Black Workers in White Unions. Job Discrimination in the United States, by William B. Gould, (Cornell University Press, Ithaca and London, 1977), pp. 1-506.

'In a sense the book is more than a professional assessment, for I have seen racial discrimination ever since I was a small child. . .
I know what it means to be black in America, and I am quite familiar with the thinking of many whites in this country as it relates to the race issue.
I became a lawyer because of the Supreme Court's desegregation decisions, and by the time I entered law school I had decided to specialise in labor law — a choice partially motivated by my belief that the law might be used to eliminate racial inequities in employment. . .'[1]

Professor Gould has brought a wealth of experience to bear in writing this most welcome and excellent book. He is a distinguished member of the Stanford Law School. He has served as a consultant to the Equal Employment Opportunity Commission, has worked for the National Labor Relations Board and also for the United Automobile Workers. He has served as an arbitrator of labour disputes. He has acted as plaintiff's counsel in employment discrimination matters in the Federal Courts including the Supreme Court. He has researched his subject very widely. Twice recently he has visited Australia, gaining an understanding of our Conciliation and Arbitration system, and in addition to working on a project concerning transnational corporations and labour relations he was engaged in research in employment discrimination particularly as regards the Aborigines. On both visits he made his headquarters with us in the University of Melbourne Law School.

The book deals with the law concerning employment discrimination in the United States on grounds of race and evaluates the effect of the law particularly as regards the unions. Gould poses as the major retardants by unions to equality of opportunity for black workers:

(1) restrictions in admissions to apprenticeship programmes jointly administered with employers by both industrial and craft unions,

(2) the denial of journeymen cards to qualified black unionists,

(3) refusal of admission to membership,

(4) the establishment of segregated or auxiliary local unions for blacks,

(5) the maintenance of separate lines of progression and seniority districts which prohibit or discourage transfers by blacks into relatively better paying and more desirable jobs held by whites,

(6) the adherence to the principle of "last on, first off" which, given equal opportunity, disadvantages blacks in times of retrenchment,

(7) the absence of blacks from policy making elective and appointed positions inside the unions.

He works through this theme.
The book is divided into three sections.

Part 1: The Development of Law and Racial Discrimination traces the development of the law from the historic decision of *Brown v. The Board of Education*[2] through to the enactment of *Title VII* of the Civil Rights Act 1964 which proscribed discrimination in employment on grounds of race colour, religion, sex or national origin, and its amendment in 1972. The section is a store of information.

In a masterly analysis Gould examines the decisions of the Supreme Court and the principal decisions of the various Federal Courts in the period after the enactment of *Title VII*. It is here that the innovatory genius of the American system of legislation coupled with judicial activism is seen at its best, illustrating the frontiers to which the law can be pushed to promote social change.

[1] Gould W. B., *Black Workers in White Unions* (1977) 11.
[2] (1954) 347 U.S. 483.

Gould of course would argue with the reviewer that the frontiers are still very limited. Nevertheless he does concede that the numerous judicial decisions have undoubtedly contributed to a better moral climate.

The major landmark after *Brown v. Board of Education*[3] is *Griggs v. Duke Power Co.*[4] which decision, according to Gould, Chief Justice Berger, who wrote the unanimous opinion of the Court, claims as the most important during his membership of the Court. The matter before the Court was a class action brought by black employees of the Duke Power Co. claiming that promotional opportunities for employees being dependant upon a high school diploma with a satisfactory intelligence test score violated *Title VII*. The Court held that neither the education or intelligence test was shown to be significantly related to successful job performance, the onus of proof being on the employer and that both requirements screened out blacks at a substantially higher rate than whites.

Title VII proscribed not only overt discrimination but practices that appear to be fair but are discriminatory in operation. If an employment practice excluding blacks cannot be shown to be job related, it is unlawful.

This case has been far reaching and Gould scrutinises its effect and the principles arising from the progeny of cases it has spawned. This neatly exemplifies how law expands its boundaries.

The author in this section also deals with the remedies afforded by *Title VII* and the fashioning out of these remedies by the courts through affirmative action in the form of quotas, ratios, goals and timetables: and the award of back-pay, punitive damages, attorney's fees and test validation.

In *Part 2: Law and Labor-Management Relations* the author sets out the accommodation between traditional union management relations and the law in dealing with black workers according to the thematic construction of retardation of equality of opportunity. He examines the National Labour Relations Act, and the implications of *Title VII*, and intertwines this with federal labour law and grievance arbitration machinery. He criticises the narrower views of the National Labor Relations Board and the arbitrators compared with the more expansionist views of the majority of judges. Arbitrators are usually chosen by management and labour unions and it is in their interest to preserve the status quo and this is reflected in their choice of arbitrator to settle grievance disputes.

In *Part 3: The Importance of Remedy and Enforcement,* which Gould claims to be the most important section, there is an empirical analysis of the enforcement of remedial actions and the impact of judicial decrees through certain industries involving the labour unions in those industries. The research has been vast. Each study is fascinating. Gould neatly illustrates how certain progressive appearing unions are strong only in rhetoric.

This is a most scholarly and sensitive work. The only criticism the reviewer has is that in dealing with the vexed issue of positive discrimination through quotas Gould turns his whole armoury on an article by John Kaplan[5] who is a colleague of his at Stanford Law School. This was actually a paper presented in September 1965 at a conference at Northwest University Law School shortly after *Title VII* had come into operation. It is true that Kaplan's view did gain some judicial acceptance, but there has been much written on either side of the issue since. There is a strong school which is opposed to affirmative action through quotas for they fear it will result in statistical percentage construction of work units on the basis of race, religion, sex and ethnic lines which will negate equal opportunity.[6] Blumrosen argues that in the

[3] *Ibid.*
[4] (1971) 401 U.S. 424.
[5] Kaplan, 'Equal Justice in an Unequal World: Equality for the Negro — The Problem of Special Treatment' (1966) 61 *Northwestern University Law Review* 633.
[6] *E.g.* Glazer N., *Affirmative Discrimination: Ethnic Inequality and Public Policy* (1975).

long run the opponents of quotas are right[7] and there is a need to articulate limits on the use of numerical standards.[8]

Gould ignores this school and their arguments in concentrating his sights on his fellow professor's 12 year old paper, and there is no footnote reference in this very thorough work to a summation of their views or even acknowledging they exist.

For Australians the first section will have special relevance. The innovative U.S.A. model was followed in the English Race Relations Models and the Sex Discrimination Model and the various Australian Race Relations and Sex Discrimination Models[9] follow to some extent the pattern. A study of the first section and its wealth of case law will show how our models may be applied and what is relevant to discrimination. In Victoria in the Equal Opportunity Act[10] dealing with discrimination on the grounds of sex and marital status the pitfalls that Gould describes of not investing the Equal Employment Opportunity Commission with 'cease and desist' powers have been avoided, and such powers have been vested in an Equal Opportunity Board which is an additional body to the Commissioner for Equal Opportunity. The Racial Discrimination Act 1975 (*Cth.*) suffers with this defect however in that the Commissioner has no such powers for they are vested in the Courts.

One major criticism Gould makes of the U.S.A. system is that no matter what the intention or the rhetoric, the President may stifle the endeavour through the amount of budgetary allowance and in the type of appointments made to the Commission. One wonders what this keen observer of the Australian scene will say when he reads in the Commissioner for Community Relations First Annual Report[11] that the budgetary allocation for the operation of the Racial Discrimination Act[12] throughout Australia for the year 1.7.76-30.6.77 was $181,000 for salaries and $44,800 for administrative expenses and the effective staff including the Commissioner and 2 Assistant Commissioners and stenographers is 10 persons.

Finally a tribute must be paid to Cornell University Press and designer R. E. Rosenbaum for the design, setting out and printing. It has been well presented, is engaging to the eye and in the wealth of detail so easily readable.

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[7] Blumrosen, A. W., 'Quotas, Common Sense and Law in Labor Relations: Three Dimensions of Equal Opportunity' 1973, 27 *Rutgers Law Review* 675, 677.

[8] *Ibid.* 678.

[9] Racial Discrimination Act 1975 (Cth), Equal Opportunity Act 1977 (Vic.), Sex Discrimination Act 1975 (S.A.), Anti Discrimination Act 1977 (N.S.W.).

[10] Equal Opportunity Act 1977 (Vic.).

[11] Australia, *Commissioner for Community Relations First Annual Report* (1976) 856.

[12] Racial Discrimination Act 1975 (Cth).

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A History of the Melbourne Law School 1957-1973, by Ruth Campbell, (Faculty of Law, University of Melbourne, 1977), pp i-ix, 1-174. Price $3.50. ISBN 0 9094 54 43 4.

I am not sure that it is altogether proper of me to offer a review of a work to which I stood midwife,[1] albeit not alone. I can hardly be expected to have an objective view of it, and, quite frankly, I don't. I like the book enormously. It is packed full of interesting information, much of it made available for the first time, and it is lively and entertaining to read. Such reviews as I have already seen in the ordinary press have been uniformly favourable. Ruth Campbell deserves our congratulations and our thanks.

But it was not an easy book to write. Institutional histories never are, and both author and midwives have a hard time of it. Perhaps the most useful contribution I can make to the discussion of the book is to explain the principal difficulties which were encountered and to note their effect upon the finished product.

In the first place, an institutional history must, in part, be a chronicle of persons and events. It cannot be wholly so, if the author really wants it to be read, because a mere chronicle would be deadly dull. The temptation, in fact, is to scrap the chronicling altogether. But to yield to that temptation would be irresponsible. The solution to the problem is the inevitable compromise, as this book bears witness. For all the detail which it records, it is not, as Professor Derham points out in his Foreword 'a complete history'.[2] It can be criticized, therefore, as not recording everything which ought to be recorded about the history of the Law School. On the other hand, it can be criticized, and has been, for recording too much. Thus there has been adverse comment on the lists of names in the final chapter, 'Tribute', though for every generation of law students many of these will be extremely evocative, in a Sandy Stone kind of way, however meaningless to the outsider. My personal, if prejudiced, view is that Ruth Campbell has achieved an appropriate balance in her handling of this difficult dilemma. The book appears to me to succeed both as a work of reference and as arm-chair reading.

The second problem about the writing of an institutional history is that there is an inescapable tendency to give much more attention to the early years of the institution than to its present and its recent past. The early years — the founders, the first teachers, the first students, the first buildings, the first courses and so on — have a glamour to which we all easily fall victim. We love to know about these things, and we would be disappointed in a history which failed to satisfy our appetite for curious and if possible entertaining detail. Ruth Campbell's history in no way disappoints us in this respect. Yet the fact of the matter is that from many important points of view the most significant years in the entire history of the Law School have been those since, say, 1950. It is in the last 25 years or so that the modern Law School which we see today has been created — a very different Law School, I suggest, to that which had existed prior to and for some time after the period of the Second World War. The principal characteristics of the modern Law School, I suppose, are a large and diverse student body, both undergraduate and graduate, male and female; a large full-time staff of professional law teachers (large, at least, by comparison with earlier years); a greatly expanded curriculum; a library of its own (however inadequate); and strong international links of various kinds. As one who experienced the transition from the 'old' Law School to the 'new', I can testify that the dynamics, inner relationships and general ethos of the latter are significantly different to those of the former. I hasten to say that I am not sighing for some past 'Golden Age'; I merely make the point that a real change began to occur some 25 years ago. Ruth Campbell has noted this, of course, but she has not

[1] Not necessarily a sexist term by the way. The 'man midwife' was one of the old 'common callings' which lurk behind the modern tort of negligence.

[2] Campbell, R., *A History of the Melbourne Law School*, vi.