

Years ago, I removed my right arm. I now notice those facets of society that discriminate against one armed people. In particular it has come to my attention that professional football clubs discriminate against one armed players; that left hand tin snips are unprocurable, and that my training as an air pilot is heavily discounted if not valueless. I was even rounded up by the police and informed that I was driving illegally.

I have never believed that I owned a right to gain employment as a footballer, a plumber, or an air pilot, and hence that an employer was in any way wrong to discriminate against me. But a stipulation that I may only drive vehicles fitted with a left hand parking brake is quite another matter. While the first three are examples of discriminations made by people exercising a right that they own, the last is a legal restriction. While the first three have an obvious relationship to my ability to perform, the last is petty bureaucratic bullying by someone who has no built in incentive to learn what is or is not relevant to one arm driving.

Opponents of sex, race and handicap discrimination harm worthwhile causes by not themselves discriminating between properly exercised choice and prejudice. Further, they should identify discriminating laws which influence the way choice is exercised or provide the opportunity for prejudice to be the criterion of otherwise proper choice.

(All people discriminate in their dealings with other people and society would not function unless they did.) Discrimination for one thing, person or class is necessarily discrimination against others, or put another way, positive discrimination is no different in type from negative discrimination. Even Senator Ryan, choosing her staff, must have discriminated against male-chauvinist Liberals.

Buyers discriminating in favour of high quality and against high price don't usually ask who is the most deserving seller, but ask which product serves their own ends best. Were buyers instead, not to discriminate or to discriminate for "worthy" producers in lieu of cheap useful goods and services, their own standards of living would suffer. There are much more effective means of providing charity than this.

In practice none of us is indifferent to the welfare he or she gains from a pair of shoes, a car, a doctor, or an employee. In that the discrimination is in favour of the useful rather than the worthy it is not necessarily fair. However, neither would it be fair to us to compel us to engage the services of a decent hard working but unskilled medical practitioner, even though it might be no fault of his that he had failed to learn much medicine.

The 'Sex Discrimination Bill 1983' introduced to the Senate by Senator Ryan seeks to prohibit discrimination on the grounds of sex, marital status, or pregnancy in employment and the provision of goods and services. (It falls into the usual error of not distinguishing properly exercised choice from prejudice.) It may not permit employers or bankers to discriminate in favour of those who will most reward them while doing nothing about those legal immunities and privileges which permit bankers or employers who exercise prejudice rather than commercial judgement to avoid commercial penalty.

On the other hand, the bill's exemptions recognise that sex related differences can sometimes be important. The bill won't compel the armed services to take women in combat roles, give the men the right to compete in female sports, or compel life assurance companies to offer men the same low premiums they offer women. The principle that Senator Ryan uses here distinguishes between rational discrimination and prejudice. It is a distinction with wider applicability.

Far from preventing prejudice or irrationality from discriminating against women, the Bill itself is yet another irrational element arraigned against women. Employers will be even more reluctant to employ women if they fear that the Human Rights Commission may later become a third party to an employment arrangement and if they must bear the costs of training and promoting women who will, in all probability, take time out to nurture a family.

It may well be a damned unfair division of labour that women raise families while men raise incomes, but to the extent that that is a problem it is exacerbated by this bill. Similar considerations arise in relation to the provision of credit. (It is not possible to prevent rational discrimination by passing laws.) The loss of freedom and welfare necessary to stop rational choice would horrify even Senator Ryan.

Prejudice is a luxury that only monopolies can afford. A competitive business which denies itself the most productive employees or the most lucrative custom will soon lose to people who are more sensible. Rather than relying on the law to enforce equal treatment of the sexes Senator Ryan would serve her cause better by concentrating on those laws which protect some people and organisations from competition. It is unlikely to be coincidence that most complaint about unequal opportunity is levelled against the public sector, trade unions and monopolies. The pleasure derived from exercising prejudice is not costless. It is a form of economic rent like excess profits, excess earnings, overmanning and golf on Friday afternoons. It is not possible in a free market and most unfree markets are unfree only because government has discriminated in favour of one or other of the market participants.

Finally the law not only permits irrational discrimination but practises it. It strikes me as unfair that prostitutes are prosecuted while their customers escape. Laws that demand unnecessary skills which license jobs or otherwise limit conditions of employment discriminate irrationally against the unskilled - women, blacks, youth and the handicapped. When customers or employers choose freely, discrimination is likely to be reasonable and varied, maximising opportunity. When laws prohibit, discrimination will be stereotyped and in individual instances unreasonable.

The Sex Discrimination Bill is concerned with a real problem but will probably make it worse, ignoring the good that might be done by tackling discrimination in the law itself.