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## Line Drawing

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## Line Drawing

"It's easy enough to know what seems right. Stating it as a principle is another matter." So concludes William Raspberry's column "How Do You Justify Separate Schools?" [op-ed, May 25] in which he strenuously opposes all-male and all-white schools yet is "utterly untroubled" by all-female and historically black colleges and universities.

A principled explanation of his line-drawing between black and white and between male and female does exist; whether Raspberry wants to endorse it is another matter.

First, the principle. Equality, as Aristotle put it, demands that people who are alike be treated alike and, by correlation, that people who are unlike be treated differently. Defenders of preferential treatment argue that race- and gender-conscious measures may well be consistent with Aristotle's equality principle. Preferences for minorities over whites, or women over men, so this argument goes, treat "unlikes" differently. Since unlikes may be treated differently, these preferences are permissible. In contrast, preferences for men over women or nonminorities over minorities treat likes differently. As such, these preferences are impermissible.

Let me explain. When Alan Bakke is denied admission to medical school because the University of California at Davis reserves slots for minorities, the difference in treatment he receives does not cause him to be stigmatized as racially inferior, nor does the difference frustrate state efforts to combat historic racial discrimination. In these ways, Bakke is unlike his minority counterparts. Contrast this to the University of Texas's 1946 denial of admission to Herman Sweatt, an otherwise qualified black applicant, on the basis of race. Is Sweatt different from his white counterparts? Of course not. Only racial prejudice can explain this difference in treatment.

The argument for women is much the same. Virginia Military Institute's male-only policy perpetuates negative stereotypes without advancing an important state objective; Mills College's women-only policy inflicts no real harm on men.

There are costs in using equality to support this type of line-drawing, however. Most obvious, as the Reagan administration persistently argued, race (and presumably gender) should play no role in decision-making. In other words, minorities and

nonminorities (and men and women) are always alike. This argument is based on a universal ideal of equality.

A second argument against preference is grounded in Pandora's box. In other words, once you abandon the universal ideal to achieve just results, you must recognize that others will seize this opening to do harm.

Take the case of special rules for pregnancy-related disabilities. On the surface, it seems an obvious case for according favorable treatment to unlikes on the basis of their difference. Yet treating pregnancy as a special case both increases the costs of hiring women and supports prohibitions of female workers in fields where exposure to toxins may cause fetal damage. Treating unlikes differently therefore may ultimately harm women's economic position.

Principles then have their costs. But when we talk about right and wrong, principles cannot be forgotten. This is especially true when it comes to equality for, as Aristotle argues, equality and justice are synonymous.

—Neal Devins

The writer, a law professor at the College of William and Mary, was an assistant general counsel to the U.S. Commission on Civil Rights.