



The Invincible Dogma: Statistical Disparity “Proves” Discrimination

A long-standing legal charade was played out again recently, when Federal Express paid \$3 million to settle an employment discrimination case brought by the U.S. Department of Labor. Federal Express was accused of both racial discrimination and sex discrimination. FedEx denied it.



Why then did they pay the \$3 million? Because it can cost a lot more than \$3 million to fight a discrimination case. Years ago, the Sears department store chain spent \$20 million fighting a sex discrimination charge that took 15 years to make its way through the legal labyrinth. In the end, Sears won — if spending \$20 million and getting nothing in return can be called winning.

Federal Express was apparently not prepared to spend that kind of money and that kind of time fighting a discrimination case. The net result is that the government and much of the media can now claim that race, sex and other discrimination are rampant, considering how many anti-discrimination cases have been “won.”

At the heart of these legal charades is the prevailing dogma that statistical disparities in employment — or mortgage lending, or anything else — show discrimination. In both the Federal Express case and the earlier Sears case, statistical differences between the mix of the workforce and the population mix were the key evidence presented to show discrimination.

In the Sears case, there was not even one woman who worked in any of the company’s 900 stores who claimed to have been discriminated against. It was all a matter of statistics — and of the arbitrary dogma that statistical disparities show discrimination.

Once statistical disparities have been demonstrated, the burden of proof shifts to the employer to prove his innocence, contrary to centuries of legal tradition that the burden of proof is on the accuser.

No burden of proof whatever is put on those who argue as if there would be a random distribution of racial and other groups in the absence of discrimination.

Happenstances may be random but performances seldom are. Most people are right-handed but, among major league hitters with lifetime batting averages of .330 and up, there have been 15 left-handed batters and only 5 right-handed batters since the beginning of the 20th century. All the best-selling beers in the United States were created by people of German ancestry. Anyone who follows professional basketball knows that most of the leading stars are black.

Some years ago, a study of National Merit Scholarship finalists found that more than half were first-



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born children, even in five-child families. Jews are less than one percent of the world's population but they won 14 percent of the Nobel Prizes in literature and the sciences during the first half of the 20th century, and 29 percent during the second half.

It would be no problem at all to fill this whole column — or this entire page — with examples from around the world of gross statistical disparities in outcomes, in situations where discrimination was not involved. But those who take the opposite view — that numbers show discrimination — do not have to produce one speck of evidence to back up that sweeping conclusion.

Human beings are not random events. Individuals and groups have different histories, cultures, skills and attitudes. Why would anyone expect them to be distributed anywhere in a pattern based on statistical theories of random events? Much less make the absence of such a pattern become a basis for multimillion dollar lawsuits?

However little evidence or logic there may be behind the belief that an absence of random distribution shows discrimination, there are nevertheless strong incentives for some people to cling to that belief anyway. Those who lag behind — whether educationally, economically or otherwise — have every incentive to think of themselves as victims of those who are more successful.

Those who want their votes have every incentive to go along, or even to actively promote that idea. So do those who want to see issues as moral melodramas, starring themselves on the side of the angels against the forces of evil. The net result is an invincible dogma — and a polarized country.

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