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Affirmative Action Through Free Choice

A few years ago a colleague of mine visited a small tie-making factory in Otaki. It was run by a strong, community-spirited Maori woman who was keen to help unemployed Maori into work, in particular mature, Maori women currently on benefits. If she had advertised for a mature, Maori woman she may well have found herself in breach of the Human Rights Act on all three counts: age, race and gender.

Instead she had to advertise the job as open to anyone and then select the kind of person she wanted: a mature, Maori woman. Not only did this mean combing through applications from people she would never contemplate hiring; those people also had to go to the time and expense of applying – and all for nothing. What is there to be gained from such a law?

Similar issues can arise in an educational setting. The distinguished legal academic Richard Epstein addressed the subject of affirmative action in a 2004 lecture for the Business Roundtable entitled *Affirmative Action: The US Experience and Implications for New Zealand* (available at nzbr.org.nz).

He made the point that the University of Chicago, where he teaches, is a small, private university. If entry into the law school were determined on grades alone, no students from minority groups might be accepted.

The University takes the view that such a situation would be bad for its students, who have to go on to live and work in a multicultural society. Accordingly, it has a policy of ensuring that intakes include minority students.

It's hard to see what's wrong with such policies in private organisations in either the employment market or education, and why anti-discrimination laws should get in the way of them. As so often happens, laws passed with the best of intentions have unintended and undesirable consequences.

For years many firms and other organisations have quietly sought to employ and promote women. Their motivations have included tapping into a wider pool of under-recognised talent and strengthening their relationships with markets in which women play important roles. Such private affirmative action policies have been widely accepted.

Even if there were no commercial advantages from such policies, why shouldn't private firms be able to adopt them if their shareholders agree? What's wrong with giving a helping hand to someone from a disadvantaged group, especially during hard times?

I think the same arguments apply to the employment of Maori or other ethnic groups. I raised this idea at the recent Jobs Summit and will promote it in my capacity as a member of the government taskforce looking at how Maori can avoid the worst impacts of the recession.

Many, if not most, indicators of Maori economic and social progress have been moving in a positive direction for many years. But there are still gaps with the non-Maori population. Private affirmative action could speed up progress.

As Epstein argues, there is no need to tie such action to past wrongs: "If we think a particular organisation will perform better with a diversity programme, for example, we should just implement it."

He makes the point that firms will often want to match employees to their markets, so they gain the trust of customers and understand local factors.

"With my white, Jewish tin ear from Brooklyn I will not do a good job trying to sell to former sharecroppers in the South." He adds that some firms may deal primarily with members of their own ethnic community, which is natural and efficient. Maori constitute a significant part of the economy with significant buying power.

Such approaches work best in competitive private markets. More care is needed in the public sector.

In particular, a centralised one-size-fits-all policy and the coercion associated with government action might well be divisive and counter-productive.

I would like to see private businesses and voluntary organisations giving more thought to ways of promoting Maori in employment and education, simply as part of good management practice.

Such efforts should be voluntary and decentralised – what works best in the head office in Auckland might not be the right approach in Gisborne.

In the final analysis, people should be free to associate, cooperate and trade in any way they wish, provided they do no harm to others. And in reality they discriminate in all sorts of social choices, such as who they marry. It is folly to pretend or wish otherwise.

As Epstein wrote, “The best maxim is live and let live. If a female Maori entrepreneur wants to hire an all-female Maori workforce, the law should not stop her from doing so. Voluntary arrangements are most conducive to social harmony.”

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