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Why Looks Are the Last Bastion of Discrimination

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Background on appearance-based discrimination The Constitution bars discrimination on the basis of race, sex, religion, national origin, and ethnicity. Although some see "lookism" as a civil rights issue similar to racism and sexism, others worry that addressing the issue with legislation encroaches on individual freedom and unnecessarily creates another legally protected group. As Rhode notes, however, the state of Michigan and six local jurisdictions throughout the United States have already enacted legal prohibitions on appearance discrimination. In Michigan, for example, a Hooters waitress sued the chain after she was told to lose weight and improve her looks. Lawyers for Hooters argued that employees at the restaurant — who wear tank tops and tight shorts — are entertainers as much as servers, but a circuit court judge has allowed the case to proceed, placing the eventual decision in the hands of a jury.

In the nineteenth century, many American cities banned public ap- 1
pearances by "unsightly" individuals. A Chicago ordinance was typical: "Any person who is diseased, maimed, mutilated, or in any way deformed, so as to be an unsightly or disgusting subject . . . shall not . . . expose himself to public view, under the penalty of a fine of $1 for each offense."

Although the government is no longer in the business of enforcing 2
such discrimination, it still allows businesses, schools and other organizations to indulge their own prejudices. Over the past half-century, the United States has expanded protections against discrimination to include race, religion, sex, age, disability and, in a growing number of jurisdictions, sexual orientation. Yet bias based on appearance remains perfectly permissible in all but one state and six cities and counties. Across the rest of the country, looks are the last bastion of acceptable bigotry.

We all know that appearance matters, but the price of prejudice can 3
be steeper than we often assume. In Texas in 1994, an obese woman was

rejected for a job as a bus driver when a company doctor assumed she was not up to the task after watching her, in his words, "waddling down the hall." He did not perform any agility tests to determine whether she was, as the company would later claim, unfit to evacuate the bus in the event of an accident.

In New Jersey in 2005, one of the Borgata Hotel Casino's "Borgata babe" cocktail waitresses went from a Size 4 to a Size 6 because of a thyroid condition. When the waitress, whose contract required her to keep "an hourglass figure" that was "height and weight appropriate," requested a larger uniform, she was turned down. "Borgata babes don't go up in size," she was told. (Unless, the waitress noted, they have breast implants, which the casino happily accommodated with paid medical leave and a bigger bustier.) 4

And in California in 2001, Jennifer Portnick, a 240-pound aerobics instructor, was denied a franchise by Jazzercise, a national fitness chain. Jazzercise explained that its image demanded instructors who are "fit" and "toned." But Portnick was both: She worked out six days a week, taught back-to-back classes, and had no shortage of willing students. 5

Such cases are common. In a survey by the National Association to Advance Fat Acceptance, 62 percent of its overweight female members and 42 percent of its overweight male members said they had been turned down for a job because of their weight. 6

And it isn't just weight that's at issue; it's appearance overall. According to a national poll by the Employment Law Alliance in 2005, 16 percent of workers reported being victims of appearance discrimination more generally — a figure comparable to the percentage who in other surveys say they have experienced sex or race discrimination. 7

Conventional wisdom holds that beauty is in the eye of the beholder, but most beholders tend to agree on what is beautiful. A number of researchers have independently found that, when people are asked to rate an individual's attractiveness, their responses are quite consistent, even across race, sex, age, class, and cultural background. Facial symmetry and unblemished skin are universally admired. Men get a bump for height, women are favored if they have hourglass figures, and racial minorities get points for light skin color, European facial characteristics, and conventionally "white" hairstyles. 8

Yale's Kelly Brownell and Rebecca Puhl and Harvard's Nancy Etcoff have each reviewed hundreds of studies on the impact of appearance. Etcoff finds that unattractive people are less likely than their attractive peers to be viewed as intelligent, likable, and good. Brownell and Puhl have documented that overweight individuals consistently suffer disadvantages at school, at work, and beyond. 9

Among the key findings of a quarter-century's worth of research: Unattractive people are less likely to be hired and promoted, and they earn lower salaries, even in fields in which looks have no obvious relationship to professional duties. (In one study, economists Jeff Biddle and Daniel Hamermesh estimated that for lawyers, such prejudice can translate to a 10

pay cut of as much as 12 percent.) When researchers ask people to evaluate written essays, the same material receives lower ratings for ideas, style, and creativity when an accompanying photograph shows a less attractive author. Good-looking professors get better course evaluations from students; teachers in turn rate good-looking students as more intelligent.

Not even justice is blind. In studies that simulate legal proceedings, 11
unattractive plaintiffs receive lower damage awards. And in a study released this month, Stephen Ceci and Justin Gunnell, two researchers at Cornell University, gave students case studies involving real criminal defendants and asked them to come to a verdict and a punishment for each. The students gave unattractive defendants prison sentences that were, on average, 22 months longer than those they gave to attractive defendants.

Just like racial or gender discrimination, discrimination based on irrel- 12
evant physical characteristics reinforces invidious stereotypes and undermines equal-opportunity principles based on merit and performance. And when grooming choices come into play, such bias can also restrict personal freedom.

Consider Nikki Youngblood, a lesbian who in 2001 was denied a photo 13
in her Tampa high school yearbook because she would not pose in a scoop-necked dress. Youngblood was "not a rebellious kid," her lawyer explained. "She simply wanted to appear in her yearbook as herself, not as a fluffed-up stereotype of what school administrators thought she should look like." Furthermore, many grooming codes sexualize the workplace and jeopardize employees' health. The weight restrictions at the Borgata, for example, reportedly contributed to eating disorders among its waitresses.

Appearance-related bias also exacerbates disadvantages based on gen- 14
der, race, ethnicity, age, sexual orientation, and class. Prevailing beauty standards penalize people who lack the time and money to invest in their appearance. And weight discrimination, in particular, imposes special costs on people who live in communities with shortages of healthy food options and exercise facilities.

So why not simply ban discrimination based on appearance? 15

Employers often argue that attractiveness is job-related; their workers' 16
appearance, they say, can affect the company's image and its profitability. In this way, the Borgata blamed its weight limits on market demands. Customers, according to a spokesperson, like being served by an attractive waitress. The same assumption presumably motivated the L'Oreal executive who was sued for sex discrimination in 2003 after allegedly ordering a store manager to fire a salesperson who was not "hot" enough.

Such practices can violate the law if they disproportionately exclude 17
groups protected by civil rights statutes — hence the sex discrimination suit. Abercrombie & Fitch's notorious efforts to project what it called a "classic American" look led to a race discrimination settlement on behalf of minority job-seekers who said they were turned down for positions on the sales floor. But unless the victims of appearance bias belong to groups already protected by civil rights laws, they have no legal remedy.

As the history of civil rights legislation suggests, customer preferences 18
should not be a defense for prejudice. During the early civil rights era, employers in the South often argued that hiring African Americans would be financially ruinous; white customers, they said, would take their business elsewhere. In rejecting this logic, Congress and the courts recognized that customer preferences often reflect and reinforce precisely the attitudes that society is seeking to eliminate. Over the decades, we've seen that the most effective way of combating prejudice is to deprive people of the option to indulge it.

Similarly, during the 1960s and 1970s, major airlines argued that the 19
male business travelers who dominated their customer ranks preferred attractive female flight attendants. According to the airlines, that made sex a bona fide occupational qualification and exempted them from anti-discrimination requirements. But the courts reasoned that only if sexual allure were the "essence" of a job should employers be allowed to select workers on that basis. Since airplanes were not flying bordellos, it was time to start hiring men.

Opponents of a ban on appearance-based discrimination also warn 20
that it would trivialize other, more serious forms of bias. After all, if the goal is a level playing field, why draw the line at looks? "By the time you've finished preventing discrimination against the ugly, the short, the skinny, the bald, the knobbly-kneed, the flat-chested, and the stupid," Andrew Sullivan wrote in the London *Sunday Times* in 1999, "you're living in a totalitarian state." Yet intelligence and civility are generally related to job performance in a way that appearance isn't.

We also have enough experience with prohibitions on appearance 21
discrimination to challenge opponents' arguments. Already, one state (Michigan) and six local jurisdictions (the District of Columbia; Howard County, Md.; San Francisco; Santa Cruz, Calif.; Madison, Wis.; and Urbana, Ill.) have banned such discrimination. Some of these laws date back to the 1970s and 1980s, while some are more recent; some cover height and weight only, while others cover looks broadly; but all make exceptions for reasonable business needs.

Such bans have not produced a barrage of loony litigation or an ero- 22
sion of support for civil rights remedies generally. These cities and counties each receive between zero and nine complaints a year, while the entire state of Michigan totals about 30, with fewer than one a year ending up in court.

Although the laws are unevenly enforced, they have had a positive ef- 23
fect by publicizing and remedying the worst abuses. Because Portnick, the aerobics instructor turned away by Jazzercise, lived in San Francisco, she was able to bring a claim against the company. After a wave of sympathetic media coverage, Jazzercise changed its policy.

This is not to overstate the power of legal remedies. Given the stigma 24
attached to unattractiveness, few will want to claim that status in public litigation. And in the vast majority of cases, the cost of filing suit and the difficulty of proving discrimination are likely to be prohibitive. But stricter anti-discrimination laws could play a modest role in advancing healthier

and more inclusive ideals of attractiveness. At the very least, such laws could reflect our principles of equal opportunity and raise our collective consciousness when we fall short.

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Comprehension

1. Why, according to Rhode, are looks "the last bastion of acceptable bigotry" (2)?
2. Why does the government allow organizations to engage in appearance discrimination?
3. What forms of discrimination do unattractive people face?
4. Why do some people object to banning discrimination based on appearance? How does Rhode address these objections?
5. According to Rhode, how effective are laws that prohibit appearance discrimination? What positive effects might they have?

Purpose and Audience

1. Does Rhode assume that her readers are aware of the problem she discusses? How can you tell?
2. What preconceived attitudes about appearance does Rhode assume her readers have?
3. Where does Rhode state her thesis? Why does she state it where she does instead of earlier in her essay?
4. Is Rhode's purpose simply to inform her readers or to persuade them? Explain.

Style and Structure

1. The first half of Rhode's essay contains a series of short examples. What do these examples illustrate? Do you think she should have made her point with fewer examples developed in more depth?
2. Paragraph 15 is a **rhetorical question**. What is the purpose of this rhetorical question? How effective is it?
3. The second half of Rhode's essay addresses objections to laws banning appearance discrimination. How effectively does Rhode respond to these objections?
4. At several points in her essay, Rhode cites statistics. Is this kind of evidence convincing? Is it more convincing than additional examples would be?
5. What strategy does Rhode use in her conclusion? What other strategy could she have used?