of whether they are members of these (Negro and Puerto Rican) minority groups or not." The report was an early usage of affirmative action: in examining hiring statistics, it sought not an end to discrimination per se but "an expansion of minority employment in white collar occupations," partly based on the logic that "the more members of minority groups that can be elevated to white collar jobs, the less will be the competition for blue collar jobs, increasing the chances for the unemployed to gain employment."[147]

A 1968 forum pushing affirmative action in white-collar employment thus made blacks, women, and Puerto Ricans points of focus, despite this Latino group's lack of lobbying and miniscule contribution to the EEOC complaint docket. According to the more than 160 invitational letters sent to New York City executives, the EEOC sought testimony from major companies "who have been successful in locating and utilizing relatively large numbers of minorities for white collar positions." The agency promised a statistics-based presentation to "clearly illustrate the extent of minority underutilization." The "principal objective" of the entire undertaking was proportional representation; it was "to facilitate greater utilization of minorities in white collar jobs."[148] At the forum, statistics on blacks, Latinos, and women were highlighted as "facts of underutilization."[149] In a surprise move, the EEOC also presented some data on the utilization of Jews and pressed for more opportunities for this group (see Chapter 9).

There is no record of any serious discussion whether it was valid to deduce discrimination from employment statistics, but there is some evidence that it was seen as not entirely legitimate or necessary in the case of women. Despite their presumable availability in every labor market, there was a tendency to drop the women category from the analysis. Thus a forum with the Washington, D.C. pharmaceutical industry concentrated only on the "participation rates" for Negroes and "Spanish surnamed" Americans.[150] The EEOC also

targeted forums in places with large Latino and Asian American populations. Forums in New York, Los Angeles, and Houston especially allowed for attention to Latinos. Similarly, as the commission became more aggressive, a "Project Outline" in July 1968 described an "action project" whose aim was "to increase the proportion of the minority group individuals participating in the labor force as well as the numbers of minorities actually hired and to do so by eliminating the discriminatory practices and patterns which have excluded them." The latter point, justified by a pragmatic logic, had in mind groups outside of African Americans: "The project is designed to obtain a maximum return for the investment of limited governmental effort; the return will be measured in the form of new hiring of numbers of minority employees, including, but not limited to Negroes and Spanish Surnamed Americans." The project involved investigating firms with lowest utilization rates of African Americans, Latinos, American Indians, and Asian Americans.[151]

In the 1970s, the EEOC increasingly began to emphasize women's status in the workplace. By this point, the women's movement had established a solid base in the formerly black-oriented EEOC. In 1970, the commission initiated a case against AT&T for alleged sex and race discrimination. David Copus—a thirty-one-year-old Harvard Law graduate, former Peace Corps volunteer in India, and women's advocate—was the instigation for the case. Copus later told the *New York Times* that when he read about AT&T's asking the Federal Communications Commission for permission for a rate hike, he saw it as a chance "to get at discrimination in the Bell System."[152] Copus, an activist described by the *Times* as uniformed in denim pants, a denim jacket, and a shirt weighted down by feminist campaign buttons (to go with shoulder-length brown hair), successfully persuaded EEOC chairman William H. Brown to pursue the case. The EEOC charged "that because AT&T's operating companies engage in pervasive and unlawful discrimination in employment against women, blacks, Spanish-surnamed Americans, and other minorities, the rate increase proposed and filed by AT&T with the Commission is unjust and unreasonable," citing Title VII, among other laws and orders, as authority.[153]

By this point, the EEOC had developed an affirmative-action-oriented definition of discrimination, one in which the intent of the discriminator was not necessarily relevant. The crucial question in this "adverse impact" theory of discrimination was simple: Did AT&T's hiring practices have an adverse effect on minority hiring? The data from the EEO-1 forms clearly showed statistical underrepresentation. But there were also many complaints from individuals, as Copus was well aware. Phyllis A. Wallace, a former EEOC technical expert, later explained that one of the reasons for the EEOC's charge was that "AT&T accounted for five to six percent of all such charges pending before EEOC" and the affirmative action approach was "a cost-effective way of reducing the backlog."[154]

EEOC officials had finally learned that women's advocates could be valuable allies. After Copus's feminist fervor and Wallace's administrative pragmatism led to the initial charge against AT&T, EEOC officials worked closely with NOW leaders. Brown assigned Copus to head a task force for the case and NOW aided in fleshing out the EEOC's concept of sex discrimination.[155] As Copus enthusiastically told the *New York Times,*

> we were advancing the really revolutionary view of sex discrimination. We took more or less hook, line and sinker the feminist view as espoused by the National Organization for Women—their view of institutionalized sex discrimination—and we said we wanted to attack it at its roots in the Bell System. Not just equal pay for equal work, etc. We wanted to present the whole sociology and psychology of sexual stereotypes as it was inculcated into the Bell System structure.[156]

The EEOC's final report on the charge claimed that "the Bell monolith" was "without doubt, the largest oppressor of women workers in the United States."[157] The heart of the EEOC sex discrimination charge was that 92.4 percent of all employees were shown by the data to be concentrated in jobs where the workers were 90 percent or more of the same sex. In its defense, AT&T argued that the problem was not "discrimination" but that women did not have an interest in the "male" jobs or did not have the necessary training.

In 1973, AT&T and the EEOC ended the formal hearings and agreed to an historic consent decree. It was a triumph for the new, expanded affirmative action. AT&T, which employed nearly eight hundred thousand workers at the time, agreed to an affirmative-action plan that was "to achieve within a reasonable period of time, an employee profile, with respect to race and sex in each major classification, which is an approximate reflection of proper utilization . . . This objective calls for achieving full utilization of minorities and women at all levels of management and non-management."[158] Though the charge focused on African Americans, women, and Latinos, the consent decree went beyond these groups in a well-balanced effort to bring about better representation of the official minorities. According to a Wharton School study of the decree:

> As a result of the decree, the Bell System labor force was partitioned into fifteen separate job classes ranging from management . . . to service workers . . . The labor force was further segmented into ten race-sex

groups, or five racial groups (Caucasian, Black, Hispanic, Asian Pacific, and Native American), for each sex.

Ultimate employment goals or ultimate objectives were then set for each of these ten groups in every job class . . . the race-sex profile of the AT&T labor was eventually supposed to approximate that of the relevant labor pool.[159]

Most controversially, the consent decree called for $15 million in back pay to be paid to thirteen thousand women and two thousand minority men and wage adjustments for thirty-six thousand other minority and women workers that eventually totaled $30 million.[160] These were considerable sums, but much less than the $175 million that the EEOC originally requested.[161]

It was not long before the EEOC negotiated more consent decrees with other large employers. For instance, negotiations between the federal government, nine steel companies, and the United Steelworkers of America resulted in a plan in April 1974 that included goals and timetables as well as $30.9 million in back pay for forty thousand minority and female employees. Other consent decrees involved trucking, banking, and airline companies.[162]

Affirmative action for America's government-designated minorities had arrived. To preempt such actions, some companies began to reach out to the growing industry of consultants on equal employment opportunity. Most of these companies had little resistance to implementing the difference-conscious affirmative action part of the plan, except for some concerns about convincing white male workers to quietly accept the promotion of minorities ahead of them. Companies were especially concerned with the back-pay requirements, and sought assistance on developing hiring and promotion practices to make them immune to litigation that would affect their profit margins.[163]

What about Asian Americans and American Indians?

While the analogy with blacks was enough to get Asian Americans and American Indians onto the EEO-1 form, the EEOC gave these two groups less attention than the others. In 1970, a report of the US Commission on Civil Rights explicitly stated that the EEOC had set priorities on African Americans, Latinos, and women.[164] Neither Asians nor American Indians exerted significant pressure on the commission, though this factor should not be exaggerated: Puerto Ricans gained considerable attention without pressing for it or filing many complaints. With Asians and American Indians, the main reasons for their neglect were more likely the small size of both groups, and

the perception that Asian Americans—despite their continued existence on the EEO-1—were not significantly disadvantaged. It would have taken significant meaning entrepreneurship to promote Asians as analogous to blacks, and no Asian groups were making this effort.

In 1967, the EEOC's Herbert Hammerman even sought to remove the two from forms similar to the EEO-1 but designed for unions, arguing that the groups were very small, the Asians did not show great discrimination, and American Indians on reservations were not technically under the purview of Title VII anyway. No one disagreed with Hammerman's reasoning, but Chairman Stephen Shulman kiboshed the effort, anticipating that such an action would mobilize these groups and produce a loud outcry.[165]

Though rarely the focus of much direct attention from the EEOC, the two groups still benefited from being official minorities in ways that Jews, Italians, Poles, Arabs, or others could not. EEOC administrators could at any time ask a firm to explain low numbers of Asians in various positions, and an individual claiming discrimination on the basis of being Asian or American Indian could, in court, easily present statistics of how many of their group a firm hired and in what positions. At their affirmative-action forums, EEOC officials occasionally grilled company representatives on their hiring of "Orientals" and American Indians. The company representatives were—when possible—armed with their own data to exonerate themselves. For example, Harvey A. Basham Jr. of New York's Chemical Bank boasted that one in five employees were either Negro, Oriental, American Indian, or Spanish-surnamed, with Orientals very well represented.[166] In the Los Angeles forum, EEOC Chairman Clifford Alexander demanded officials from companies such as Lockheed, TRW, and Universal Studios to show how many "Oriental" employees, along with blacks and Mexican Americans, they had at management and clerical levels.[167] Even in Houston, far from centers of Asian American population, firms such as Gulf Oil described their affirmative-action program that included Asian Americans and American Indians, and without prompting Texas Instruments reported data on all of the official minorities.[168] The pressure exerted by the EEOC regarding the status of Asians and American Indians was never all that strong; part of the problem for a zealous advocate of Asian American rights was that the firms often reported higher numbers of Asian American employees at the professional, management, and official levels than they did African Americans and Latinos. Still, America's larger employers learned to pay attention to and to value increasing numbers of Asian American and American Indian employees. In contrast, nonofficial minorities or victims of religious discrimination would have to either find smoking-gun evidence of discrimination or somehow assemble their own statistics, as described in Chapter 9.

Expansion of Affirmative Action in the Contract Compliance Program

The designation of the official minorities and the beginnings of the affirmative-action model of justice occurred in the EEOC, but affirmative action as a policy would gain its most explicit regulatory formulation in the hiring goals and timetables requirements of the Labor Department's Office of Federal Contract Compliance (OFCC). Here, as in the EEOC, the focus of affirmative action was on African Americans, and developed following a logic of administrative pragmatism. From the beginning, however, despite the emphasis on blacks, this affirmative action included the EEOC's ethnoracial minorities. Sex discrimination, though not originally covered by the executive order establishing affirmative action in government contracting, did become so through amendment. It took meaning entrepreneurship by women's activists inside and outside the government who pushed for the analogy with blacks, and the political opportunity afforded by the law's formal equivalence of race and sex discrimination, to overcome the reluctance of Labor Department bureaucrats and other government officials to treat women as a minority.

Sex Discrimination in the Executive Order and Affirmative Action

NOW's concern with equal employment opportunity was not limited to pressuring the EEOC. One of its earliest actions was to ask President Johnson to add "sex" to the list of forbidden grounds of discrimination in his 1965 Executive Order 11246, requiring nondiscrimination and an undefined "affirmative action" by all government contractors on the basis of race, color, religion, and national origin. The executive order mirrored Title VII in its coverage, but was missing sex discrimination. NOW demanded that this inconsistency be rectified.

NOW had demanded the change in its 1966 letter to Johnson (described earlier). Though the organization was new and had almost no membership, its representatives met with officials of the Justice Department and the Civil Service Commission and persuaded Labor Secretary Willard Wirtz to accept the idea.[169] With some additional support from the Business and Professional Women Clubs and the General Federation of Women's Clubs, Johnson signed Executive Order 11375 on October 13, 1967 (usually referred to as "11246 as amended").[170] With that, women could now benefit from federal pressure on contractors to use affirmative action.

What were women's advocates hoping to achieve? Did they want to aggressively root out discrimination—or have women hired preferentially? Mary Keyserling, director of the Labor Department's Women's Bureau, interviewed in October of 1968, shared thoughts that expressed no clear idea of what women had won for themselves. Though formerly a relatively conservative women's advocate, by 1968 her views fit with the incipient ideology of NOW. She seemed to avoid advocating overt difference-conscious policy, but also sought increasing proportions of women in employment. In her view, OFCC officials could

> say quite flatly, just as they have in relation to the problem of race discrimination, "We expect affirmative action on the part of federal contractors and on the part of government supervisors." This means recruiting people on the basis of ability. Where sex isn't relevant, and it almost never is, you recruit people, and all people who are qualified are open to appointment.

She admitted that it was hard to find discrimination, "but general employment patterns are detectable. The firm that never has any women in certain of its jobs where women are skillful and qualified—and I believe that women are skillful and qualified in the full range of jobs—the firm that establishes this pattern is clearly discriminating."[171] Apparently without even being aware of doing so, Keyserling then began to talk in terms of affirmative action. She claimed that Johnson had "a very real concern with the under-utilization of woman-power"[172] and argued that

> a new approach to meeting the needs of women in our society has emerged. The emphasis was very largely on correcting underutilization. It turned from mere declaration of rights to the actual opening of the doors of opportunity. There was still much door-opening to be done, and it was done through law. But it was also—"Let's find out *why* people aren't going through those doors and if there are barriers that are keeping them from realizing the opportunities now released through change in law. Let's meet those problems specifically."[173]

For Keyserling, as for many civil-rights advocates, the only way to know if an opportunity existed was if someone successfully pursued it. In this view, women could not, therefore, simply miss an opportunity or prefer not to seize it.

Despite the high hopes, impatience, and pressure of women's advocates such as Keyserling, the OFCC behaved toward women much as the EEOC had. The transition to the new administration of Republican Richard Nixon, who appointed African American Arthur A. Fletcher as assistant secretary of labor, was not a favorable change for women's advocates. Fletcher, as well as labor secretary George Shultz and his successor James Hodgson, resisted the women–blacks analogy. The familiar pattern of delay and indecisive-

ness kicked in; the OFCC issued *proposed* guidelines—not official—implementing 11246 for women in January of 1969, and eight months later (August 4–6) the office held public hearings on the issue. These guidelines required contractor recruiters to make trips to women's colleges and to include female students when they visited coeducational colleges, technical schools, and secondary schools. They also required an undefined "affirmative action" to eliminate sex-segregated departments where females were paid less than males to do similar work.[174]

Meanwhile, the Labor Department's affirmative action for ethnoracial minorities was developing on a different track, as described previously. At the OFCC, affirmative action began in the Philadelphia Plan, which was aimed at blacks in the construction industry. Though women were covered by the executive order that authorized the Philadelphia Plan, the plan did not include women. It did include the other official minorities. A June 1969 memo to the "Heads of All Agencies" justified the plan's minority hiring goals with references to the underutilization of black workers in seven skilled construction trades: iron workers, plumbers/pipe fitters, steamfitters, sheetmetal workers, electrical workers, roofers and water proofers, and elevator construction workers. African Americans constituted less than 0.5 percent of these trades in the Philadelphia area, despite a black population in 1970 of 33.6 percent.[175] Though it only discussed the facts of African American workers, the Philadelphia Plan ordered that bids for contracts must include "specific goals of minority manpower utilization." The meaning of "minority" was the same as in the EEOC definition: "Negro, Oriental, American Indian and Spanish Surnamed American." This last category included "all persons of Mexican American, Puerto Rican, Cuban or Spanish origin or ancestry."[176]

The original Philadelphia Plan thus nominally included the EEOC's official minorities, but emphasized African Americans. The groups were soon equalized. Only three months later, the next order gave details on implementation of the plan and did not mention African Americans separately from the other groups. It gave aggregate statistics only for "minorities."[177] There is no evidence of debate, lobbying, or protest in the process of reproducing the official minorities of the EEO-1. If there was any pressure from advocates for the ethnoracial groups, it was very light.

Women and sex discrimination, however, remained marginalized by their perceived incongruity with the situation of blacks. Part of the neglect of women may have resulted from the focus of the Philadelphia Plan on construction employment, an area few feminists saw as an important frontier for women's utilization. However, the OFCC soon expanded on the Philadelphia Plan by requiring something like it for *all* contractors, not just construction, and not just Philadelphia. On February 5, 1970 the OFCC—without any apparent lobbying from outside civil-rights groups—issued Order No. 4, requiring government contractors to supply hiring goals and timetables for the ethnoracial minorities, thus leaving out religious minorities, European ethnic groups, and women. Contractors with at least a $50,000 contract and more than fifty employees were to make efforts to "correct any identifiable deficiencies" in the utilization of minorities. Utilization was "having fewer minorities in a particular job class than would reasonably be expected by their availability." Order No. 4 required minority-hiring goals and timetables based roughly on "the percentage of the minority work force as compared with the total work force in the immediate labor area."[178]

This was a remarkable flowering of minority rights, happening without significant lobbying, without controversy—without anyone noticing at all. That is, *almost* no one was noticing: women's groups again felt the sting of second-class treatment. The OFCC was denying the validity of the analogy between blacks and women, keeping equal-opportunity regulations for the two completely separate, and ignoring women as much as possible. The sex discrimination guidelines were still languishing in the proposal stage.

Women's advocates, both inside and outside of government, mobilized to push for the equality of women with the other minorities. The effort started small. Bernice Sandler, a member of a NOW spin-off group called the Women's Equity Action League (WEAL), believed she was unfairly denied a position for which she was qualified in the department of counseling and personnel services of the University of Maryland, where she was told that she "came on too strong for a woman." Title VII and the EEOC could not be of help, since educational institutions were exempted from its coverage. Encouraged by an OFCC official, she sought remedy through the only legal means—the new, amended 11246.[179]

Because of the way discrimination law had developed in response to discrimination against African Americans—focusing on statistics of employment discrimination—it was not difficult for a few women's advocates to have a large impact. The goal was to show that women were victimized like blacks. Sandler and her colleagues at WEAL only needed to assemble statistical data showing disparities of women being hired as compared to men.[180] Sandler may have been an individual victim, but she sought a broad attack on discrimination in higher education. Women's advocates did not need great funding or organization. They only needed to send their statistics to the OFCC, which was responsible for affirmative-action guidelines, and the Department of Health, Education and Welfare (HEW), which was responsible for the regulation of educational institutions.[181]

Sandler led WEAL on January 31, 1970 to a class-action sex discrimination complaint against all universities and colleges with federal contracts.[182] This

was not a case where women's leaders faced a uniformly uncaring government—an OFCC official helped draft the initial complaint.[183] Support also came from Martha Griffiths, herself a member of WEAL, who declared that the men running the universities were "the most bigoted, the most provincial group of people in the country."[184] Later, WEAL helped organize specific complaints directed at more than 250 institutions of higher education, including Columbia University, the University of Chicago, and the state university and college systems of California, Florida, and New Jersey.[185] WEAL had little interest in finding discriminatory intent. Following the logic of affirmative action, this was a rationalized, numbers-based drive for equality. While blacks had needed decades of protest before passage of laws and regulations ensuring equal rights, things were now much easier for women. Sandler wrote:

> One of the most useful aspects of the Executive Order is that any individual or group can file a complaint, and the complaint can be filed on the basis of a pattern of discrimination . . . The complainant need not be the individual or group suffering discrimination . . . In some instances complaints have been based on extensive reports; in others, simply the number and percentage of women at each rank in several departments of an institution has served as the basis of a complaint.[186]

WEAL sent letters of complaint to the secretaries of the Departments of HEW and Labor. It also sent letters to approximately forty members of Congress, chosen because they represented the state where the complaint was based or because they sat on education committees. The letters included requests for the congressmembers to write the Labor and HEW secretaries for additional pressure. Typical letters highlighted facts such as an absence of female full professors at a university, and discrepancies between the percentage of doctorates in a field awarded to women and the number of female faculty in that area. The letters demanded a "full-scale compliance review" and suspension of pending contract negotiations "until such time as all inequities are eliminated and an acceptable plan of affirmative action is implemented."[187]

The WEAL campaign, then, was a well-orchestrated push for affirmative action for women. Its immediate accomplishment was to validate the analogy drawn between women and blacks. As Sandler stated, "By filing charges under the Executive Order we have been able to 'legitimize' the issue and confirm the suspicion that there really *is* discrimination."[188] WEAL encouraged women's groups from campuses across the country to file complaints with the "basic data necessary," which consisted of "minimal-statistics showing that women were underrepresented in various departments at various levels."[189]

Though some in government had encouraged the pressure, other officials did not appreciate it. HEW asked its Office for Civil Rights to handle the complaints of the women's group, expecting them to go away in a few months. But twenty members of Congress responded to WEAL's request for help. It was not difficult to get this help—Congresswoman Martha Griffiths was a member of WEAL, along with fellow members of Congress Edith Green, Shirley Chisolm (D–NY), and Patsy Mink (D–HI). Griffiths helped lead the effort with a speech in the House of Representatives that explained the WEAL complaint and chastised the Labor Department for not enforcing the executive order for women. Other women associated with WEAL or higher education wrote letters to their representatives in Congress.[190] Even President Nixon's Task Force on the Status of Women (see Chapter 8) called for the "immediate issuance by the Secretary of Labor of guidelines to carry out the prohibitions against sex discrimination by government contractors" in their April 1970 report.[191] Sandler then got a closer look at the administrative goings on: HEW offered her a job in 1970, though she continued to lend her leadership to the pressure brought about by WEAL in her spare time.[192]

On June 2, 1970, the OFCC finally issued its Sex Discrimination Guidelines for Government Contractors and Subcontractors. Separate guidelines for race and sex discrimination were justified, according to the guidelines, because "experience has indicated that special problems" were related to implementing the executive order for women. The guidelines, to be effective on June 9, contained most everything women's groups had lobbied for in the previous four years: no discrimination unless sex was a BFOQ, no sex-segregated job advertisements, no distinctions between married and unmarried, no validity to state protective laws, no refusals of leave for child bearing, and so on. In the area of affirmative action, the guidelines were even weaker than before. They kept women separate from the other minorities by not requiring hiring goals and timetables. Instead, they offered only vague extra effort to recruit and promote women. No numerical goals were required.[193] Badly misinterpreting the political climate, Nixon's domestic policy adviser Leonard Garment was proud of the guidelines and expected political mileage from a dramatic release.[194]

Whereas the guidelines would have been a boon in 1967, in 1970 they were totally inadequate. Women's leaders felt that affirmative action for women was not taken seriously by the federal government; some even called the guidelines "useless."[195] A week after the guidelines went in effect, Ann Scott of NOW's Federal Compliance Committee sent a letter to Assistant Secretary of Labor Arthur Fletcher, a major architect of the Philadelphia Plan for the other official minorities, pointing out remaining loopholes. She argued that "NOW recognizes no valid bona fide occupational qualifications in

the kind of work done by federal contractors, nor in any kind of work except for sperm donor and wet nurse." In addition, Scott rejected the distinction the OFCC made between the other official minorities and women, demanding that "the affirmative action goals and timetables required by Order No. 4 must be enforced in regard to women."[196] Meanwhile, NOW continued to apply pressure, filing on June 25 a formal complaint against thirteen hundred government contractors, charging sex discrimination.[197]

Labor Department officials in charge of affirmative action were wringing their hands, clearly uncomfortable with the women–blacks analogy but unable to make a final decision about it. Lobbyists for women, as part of their campaign against inequality in higher education, had met with Arthur Fletcher several times. As Sandler later wrote, Fletcher had "assured women orally at several meetings that the order [No. 4] did indeed apply to them." This never appeared in writing. According to Sandler, "the department wavered, for at one point an internal memorandum was circulated within the department stating that Order No. 4 covered women workers; a few days later the memorandum was withdrawn." Replacing Shultz (whom Nixon moved to the Office of Management and Budget to use his talents on a wider variety of issues), new secretary of labor James D. Hodgson then reiterated—despite contrary urgings from Patsy Mink—that Order No. 4 in fact did not apply to women.[198] On July 25, Hodgson told a meeting of ten women's organization leaders that though job discrimination against women was "subtle and more pervasive than against any other minority group," the Labor Department still had "no intention of applying literally exactly the same approach for women" as that used for the other minorities. NOW's Ann Scott, clearly believing that subtlety and pervasiveness did call for exactly the same approach, told the press after the meeting that "women had been left out again" by Nixon.[199] Representative Florence Dwyer (R–NJ) joined Scott in urging Hodgson to categorize women with the other minorities and include them within the ambit of Order No. 4.[200] Scott and Bernice Sandler threatened to use Mink, Edith Green, and Senator Margaret Chase Smith (R–ME) for all communications with the OFCC and raised the spectre of "disruptive activities."[201] In the face of mounting criticism, Hodgson waffled some more, saying a few days later that "some kinds of goals and timetables applying to some kinds of federal contractors" would be a part of new guidelines.[202]

On July 31, 1970, Green, chair of a House Special Subcommittee on Education, was concluding her comprehensive hearings on sex discrimination (see Chapter 8). Speaking that day were Jerris Leonard, assistant attorney general of the Civil Rights Division of the Justice Department, and Elizabeth Duncan Koontz, the director of the Labor Department's Women's Bureau.

They were to explain why women were different from the other minorities for purposes of the affirmative-action guidelines. Green, who in 1964 had argued that race and sex discrimination were very different, now clearly was angry that women were treated differently: "Now, it is my understanding that the Labor Department, and we have, I hope, someone who can respond to this question today, has made this Order No. 4 apply only to minorities and not to discrimination on the basis of sex. Now, is that not stating an [illegal] administrative preference under title VII?"

After Leonard told her that there *were* guidelines for affirmative action for women, Green correctly pointed out that "Order No. 4 is far stronger in requiring the contractors to have an affirmative action program," and argued again that "the Government has, by administrative action, placed enforcement in ending one kind of discrimination above all others, when Congress did not in any way say that was to be the case."[203] Of course, Congress had nothing to do with Order No. 4; it was a regulation designed to implement an executive order. Moreover, neither the Civil Rights Act nor the executive order said anything about hiring goals and timetables. Green also paid no attention to the religious minorities and countless ethnicities that were also left out of Order No. 4.

But the focus that day was women. To answer Green's complaints, Koontz read into the record an explanatory statement from outgoing Labor Secretary Shultz that displayed considerable sociological sublety on the issue of women's employment patterns—a wariness that was completely lacking in the area of ethnicity and race. Shultz sought to show equal commitment by arguing that "the Federal Government is convinced that the under-utilization of women in employment throughout the nation constitutes a waste of national resources and talent." Though there were sex discrimination guidelines separate from Order No. 4, "both documents are directed to the same result and both require affirmative action on the part of Government contractors to attain that result." The main difference was that for Order No. 4, contractors were to "analyze their work force and their potential work force recruitment area and where deficiencies in the utilization of minorities exist, that goals and timetables be set to which the contractor's efforts shall be directed to eliminate those deficiencies." Shultz's letter argued that though "it is clear that utilization of the concept of goals and timetables as an anti-sex discrimination tool is appropriate," the procedures under Order No. 4 did not apply, primarily because "many women do not seek employment. Practically all adult males do."[204] In short, taken-for-granted gender roles made women different.

Green dismissed the sociological assumptions of the Labor Department, declaring, "I am getting more and more discouraged about any real deep

concern or intention to act." Koontz could only respond, "Well, please don't," and continued reading Shultz's statement, which is worth quoting in detail, both because of Shultz's reasoning and Green's reaction. Shultz argued not only that many women did not seek employment, but that those who did might not want all occupations: "Many occupations sought after by all racial groups may not have been sought by women in significant numbers." While all races and ethnicities were fundamentally the same, then, this was not true of men and women:

> Now, accordingly, different criteria must be employed in examining work force patterns to reveal the deficiencies in employment of women than are used in revealing racial deficiencies. Such criteria may well include the availability of qualified women in the employer's own force and the interest level expressed in respective occupations, as evidenced by applications for employment in those occupations. It will be necessary to examine whether the interest among women for certain occupations might be changed by effective affirmative action programs, and to properly examine these criteria and review suggestions regarding them or regarding the other applicable criteria. The Department plans to engage in an immediate series of consultations with interested parties. Representatives of women's groups, employers, and unions as well as acknowledged authorities on human resources will be invited to participate . . . The information thus obtained will be utilized by the Department in expanding and further defining its approach toward employing affirmative action to achieve an equal employment opportunity for women among Government contractors and by applying the concept of goals and timetables.[205]

Green's response to Shultz's plan was unequivocal: "I just have to say it is the biggest bunch of gobbledygook I have heard for a long, long time." Green may have heard nothing in Shultz's bureaucratese other than that women's rights in the workplace would receive different—lesser—enforcement. Referring to an earlier proposal by Koontz that the Women's Bureau be given authority to investigate and report on discrimination against women, Green forcefully rejected the idea "because it seems to me that you would still be under the Secretary of Labor, who in only one instance, back in FDR times, was ever a woman. And the Labor Department—you know, after a hundred years, has apparently yet to find out the widespread pattern of discrimination on the basis of sex."[206]

Even after this confrontation, the Labor Department continued to delay, as it met with Sandler and Scott but also business groups and labor unions.[207] In August, Hodgson told speechwriter William Safire there were benefits to

appeasing women but also that "women's Lib groups are obviously trumpeting some absurdities."[208] Weeks stretched into months. October brought more vague Labor Department denials of the women–black analogy to WEAL members in Congress.[209]

How were women's rights viewed behind the scenes at the Labor Department? An incident at the University of Kansas in February 1971 reveals the dismissive attitude toward problems faced by women, especially Euro-American women. It showed that the top OFCC officials continued to be at odds with women's advocates on the question of the sociology of women's employment and the analogy drawn between women and race minorities. Assistant Secretary of Labor Arthur Fletcher, an African American male and a major figure in the development of affirmative action for racial minorities, was giving a public lecture as part of a course on labor relations. The professor had introduced Fletcher as the person in charge of four divisions, including the Women's Bureau, which the professor derisively said was concerned with "women's lib, and these kinds of things." Fletcher did not rebut this characterization. Unknown to Fletcher, Karen Keesling, executive director of the Intercollegiate Association of Women Students, was part of the class and reported this and other transgressions to Senator Bob Dole (R–KS) and the White House. Fletcher apparently had a very circumscribed idea of fair employment, focused only on the official ethnoracial minorities. Keesling explained that during the question-and-answer period,

> a Mexican-American student asked if Mr. Fletcher was referring to blacks only when he spoke of minority groups. His answer was that a minority group is any group which is discriminated against economically because of its color. He stated that [white] ethnic groups are not included in his definition of minority groups. After this comment I asked if women were included in his definition of a minority group. He replied that "women were legislated their minority status." I assume he was referring to the addition of the word "sex" in Title VII of the Civil Rights Act of 1964.
>
> Following this explanation I asked if he felt that women were the victims of economic discrimination. He said, "Yes, some of them, but they were thrown in with all the rest of the women." This leads me to believe that Mr. Fletcher thinks there are very few women who are economically deprived, and that these few did not justify the inclusion of the word "sex" in Title VII.

According to Keesling, Fletcher expressed the view that only women who were heads of households faced significant discrimination, and their discrimination was based on color, not sex. Dole requested clarification of the matter

from the department, and in response, a legislative affairs aide from the Labor Department, Frederick Webber, informed Dole how best to respond to Keesling. In doing so, he supplied the clearest explanation (devoid of Shultz's bureaucratic "gobbledygook") of why women were different from racial minorities and should not receive the same affirmative action.

First, Webber told Dole to inform Keesling that federal officials make numerous speeches in a week and a "slip" occasionally occurs. Additionally, Webber said Fletcher was a strong supporter of women's rights, and "the OFCC under his leadership is proceeding to get affirmative action goals for women in employment established and implemented." But this affirmative action had to be specially tailored:

> You will recognize that women, per se, cannot be considered one of the groups having minority status. For example, Order 4 . . . specifying the obligations of government contractors with respect to equal employment opportunities for minorities, cannot be applied to women because one of the factors setting goals and time tables [*sic*] is the percentage of minority population in the area surrounding the employer. For women this percentage would usually be more than half. No one has yet proposed that every employer's payroll should be more than half women.

This was the crux of the matter: the proportional model of justice at the heart of affirmative action was just too revolutionary to include women, which would lead to apparent absurdities such as a requirement that employers strive for a 51 percent female workforce. But nothing in the civil-rights laws or executive orders, and nothing in the concepts of "civil rights" and "equal opportunity," suggested there should be different models of justice for different groups. The result was a conflict between the way civil-rights law was being implemented for ethnoracial minorities and what the administrators believed was appropriate for women.

Dole was to explain that Labor is "currently forming an advisory committee, including representatives of women's organizations as well as the National Association of Manufacturers, Chamber of Commerce, etc. to determine the relevant factors needed to secure an Order affecting women's employment similiar [*sic*] to Order 4 for ethnic minorities." In a comment sure to only increase Keesling's anxiety, Dole was to add that Fletcher was helping in this current effort.[210]

When Labor officials did meet with women's groups in April and May of 1971, the dam finally broke: the government accepted the understanding that women as a minority were analogous to blacks, Latinos, Asian Americans, and American Indians. The result was a "Proposed Order No. 4," published for comment on August 31, 1971. The final version, the "Revised Order No. 4," equalizing women and racial minorities with respect to goals and timetables, became binding on December 4, 1971—a full year and a half after Koontz promised immediate action.[211] Still, a year and a half was far shorter than the many decades it took blacks to win civil-rights protections. Women would henceforth be a part of government contractor affirmative-action plans. Contractors would have to promise to hire certain percentages of women within given time periods (though these would be based on studies of the pool of women workers and rarely be 50 percent).[212] Women's advocates had won their affirmative action, and an officially recognized victim status equal to African Americans and the other official minorities.

Conclusion

Employment affirmative action for Latinos, women, Asian Americans, and American Indians was made possible and—compared with the black civil-rights struggle—relatively easy by the prior development of law, bureaucracies, and regulations designed to help black Americans. The Civil Rights Act of 1964 and Title VII within it, the EEOC, the OFCC, the EEO-1 form that made difference-conscious affirmative action possible, and affirmative action itself were *all* created to prevent discrimination against black Americans and prevent black unrest in America's cities. The protections against national origin and sex discrimination in Title VII, the designation and counting of nonblack official minorities in the EEO-1, and the inclusion of the official ethnoracial minorities in the OFCC's affirmative action were all basically free rides, requiring virtually no lobbying or protest at all. EEOC officials defined the official minorities mostly undisturbed by representatives of any groups except blacks. This was possible because the government's experience with black Americans had legitimated racial or ethnic targeting in public policy, and because these minorities had meanings that made them analogous to blacks. Indeed, that was the very meaning of minority in the American context: analogous to blacks.

Once they were formally included in affirmative-action regulations, some of the other groups needed to apply pressure for significant action on their behalf. At the EEOC, it was not necessary for Latinos and women to lobby specifically for affirmative action to be included in the agency's efforts in that area. What was needed was meaning entrepreneurship aimed at the bureaucrats. The message was that Latinos and women were oppressed like blacks, and that their advocates cared. When EEOC administrators saw these groups as analogous and as politically active, they included them as part of affirmative-action policy. Over at the OFCC, Latinos and the other nonblack minorities identified on the EEO-1 form were integrated without controversy

into the program for affirmative action. Here, however, there was reluctance to include women. Labor Department officials had trouble with the woman–black analogy.[213] Women's advocates had to apply significant pressure and lobbying to have the policy designed for African Americans extended to them. While the resistance they encountered was very great relative to other nonblack groups, this should not obscure a simple fact: it took less than two years of pressure before they found victory. Their efforts were significantly eased because discrimination law developed for blacks, relying on statistics, made unnecessary individual women complainants.

What occurred here was not typical of the politics of disadvantaged groups in America. The advocates for women and Latinos were not representing organized, mass constituencies as had civil-rights groups representing disenfranchised southern African Americans. For Latinos, there was never anything remotely like the mass marches on Washington organized by leaders of the black civil rights movement. Latino groups were poorly funded, poorly organized, and lacking in mass mobilization capabilities. It did not matter—their leaders had clout. Similarly, NOW and WEAL were not originally groups with mass memberships, and their influence predated their grassroots activities. NOW had influence literally days after it was planned on some paper napkins at a luncheon. The mass mobilization of the black civil rights movement helped create agencies for civil rights that obviated any similar need among other groups. A nonparticipatory minority-rights politics became possible, where self-appointed leaders could pressure and have impact. Civil-rights bureaucrats practiced anticipatory politics. They anticipated that the millions of women, Latinos, Asian Americans, and American Indians wanted affirmative action.

Though political leaders and advocates for disadvantaged groups had used the term "minority" before the EEOC's EEO-1 form, this form—based on determinations made in the 1950s without study or analysis—gave the term real political meaning. For the first time, there was an official government document that stated the identities of the nation's minority groups, separating them from the "majority," and joining this designation to policy with real impact and implications. The OFCC copied the EEOC's determinations in its own affirmative-action regulations. These quiet designations of official minorityhood shaped the trajectory of American politics and the structure of opportunity for the next several decades. The same official minorities, with only minor changes, would be replicated in other affirmative-action programs, as shown in Chapters 5 and 6.

5

"IN VIEW OF THE EXISTENCE OF THE OTHER SIGNIFICANT MINORITIES": THE EXPANSION OF AFFIRMATIVE ACTION FOR MINORITY CAPITALISTS

Employment affirmative action was not the only way to help African Americans and other minorities. That policy sought to help minorities be hired and advance through established—that is, white male-owned—businesses. Another possibility was to help the minorities become owners of businesses. This could be done through minority preference in the provision of government contracts, where billions of dollars flowed from the federal agencies to construction companies or suppliers of various goods and services. A struggling black-owned construction business, for example, could get a multimillion dollar road improvement contract even though that business offered to do it at a price higher than white-owned businesses. Minority preferences were also possible through favorable loan terms or even technical assistance. In this way, the black-owned business could develop, become stronger, and eventually graduate out of the preference program.

The Johnson and Nixon administrations created programs of this type during the minority rights revolution. The goal of this chapter is to explain why they did so, and why and how they expanded the program to include the other official minorities of the employment affirmative-action regulations. The dynamics here are different than in the case of employment. That was mostly an administrative process shielded from electoral politics. Programs for minority capitalism, on the other hand, were developed for blacks as a way to mitigate the urban riots of the 1960s and also in part to win their votes.

Unlike employment affirmative action, which was always premised on fighting discrimination against minorities or remedying past discrimination, minority capitalism did not (originally, at least) have a discrimination rationale. There is no evidence that the government, in establishing such programs, was responding to complaints of discrimination or to studies showing why some groups were not setting up their own businesses in rates similar to Euro-Americans. There was no clear public rationale other than the intrinsic