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Are we letting colour blindness become myopia?

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All animals are equal but some animals are more equal than others.  
- George Orwell, Animal Farm.

I. Introduction

Recently the United States Supreme Court decided the most important civil rights case since Brown v. Board of Education, which outlawed racial segregation in schools. Twenty five years later racial discrimination was once again the issue before the Supreme Court in Regents of the University California v. Bakke, but in a somewhat different and more perplexing form - reverse discrimination. The question at issue was whether the University could give preference to blacks over whites by means of a quota system, in order to remedy past discrimination. Bakke was a white student who had not been admitted to the University's Medical School even though his grades were much higher than those of racial minority students given places reserved for such students by a quota in the entering class. He alleged that the University had excluded him because of his race. The Supreme Court held by a majority of five to four that rigid quotas based solely on race, where there was no previous history of discrimination, were in violation of Title VI of the Civil Rights Act of 1964 which prohibits racial discrimination in any programme receiving federal funds. However, the Supreme Court also held that race might legitimately be an element in judging students for admission to universities.

The case deals with the important issue of the allocation of scarce resources - in this instance places in a medical school. As blacks are not achieving the standard required to gain entry to medical schools under a system of open competition, and although the United States population and medical profession. The granting of such a preference in the form of a quota conflicts with the rights of whites as a group not to be penalized because of their race.

The concept of reverse discrimination is not limited to the United States nor is the under achievement of racial minorities.
New Zealand social factors which in many ways resemble those which led to the establishment of quota systems in the United States have resulted in the introduction of similar quotas here for entry to medical education.

This paper examines the legal implications and social justifications of such schemes with special reference to the Auckland Medical School.

II. The New Zealand Situation.

For several years New Zealand's two medical schools have been trying to do something to remedy the under representation of Polynesians in the medical profession. Both have introduced preferential entry schemes for polynesians. Such schemes serve as an encouragement to make a career in medicine and give unspoken recognition to the fact that it has been more difficult for this minority group, under the present education system, to achieve the standard required than for other students.

The Otago Medical School has operated a preferential entry scheme for polynesians for many years. Until 1974, two places were made available for preferential entry. When the size of the entering class was increased from one hundred and fifty to two hundred in 1974 the preferential places were increased to six.

However, this plan was not entirely successful as there was no recruitment for the scheme and without this few students, schools or guidance counsellors were aware of it. Consequently between 1950 and 1974 only thirty two out of the forty eight preferential places were taken and only eighteen of these by New Zealand Maoris. But out of these thirty two students thirty qualified, one resigned and one died. This shows that polynesians are capable of completing the medical school course if they are admitted. Unfortunately the trend at the Otago Medical School over the last decade, has been a decline rather than an increase in the number of polynesian students.

In contrast the Auckland Medical School has taken active steps to recruit more polynesian students.

In March 1971, the University of Auckland Faculty of Medicine recommended to the Senate that "there be a limited number of preferential
places for suitably qualified polynesian students who are New Zealand citizens." The number of places created was initially 9 "Up to three" but in 1976 this was increased to 10 "up to six".

The degree of polynesian ancestry required is not fixed but proof of polynesian ancestry may be required by the Admissions Committee. A feature of the application form 11 is a declaration of New Zealand Citizenship and under this scheme this is interpreted so as to include those foreign nationals who are ordinarily resident in New Zealand in the terms of the Overseas Admissions Committee Handbook para 2.3.

There were one hundred and thirty places in the Auckland Medical School's entering class in 1978. 12 The basic criterion for selection into the medical course is the candidate's results in the Universities Bursaries Examination. 13 In 1978 one hundred and five out of the one hundred and thirty were admitted on this basis. However, there is an admissions policy permitting "mature" entry and this requires a display of academic excellence in tertiary studies usually coupled with good Bursary results. 14

When an application is made for entry to the Auckland Medical School, the applicant is asked whether he wishes to be considered for one of the places in the Polynesian Preference Scheme if he is of polynesian descent. 15 If a Polynesian Preference applicant achieves an 'A' Bursary of a sufficient standard (currently \( \frac{340}{500} \)) to merit selection with the mainstream of applicants the application for Polynesian Preference is withdrawn. 16

All the successful applicants for the medical course will have been interviewed. But the Polynesian Preference applicants are interviewed by a different panel consisting of Professor C.D. Mantell (who is a polynesian), another person of high standing in the polynesian community and an additional member of the Medical Faculty.

There are up to six places available every year for applicants under the Polynesian Preference Scheme. However, in some years the quota has not been filled due to either the poor education standard of the applicants or insufficient applicants. 17
The Polynesian Preference Scheme is fairly well publicized as it is mentioned in all the publications concerned with entry to medical school especially in the Faculty Handbook and applications information sent to every secondary school listed in the Department of Education Directory. Consequently the Polynesian Preference Scheme offers places in the medical course to those applicants of polynesian origin who are New Zealand citizens and who although displaying academic ability of a high order gain insufficient marks in public examinations to achieve a place in the list of successful applicants.

The Medical School recognized that the Polynesian Preference Students would need special help, especially in their first year, and so a system of additional tutorials was arranged for them. These tutorials proved to be very successful and have been extended to students in their Second Year.

The total number of students studying medicine at Auckland University was limited to four hundred and fifty by the Limitation of Enrolments Statute 1970. The Medical Faculty has limited the number of students in the entering class to one hundred and thirty. Under the Degree Course Regulations for the Degree of Bachelor of Human Biology (BHB) admission to Part I of the course of study will be withheld or granted upon consideration of the past performance of the applicant in public examinations and at school, and upon an interview where it is required. Therefore the University has power to limit the number of applicants accepted into the Medical School and also has set criteria upon which to judge their fitness for entry.

The establishment of such a scheme raises the question of whether it contravenes any anti-discrimination legislation and also whether there are any members of the community who object to such a scheme and might bring an action if this were possible.

The Auckland Medical School Scheme has received praise and been held up as an example to the government and other bodies of what can be done to assist polynesians. But there are also persons in the community who would object to such a scheme. The Race Relations
Conciliator (Mr Harry Dansey) has been astonished to receive a significant number of complaints from European New Zealanders about the publication of local authority information pamphlets and newspaper advertisements in polynesian languages. Also 25

When the Auckland City Council advertised a scholarship at Auckland University for Pacific Island Students I received about six written complaints and about twenty critical telephone calls. Their claim, which seemed to me unjustified, was that if the Council had a scholarship it should be for everybody.

This is borne out by remarks made by Professor C.D. Mantell (of the Auckland Medical School) who believed that there was enough feeling of this kind in Auckland at the present time to encourage someone to bring an action. 26 It would not be surprising then if a rejected applicant were to challenge the validity of a scheme such as the one operated by the Auckland Medical School.

III The Legal Implications.

In New Zealand we do not have a written constitution. Rights and liberties may, therefore, arise from either the common law or statute. There are no apparent common law restrictions on discrimination. Thus any restriction on discrimination in New Zealand must be embodied in anti-discrimination legislation. The Polynesian Preference Scheme must contravene such legislation if it is to be declared invalid.

The Race Relations Act 1971 was enacted to prevent racial discrimination in the basic fields of: 1) Access to and use of public places, public transport and other public facilities 27; 2) the provisions of goods and services or facilities by persons whose business it is to provide them 28; 3) land, housing, business and residential accommodation 29; 4) employment. 30 There are no sections in the Act which specifically apply to the provision of education. It is difficult to interpret the other prohibitions in the Act to include educational institutions as their wording is too narrow. This is supported by the fact that discrimination in education is specifically covered in more recently enacted anti-discrimination legislation. 31

An important provision of the Race Relations Act 1971 is Section 9 which states that anything done or omitted is not a breach of the Act if it is done in good faith for the purpose of
advancing or assisting particular persons, groups of persons or persons of a particular race, colour, ethnic or national origin and if these groups or persons may reasonably be considered to need assistance or advancement to achieve an equal place with other members of the community. This section would provide a possible defence if any action could be brought against the Medical School under the Race Relations Act 1971. In the light of the information on the lack of educational attainment by polynesian students, which is elaborated in the fifth part of this paper, it would seem that the Medical School would have no difficulty in establishing a need for some sort of assistance to such students. The fact that the scheme which the Medical School operates is well organized and successful would strengthen their defence under section 9 against any action brought under the Race Relations Act 1971. Consequently, it is difficult to envisage that an action could be successfully brought against the Auckland Medical School's Polynesian Preference Scheme under the Race Relations Act 1971.

The Human Rights Commission Act 1977 is to a great extent an anti-discrimination statute and is a supplement to the Race Relations Act where that Act was deficient. Section 26 of the Human Rights Commission Act 1977 deals specifically with the provision of education. Section 26 provides

(1) It shall be unlawful for an educational establishment, or the authority responsible for the control of an educational establishment:-

(a) To refuse or fail to admit a person as a pupil or student; or
(b) To admit him on less favourable terms and conditions than would otherwise be made available; or
(c) To deny or restrict access to any benefits or services provided by the establishment; or
(d) To exclude him or subject him to any other detriment—by reason of the colour, race, ethnic or national origins, sex, marital status, or religious or ethical belief of that person or of the colour, race, or ethnic or national origins of any relative or associate of that person.

(2) An educational establishment maintained wholly or principally for students of one sex, race, colour, or religious belief, or the authority responsible for the control of any such establishment, does not commit a breach of this section by refusing to admit students of a different sex, race, colour, or religious belief.

(3) In this section "educational establishment" includes an establishment offering any form of technical training or instruction.
An action might be brought under this section by an aggrieved applicant who believed he had not been admitted to medical school because of his race. In this situation a non-polynesian student could allege that the university had 1) refused or failed to admit him; 2) denied or restricted his access to the benefits and services they provided (namely a medical education); 3) excluded or subjected him to some other detriment because of his race or colour.

If a non-polynesian student could show that he would have been admitted to the Medical School entering class under a system of open competition, had there not been preferential places given to polynesian students, then he would prima facie seem to have a strong case under section 26, subsection one.

However, when selecting students, the Medical School takes into account factors other than academic achievement such as the applicants performance in an interview. Personality factors such as these could make it more difficult for a rejected applicant, even though his academic achievement was higher than that of the Polynesian Preference Students, to establish reverse discrimination.

Section 29 of the Human Rights Commission Act 1977 provides:

Anything done or omitted which would otherwise constitute a breach of any of the provisions of sections 19, 20, 21, 22, and 26 of this Act shall not constitute such a breach if:
(a) It is done or omitted in good faith for the purpose of assisting or advancing particular persons or groups of persons of a particular colour, race, or national origin; and
(b) Those groups or persons need or may reasonably be supposed to need assistance or advancement in order to achieve an equal place with other members of the community.

This section is very similar to section 9 of the Race Relations Act 1971 and would exempt the Medical School from liability if they could show that the purpose of the Polynesian Preference Scheme was to assist or advance polynesians and that polynesians could be reasonably supposed to need such assistance or advancement.

It would seem that the Medical School would be able to establish that such assistance is necessary. This would be argued on the basis
of the need to increase the number of polynesian doctors in order to provide adequate and appropriate health care for their people and also on the grounds that without such assistance the number of students fulfilling the entrance requirements for medical education would be unlikely to increase.

If the Polynesian Preference Scheme was not in apparent contravention of section 26 it might still be challenged under section 27 of the Human Rights Commission Act 1977 which states that

Where a requirement or condition which is not apparently in contravention of any provision of this Part of this Act has the effect of giving preference to a person of a particular colour, race, ethnic or national origin, sex, marital status, or religious or ethical belief in a situation where such preference would be unlawful under any other provisions of this Part of this Act, the imposition of that condition or requirement shall be unlawful under the provision unless the person imposing it establishes good reason for its imposition and shows that its imposition is not a subterfuge to avoid complying with that provision.

Despite the fact that the Polynesian Preference Scheme does appear to contravene the Act it seems that the scheme would be lawful under section 27 even though it gives preference to persons of a particular race as it could be shown that the Medical School had a "good reason" for its imposition. The Medical School would argue that there is a need for more polynesians in the medical profession and that, because of the low educational attainment of polynesians as a group at present, the only way to achieve this is to give such students preference. They would also point out that the preference made is not a great one as the preferential students still have to reach a high educational standard which is not much lower than that of the other students. If this information amounted to a "good reason" under section 27 then the Scheme would not be unlawful and not in contravention of section 26 of the Act.

The provisions of the Human Rights Commission Act 1977 have not yet been interpreted by the Commission or the Courts and therefore anything that one could say about the outcome of an action can only be tentative. Consequently it is useful to look to other jurisdictions to see how they have dealt with instances of reverse discrimination and their relevant legislation as an aid to the interpretation of the New Zealand legislation. The United Kingdom legislation will now be examined.
as it is the most relevant in relation to the New Zealand legislation.

IV The United Kingdom Legislation.

The United Kingdom Race Relations Act 1976 resembles closely the New Zealand anti-discrimination legislation. Discrimination in education is specifically prohibited by the United Kingdom Act in Section 17 which states that

It is unlawful, in relation to an educational establishment within column 1 of the following table, for a person indicated in relation to the establishment in column 2 (the "responsible body") to discriminate against a person -

(a) in the terms on which it offers to admit him to the establishment as a pupil; or

(b) by refusing or deliberately omitting to accept an application for his admission to the establishment as a pupil;

or

(c) where he is a pupil of the establishment -

(i) in the way it affords him access to any benefits, facilities or services, or by refusing or deliberately omitting to afford him access to them; or

(ii) by excluding him from the establishment or subjecting him to any other detriment.

It can be seen that section 26 of the New Zealand Human Rights Commission Act 1977 is worded in a very similar manner to section 17 of the United Kingdom Act and therefore any interpretation of section 17 would be very useful in interpreting the New Zealand legislation.

Unfortunately no cases have yet been decided under the 1976 United Kingdom Race Relations Act and therefore the only English decisions available at present are those relating to claims under the 1965 and 1969 Acts which did not contain provisions which specifically prohibited discrimination in education.

In Cumings v. Birkenhead Corporation decided when the 1968 Act was in force which had no separate education provisions, it was said that if an education authority were to allocate children to particular schools according to the colour of their skins it would be so unreasonable, so capricious, so irrelevant to any proper system of education that it would be ultra vires altogether, and this Court would strike it down at once.

It would seem, therefore, that a court would intervene in a blatant case quite apart from this legislation. Lord Denning M.R. added that
if there were valid educational reasons for a policy as, for instance, in an area where immigrant children were backward in the English tongue and needed special teaching then it would be perfectly right to allocate those in need to special schools where they would be given extra facilities for learning English. In short, if the policy is one which could reasonably be upheld for good educational reasons, it is valid. But if it is so unreasonable that no reasonable authority could entertain it, it is invalid.

Unfortunately these remarks were obiter as the case was concerned with the allocation of schools according to religion and the action was brought under the Education Act 1944.

However Lord Denning M.R.'s view in *Cummings v. Birkenhead Corporation* seems to be supported by section 35 of the United Kingdom Race Relations Act 1976 which creates a general exception to Parts II to IV of the Act. Section 35 states that

Nothing in Parts II to III shall render unlawful any act done in affording persons of a particular racial group access to facilities or services to meet the special needs of persons of that group in regard to their education, training, or welfare, or any ancillary benefits.

This section would seem to cover the situation where there were "good educational reasons" for positive discrimination. Therefore programmes such as special language courses for persons whose first language is not English would be permissible. This section could be interpreted to cover the type of special admissions programmes operated by medical schools for racial minority students.

Section 13 of the United Kingdom Race Relations Act 1976 lays down a general duty on vocational training bodies not to discriminate. However section 37 of the Act provides an exception and allows for positive discriminatory training. To satisfy the conditions for positive discrimination there must have been no persons or a relatively small number of a racial group engaged in the relevant work in Great Britain or in a particular area. The training bodies concerned are the industrial training boards, the Manpower Services Commission and the Training Services Agency. However, other bodies may be designated. The question of whether a body concerned with medical education might be so designated and hence come within the scope of section 37 of the Act is complicated by the fact that medical education is provided by
Universities but registration of medical practitioners is controlled by the Medical Council of Great Britain. University education falls within section 17 and not section 13 of the Act but the Medical Council might qualify for designation under section 37. However, when looking at the general scheme of the Act, it would seem that sections 13 and 37 are designed to cover the trade training institutions (e.g. plumbing, mechanics etc) and not those institutions mentioned in section 17 of the Act.

It would seem, therefore, that under the United Kingdom Race Relations Act 1976, preferential entry schemes would be lawful as long as the body operating the scheme could show that there was some good and justifiable educational reason for the operation of the scheme.

After a review of the New Zealand and United Kingdom legislation it is evident that there must be some social justification for giving preference to racial minorities. The situation giving rise to the Polynesian Preference Scheme at Auckland University will now be discussed.

V. The Social Justifications.

Medical schools are now, more than ever before, experiencing a shortage of places for admissions and consequently the number of places available is far less than the number of applicants who are minimally qualified. In the New Zealand context the first question is do we need more polynesian doctors?

The patient's reaction to medical intervention can be greatly influenced by his attitudes towards disease, health and medicine. These attitudes need to be understood before treatment can be successful. The influence of cultural attitudes to medicine has been described by G.L. Engel 42

Social and cultural factors will also influence how the disorder is experienced by the patient, by the environment and by the physician. Such factors may determine what symptoms the patient selects to present to his family or physician and what symptoms he may elect to minimise or conceal. Different cultures have different standards as to what is acceptable and what is grounds for shame or concealment. Such factors may also determine when, how, or where the patient goes for help. In some social settings and cultural groups, the expected behaviour is to seek medical help early; in others, one goes only as a last resort.
Polynesians and pakehas have different cultural responses to both sickness and treatment. Since polynesians have different cultural responses to medicine the medical practitioner needs to be aware of this when treating polynesian patients. Without any experience by the doctor of polynesian culture or at least some awareness of different cultural attitudes, the relationship between him and the patient, the co-operation of the patient during treatment, and consequently the patient's health are likely to suffer. This is especially important as polynesians have a high incidence of disease and high mortality rate and are therefore in need of greater health care. 43

Until recently medical students in New Zealand did not receive any formal training in treating the Maori patient. Otago University Medical School gives some training through reading and lectures by Maori doctors and cultural leaders in its Behavioural Sciences Course. Auckland medical students spend a week on a marae. But a week on a marae or a course of lectures can only give a brief insight into the great amount of knowledge gained through a lifetime's experience of a culture which only a polynesian student has. The high incidence of disease and the early death of polynesians have many causes but probably one of the most important contributing factors is the lack of communication with doctors.

This problem is compounded by the maldistribution in New Zealand of medical care resources in relation to the population's needs. As a result least health care is given in areas where the greatest need exists. Most doctors can choose where they will work and therefore tend to go to upper and middle class areas. This leaves lower class areas with insufficient doctors and health services. Middle and upper class patients also demand more health services than working class patients and are more critical of the services they get. As a result they get better services. 44 Polynesians tend to live in areas which are considered lower class and which do not have sufficient health care services (e.g. the recent controversy over the lack of doctors in Porirua). 45 Consequently the availability of health care to polynesians is not as great as for pakehas who live in other areas.

There is, then, a clear need for more polynesian doctors to improve the understanding and treatment of the polynesian patient in
New Zealand. In order to train more of this minority group as doctors there need to be more suitably qualified applicants to medical school. One needs to examine why there are not many more who qualify for admission to medical school without a special admissions programme for them.

The major reason why very few polynesians qualify for admission to medical school under an open admissions programme, and also why there are only a small number who apply for medical school, is the low level of educational achievement among them. The 1971 Census showed that the academic or formal educational qualifications of Maoris in the labour force was proportionately below those of non-Maoris.

**Educational Qualifications of Maoris in the Labour Force 1971**

<table>
<thead>
<tr>
<th>Qualification</th>
<th>Males</th>
<th>Females</th>
<th>Total</th>
<th>Percentage of Labour Force</th>
</tr>
</thead>
<tbody>
<tr>
<td>University -</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Doctorate</td>
<td>6</td>
<td>-</td>
<td>6</td>
<td>0.01</td>
</tr>
<tr>
<td>Master's degree</td>
<td>10</td>
<td>1</td>
<td>11</td>
<td>0.02</td>
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<tr>
<td>Bachelor's degree</td>
<td>136</td>
<td>17</td>
<td>153</td>
<td>0.22</td>
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<tr>
<td>University diploma or certificate</td>
<td>91</td>
<td>13</td>
<td>104</td>
<td>0.15</td>
</tr>
<tr>
<td>Other</td>
<td>2</td>
<td>1</td>
<td>3</td>
<td>-</td>
</tr>
<tr>
<td>Secondary</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Higher leaving certificate (1)</td>
<td>142</td>
<td>64</td>
<td>206</td>
<td>0.29</td>
</tr>
<tr>
<td>University entrance</td>
<td>698</td>
<td>293</td>
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<tr>
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<td>3,922</td>
<td>5.53</td>
</tr>
<tr>
<td>Other</td>
<td>162</td>
<td>262</td>
<td>424</td>
<td>0.60</td>
</tr>
<tr>
<td>Primary qualifications</td>
<td>350</td>
<td>122</td>
<td>472</td>
<td>0.67</td>
</tr>
<tr>
<td>No qualifications (2)</td>
<td>46,386</td>
<td>18,220</td>
<td>64,606</td>
<td>91.13</td>
</tr>
<tr>
<td>Totals</td>
<td>50,105</td>
<td>20,793</td>
<td>70,898</td>
<td>100.00</td>
</tr>
</tbody>
</table>

(1) Includes University Scholarship, University Bursary, University Preliminary (Fine Arts, Accounts Prelim.)

(2) Includes not specified.

Only eight point nine percent of the Maori labour force was recorded as having any formal educational qualifications in comparison with thirty-two point three percent of the non-Maori labour force. A comparison of qualifications held by the two groups shows seven point eight percent...
of Maoris with secondary school qualifications as against twenty-four percent of non-Maoris, and point four percent of Maoris with University qualifications relative to four point three of non-Maoris. 47

There are factors which contribute to the low educational achievement among Maori children. Ausabel identified as a major contributing factor the lack of parental guidance and encouragement for school children. Maori children realize that their parents are concerned that they pass School Certificate, for example, but in contrast to pakeha parents make fewer demands about homework and school attendance. 48 Maori pupils may do well at school up until about the fourth form but as they begin to have greater contact with the adult Maori community they see that the adults are not greatly concerned with education. Consequently their aspiration to do well is weakened. 49

A survey of Maori doctors in New Zealand (conducted by Dayll Jensen of the Otago Medical School) showed that eleven out of the fourteen Maori doctors who replied to the survey believed that the disciplined work at their secondary schools (where seven of them were boarders) made a significant contribution to their success. All of these doctors stated that their parents were interested or actively encouraging in their children's education. 50

Socio-economic status also seems to be a contributing factor in the lack of suitable polynesian applicants to medical school. Maori incomes are in general lower than those of non-Maoris.
The 1971 Census showed that the income brackets up to and including the $3,000 to $3,999 bracket (the modal income for both Maori and non-Maori population) held ninety-two point six percent of all Maori income recipients and only eighty-three point one percent of those who were non-Maori. A much smaller percentage of Maori income recipients than non-Maori income recipients are included as the income brackets rise. In the highest income bracket ($15,000 and over) there were point four seven non-Maoris and only point zero eight percent Maoris.

The 1971 Maori labour force was thirty-one point two percent of the total Maori population. As a result the Maori population has a
high dependency ratio (those who consume but do not produce - usually the very young and the very old). As a consequence, Maoris not only earn less, but their earnings have to be distributed over a greater number of dependents. 53

Maoris are disproportionately highly represented in low cost housing settlements for low income families due to their low socio-economic status. 54 These areas have few doctors and lawyers, hardly any community facilities and suffer a very high juvenile crime rate. It was predicted in the Report on Juvenile Crime in New Zealand that twelve percent of non-Maori boys aged ten years would appear in court before their seventeenth birthdays while just over fifty-two percent of Maori boys would do so. 55

In Dayll Jensen's survey only four of the Maori doctors who responded to the questionnaire had fathers who could be classed as semi- or unskilled workers, the remainder being skilled workers, farmers, or professional men. Three of the seven farmers' wives were teachers. 56 This is consistent with the finding that less than twenty-five percent of New Zealand's university students come from "working class" homes. 57

Language difficulties also affect the number of polynesian children who reach the standard required for entry to medical school. When Maori children start school they are consistently found to have retarded language development. 58 One cause of this is that Maori children have more contact with other children than with parents and therefore do not receive the positive repetition and reinforcement necessary for normal speech development. Another cause is that Maori and English are both spoken in many homes and therefore neither language is consolidated. As a result children who speak only a little English or who speak it badly are at an immediate disadvantage when they are expected to read it or write it at school. A survey of trade trainees and university students showed that only fourteen percent of the university students came from a home where Maori was spoken more often than English compared with sixty-nine percent of the trade trainees. 59

In Dayll Jensen's survey, twelve out of the fourteen doctors who replied to the questionnaire came from homes where English was
predominantly spoken and in six of these homes Maori was spoken rarely or not at all.

A manifestation of all these factors is the attitudes of third and fourth form students in New Zealand public schools. Both Maoris and pakehas thought of Maoris as "musical, happy-go-lucky, unattractive, and as failures."

With few highly educated polynesians to act as role models, low parental expectations, low socio-economic status and language difficulties this is hardly a surprising result.

Government policy until very recently contributed to the lack of progress within the professions by the polynesian people. This is reflected in a statement by the Labour Department, as recently as 1965, which commended the readiness of Maoris to do unskilled or semi-skilled manual or labouring work and without their contribution it is probable ... that we would have to import ... a very much larger number of persons suited to such work.

The Labour Department's view is reinforced by a statement by Sir John Marshall on the place of Maoris in the New Zealand social structure: "Maoris do have a role to play in New Zealand Society and I have been through factories and noticed they make particularly competent and happy machine operators."

Recently the Maori Affairs Department and the Education Department have become increasingly concerned about the under-achievement of polynesian children and have begun to launch programmes to remedy this. One such programme is the setting up of homework centres for pupils and counselling services for both pupils and their parents. Concern has also been expressed in Parliament recently about the small number of polynesians attending university.

VI. Conclusion

The New Zealand anti-discrimination legislation requires some social justification for giving preference to polynesians when admitting them to medical school. The material presented above shows that there is ample justification for the existence of such a scheme. Polynesians in New Zealand are four times more likely to be unemployed, live in over-crowded
accommodation, or be below the poverty line than pakehas. 66 They are educationally disadvantaged and poorer because they belong to a group who have suffered a history of discrimination and poverty. These factors have been perpetuated through the lack of opportunity due to their poverty. 67 Europeans hold the majority of positions of power, responsibility and authority in government, industry, universities and the professions. Consequently a vicious circle has been created which is virtually impossible for the polynesians in it to break without assistance.

The Auckland Medical School's Polynesian Preference Scheme provides a means for more polynesians to study medicine and is essential if we as a society want to see more polynesians represented in the medical profession. Without such a scheme very few polynesians would be admitted as they fail to reach the standard required under a system of open competition. Until something is done to improve the education of polynesians at a much earlier stage of their schooling such schemes will be necessary. Recently steps have been taken to try and remedy the educational under-achievement of polynesians 58 and if these are successful then the Polynesian Preference Scheme may only need to be a short term operation. At present the scheme is well organised and successful. It assists polynesian students in a significant way with little prejudice to the rights of the white majority given that there is not any great disparity in academic achievement between the preferential and main-stream students. 59 Nevertheless white students are being discriminated against because of the scheme. However, only a small class of students is affected. It therefore becomes a question of whether this degree of discrimination is acceptable when balanced against the benefits which the scheme provides. On balance the scheme is not undesirable.

It is also important to remember that a medical education is a privilege and not a right. Therefore when allocating a scarce resource such as places in a medical school there is less need for equity. 70 Consequently the medical school has this additional justification for the existence of such a scheme.

The ideal New Zealand is founded on an egalitarian society. The egalitarian ideal presupposes no extremes of wealth, and racial equality. Few ideals are ever fully realized and this is so with New
Zealand's ideal society. When one contrasts the situation of polynesians in New Zealand with the ideal one finds that the two are poles apart. This means either that the ideal has not been realized or that we are a nation of hypocrites. The existence of this situation provides a challenge to all those New Zealanders who profess a belief in the egalitarian society and racial harmony. Brennan J. in Regents of the University of California v. Bakke stated my views exactly when he said:

Against this background, claims that law must be colour blind or that race is no longer relevant to public policy must be seen as aspiration rather than as description of reality. We cannot ... let colour blindness become myopia.
FOOTNOTES

1. 347 U.S. 483 (1954)


4. "Polynesian" includes both Maoris and Pacific Islanders when used in this article.


6. Ibid. 58.

7. Ibid. 50.


10. Ibid. There was no overall increase in the size of the school.

11. Appendix one.


14. Letter from Dr. D. Cole, ante.

15. Appendix one.

16. Letter from Dr. D. Cole, ante.

17. Admissions Since 1971

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<tr>
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<td>1</td>
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<tr>
<td>1972</td>
<td>3</td>
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<td>1973</td>
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<td>1977</td>
<td>21</td>
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<tr>
<td>1978</td>
<td>19</td>
<td>5</td>
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* Plus one under the ordinary system
+ Plus two under the ordinary system.

Figures by Dr. D. Cole.

Faculty of Medicine and Human Biology Handbook, ante, p.32.

Letter from Dr D. Cole, ante.

Limitation of Enrolments Statute 1970, s.2(a) and the First Schedule to the Statute.

Faculty of Medicine and Human Biology Handbook, ante, p.32.

BHB Regulations, Regulation 2(b).

Appendix two.

Dansey, H., New Zealand Listener, 14 January 1978, p.17

Comments made during an interview of Professor C.D. Mantell by A.M. Fieldhouse, Auckland, 13 June 1978.

Race Relations Act 1971, s.3.

Ibid. s.4

Ibid. s.6

Ibid. s.5

Human Rights Commission Act 1977, s.26

Ibid. s.26(1)(a).

Ibid. s.26(1)(c).

Ibid. s.26(1)(d).

See Social Justifications section, post.

P.4 ante

P.6 ante

(1972) Ch.12. The case was concerned with the allocation of children to schools according to their religion. The action was brought under s.76 of the Education Act 1944 (U.K.) which required that local education authorities should, where possible, educate children in accordance with the wishes of their parents. Consequently all Lord Denning M.R.'s comments on the allocation of children to schools according to their race were obiter.

(1972) Ch.12, 38 per. Lord Denning M.R.

Idem.

The table in the United Kingdom Race Relations Act 1976, s.17.


Older, J., op. cit., p.50.

Ibid. p.109.

Table from Census 1971, Bulletin VIII, The Maori People, p.14. The 1971 Census is the most up to date data at the time of writing.


Idem.

Results of this survey are reported in The Pakeha Papers, op. cit., p.53.


The Pakeha Papers, op. cit., p.53.


The Pakeha Papers, op. cit., p.54.


Appendix three.

Appendix four.
66 Easton, B., "Maori Poverty", New Zealand Listener, 12 August 1978, p.27.

67 Idem.

68 P.17 ante.

69 P.3 ante.


71 Time magazine, 10 July 1978, p.30.
THE UNIVERSITY OF AUCKLAND SCHOOL OF MEDICINE
APPLICATION FOR ENTRY – 1978

DATE FOR APPLICATION – FORMS TO BE WITH THE
ANT REGISTRAR, SCHOOL OF MEDICINE, UNIVERSITY
OCKLAND, PRIVATE BAG, AUCKLAND, BY 1 OCTOBER 1977.

NAME ..............................................................................................................

ENAMES ...........................................................................................................

PRIVATE ADDRESS ...........................................................................................

PHONE ..............................................................................................................

E ADDRESS (if different) ......................................................................................

PHONE ..............................................................................................................

5. MARITAL STATUS ...........................................................................................

AGE OF BIRTH  AGE AS AT 31 DECEMBER 1977

(Year)  (Month)

MEMBERSHIP ......................................................................................................

YOU ARE OF POLYNESIAN DESCENT, DO YOU WISH TO BE
RDERED FOR ONE OF THE PLACES AVAILABLE FOR
NESIAN WHO ARE NEW ZEALAND CITIZENS? ...........................................

YOU ARE NOT A NEW ZEALAND CITIZEN ARE YOU ORDINARILY RESIDENT IN NEW ZEALAND IN THE TERMS
THE OVERSEAS STUDENTS ADMISSIONS COMMITTEE DEFINITION (NZOSAC HANDBOOK – Para 2.3, see extract in
above)

OL EXAMINATION RECORD. Enter the marks obtained in the appropriate square. If you sat subjects other than those
Name them in the blank column provided. The total for School Certificate should include English and the three subjects
the highest marks. On the University Entrance line indicate if you were accredited. If you are still at school indicate the
ation and subjects being taken this year. If results are available, state whether you gained a Junior Scholarship, or an "A"
"Pass in the Bursaries Examination.

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</tbody>
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*for S.C. give English plus three other highest marks.

OVER...
Appendix One

1. Are you now attending school?
   (If yes, state nature of employment or occupation)

2. Have you attended a University or other Institute of Tertiary Education, give
   the name of University, etc.

3. Years of attendance and subjects taken with results

4. Note: Transcript of University Academic Record should be obtained and forwarded with this form

5. Scholastic Prizes or Distinctions

6. Have you previously applied for entry to the Auckland Medical School?
   (If yes, state year)

7. Have you suffered from a major illness or have you a severe disability?
   (If yes, give details on a separate sheet marked CONFIDENTIAL)

8. Your application is unsuccessful what do you plan to do in 1978?

9. General comments about interests, personal achievements and activities

   Nature

   Date

If under exceptional circumstances will applications be accepted if the statistical form is not returned with the application?

Receipt will be acknowledged.
EMPLOYERS TOLD TO PUT MAORIS IN BETTER JOBS

AUCKLAND, July 3 (PA).—If New Zealand is to avoid race riots and violence, employers must take “positive” action to put Maoris and Islanders into better jobs.

They should take a lead from the Auckland Medical School, according to Dr R J Walker, chairman of the Auckland Maori Council, and set aside places for Maoris. They should aggressively seek those Maoris out by seeking the help of Maori organisations and leaders.

Many of the Maoris who become involved in land issues such as Bastion Point and at Raglan were really expressing anger and frustration at seeing no real stake in society. A lot of the people arrested at Bastion Point and at Raglan had nothing to lose,” Dr Walker said.

This dissatisfied “brown proletarian” would grow and many more issues would be created if something positive was not done.

“I would hate to see it come to the situation where the only way the majority could be convinced of this is by urban riots,” Dr Walker said.

What was happening in New Zealand was a replica of what happened in the United States when black were pushed to the bottom of the social heap. The only outlet for black talent had been sport, entertainment, and music. This had led to the race riots of the 1960s.

Dr Walker said that the Auckland Medical School had set aside three places out of 60 for Polynesians in its initial student intake. Now it was six places out of 120.

It was hard to fill the initial quota even with bursary students, but gradually the standards had risen. This year there was so much competition among Maoris for the places that they had to be at a bursary standard.

The medical school had sought the help of Maori leaders to get suitable young Maoris to apply.

“The Maori leaders need encouragement, and unless those places are set aside for them they think the competition is a bit too hot. Now they are starting to create box competition between themselves,” Dr Walker urged employers, including television stations and newspapers, to do the same and to let Maori leaders select young Maoris for them.

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Maori ‘task forces’ are ready to help young people gain achievement in education

HUNDREDS of “task forces” comprising Maori community workers, Maori parents and Maori Affairs Department staff will swing into action this week with an educational achievement project for Maori and Pacific Island youth.

The groups, to be known as “Tu Tangata” — the stance of the people — will concentrate on establishing home worksheet centres for pupils and counselling services for both pupils and their parents.

Announcing the project today, the Maori Affairs Minister (Mr MacIntyre) said the plan was in line with his department’s new community and youth development policy.

“What is envisaged are community organisations throughout New Zealand initiated and led by Maori people that will be totally task-oriented,” the Minister said.

Mr MacIntyre said the committees would not sit around talking about broad problems. Enough talking had been done. The Maori people felt they would like to take some real action in their own particular way.

In time “Tu Tangata” would be seen as resources action people helping all New Zealand children. But, at this stage the urgency and priority were without doubt with Maori and Pacific Island youth, about 70 percent of whom were leaving school without any academic attainments.

The concept, financed to date by the Maori Education Foundation, with other grants promised, is based on practical support to encourage secondary schoolchildren at all levels to pass examinations or enter traineeships.

Already strong support has been given by the New Zealand Maori Council, the Maori Women’s Welfare League, and the Maori Education Foundation, which had all pledged to pull together with the department to make the project work.

About $10,000 was in hand to provide for initial running costs, such as tutors’ fees.

Every department community officer had been directed to “set cracking” with the plan, and detailed tasks were already outlined.

These include seminars on examination techniques, using former examination papers, marae-based schemes, career information, meetings, and school holiday programmes — all designed to advance young people’s education and at the same time assist parents to come to grips with their own objectives.
Maoris not prominent on university rolls

Parliamentary Reporter

ONLY 52 Maoris held university qualifications in medicine, science, engineering, and commerce, compared with 26,000 non-Maoris, Mr Mat Rata (Lab, Northern Maori) said in Parliament yesterday.

All of those 52 were male, he said during the Budget debate.

There were more overseas students studying at New Zealand universities than there were Maoris.

"I welcome the fact that we can share our knowledge with our Commonwealth partners, including those from the Pacific, but charity ought to begin at home," he said.

The number of Maori school-leavers intending to go to tertiary education had risen only from 1.1 percent to 1.2 percent in the last 10 years.

Only 0.3 percent of Maori workers held a university degree or diploma, compared with 4.4 percent of non-Maori workers.

Maoris made up only 10 percent of the population, yet they comprised 43 percent of the country's prisoners in 1975.

On the other hand, they made up only 4.2 percent of the Police Force, 4.6 percent of probation officers, and 2 percent of Justices of the Peace, while there were no Maori Judges of the Supreme Court.

"Is it any wonder that the grievances felt by young Maoris are more vocal today?" he asked.

The Maori Affairs Department budget for Maori housing has also been cut.
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