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LAWRENCE SUMMERS' SPEECH ON "INNATE" DIFFERENCES BETWEEN MEN AND WOMEN—A DIFFERENT PERSPECTIVE

*THOMAS C. FISCHER**

Many years ago, as a young assistant dean, I oversaw the admissions department at Georgetown University Law Center. I wondered why so few women and minorities attended our school, and U.S. law schools in general. (There were only three women in my Georgetown class of 250 students, and no persons of color.) What I discovered was that there were a variety of reasons, ranging from admissions practices, societal influences, and the candidates themselves.

Until law schools began recruiting at predominantly female and minority colleges, the previous generation's professionals overwhelmingly provided the next generation's professional school candidates. Both groups were mostly white and male. Moreover, the national aptitude test, the Law School Admissions Test (LSAT), compared the abilities of current test takers to those of past test-takers who had succeeded in law school. The model again was largely white males. Finally, the test questions were designed by persons who used upper-middle-class white language, experience and values as a prism. Accordingly, the test scores of women and members of minority groups were lower than those of white males, and the former tended to be excluded in greater proportion due to their scores.¹ In other words, what appeared to be a quantitative, objective measurement of ability was somewhat stacked against women and persons of color.

But we also found that college counselors discouraged women from applying to law school, saying that they would be harassed (and to some degree that was true in the '60s and '70s), and that there would be no jobs for them when they graduated. Minority students were discouraged for similar reasons, and in the late 1960s and early 1970s many of them began to be heavily recruited by large corporations with attractive job offers, so they could not see much reason to defer their pursuit of the "American dream" to attend law school.²

* Former Dean and Professor of Law Emeritus, New England School of Law; Distinguished Academic in Residence, Seattle University School of Law. AB University of Cincinnati; JD Georgetown University Law Center.

¹ Unpublished research done for the Admission Committee, Georgetown University Law Center, between 1967 and 1971. At that time, the Law Center received the LSAT scores of about one-sixth of all test takers, a sizable sample.

² *Id.*

Finally, research I did before I left Georgetown revealed that many potential law school candidates (we studied only women, but I suspect the findings would apply equally to minorities) self-selected *themselves* out of the applicant pool. In greater proportion than their parents, spouses or best friends, women felt that they would not qualify for or be able to compete in law school. So self-perception or self-election played a role too.³

Well, experience based on study and experimentation has proved us wrong about women and minorities in law schools and the legal profession. Through more enlightened and liberalized admissions practices; better designed aptitude tests; support programs; and improved self-image, we have learned that women and minorities can indeed excel in law school and in the practice of law. Their inclusion is now changing the profession. But it has changed societal and personal attitudes as well.

Which brings us to Harvard President Lawrence H. Summers' recent comments about the "innate" differences between men and women as regards math and science skills. Taken as a group, I believe Summers is statistically correct in saying that, at a certain age on certain aptitude tests, women score less well in math and science than do men, and score higher in verbal skills. (Similar deviations occur for persons of color as a group.) What this generalization does not tell us is that some women outscore some men in math and science, and some men score higher in verbal skills than some women. Nor does it tell us what may happen later in life, when a member of either group is challenged by a particular mentor, or becomes dissatisfied by a career for which they initially seemed well suited. Nor does it account for societal influences or personal choices. We might just as well identify the differences as "alpha" and "beta" (or, if you prefer, as lambda and mu) groupings, as by sex.

More recent research of mine, into the initial job choices of law school graduates, revealed that men were more prone to take law firm jobs while women were more likely to take government or corporate jobs, or to practice solo, in small firms, in some law-related field or not at all. Minority group graduates' choices reflected similar differences. When a small sample of women was asked why this was so they cited lifestyle choices (free time, regular hours); to the wish to collaborate rather than compete; to their employability and treatment in other (mostly large law firm) positions. Since these professional "choices" were not limited to women alone, and were influenced at least to some extent by individual preference rather than aptitude, it seems much better to treat them also as alpha/beta elections than to label them by sex or minority status.⁴ And, since these choices persisted (and crossover between sexes increased) as large law firms and corporations began to aggressively recruit women, assumed barriers

³ Thomas C. Fischer et al., *Family Constellations of Law and Medical Students*, 26 J. LEGAL EDUC. 241 (1974) (National Institutes of Health-funded research).

⁴ THOMAS C. FISCHER, *LEGAL EDUCATION, LAW PRACTICE AND THE ECONOMY: A NEW ENGLAND STUDY* 68-75 (Rothman 1990).

(discrimination, glass ceilings) seemed not to be as great a reason for the differences between men and women as was once thought. Indeed, as legal careers progressed, more alphas turned into betas than vice versa.⁵

All this indicates to me that a stop-action photo (the SAT) of a person's "innate ability" is far from the whole story. Indeed, the introduction of large numbers of women and minorities into the legal profession (and other professions) is having a profound effect. The positions and work the betas seem to prefer are increasing in relation to alpha jobs.

In sum, generalizations based on single measurements of "ability" at a particular point in time may tell us something about prospects and possibilities. But to label them as sexual (or racial) markers that endure over a career is pretty foolish. At best they should be used to question and address how abstract measures of "innate ability"—telling someone what they can and cannot do—might reinforce societal pressures and skew personal choices, thereby thwarting equal opportunity and individualism.

⁵ LEONA M. VOGT, *From Law School to Career: A Highlight Report of the Career Paths Study of Seven Northeastern Area Law Schools* (Harvard Law School 1986).

