Legal and Ethical Analysis – U.S Supreme Court:

Price Waterhouse v. Hopkins

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This paper provides an ethical and legal analysis of the 1989 Supreme Court case regarding Title VII discrimination - Price Waterhouse v. Hopkins.

**Background**

This case was brought to the Supreme Court for a review of the level of evidence needed for a Title VII discrimination claim. Ms. Hopkins had been working for a legal firm and was proposed as a partner in the firm after working on several large cases. She was denied partnership and, on a second occasion, the firm denied the request to re-propose her as a partner. She brought suit against the firm on the basis that she was denied partnership because of her gender. There were several written accounts by members of the firm that pointed to institutionalized gender discrimination; however, there are also other non-gender based reasons for why she was not made a partner. The Price Waterhouse firm appealed at multiple court levels and brought the case to the Supreme Court on the claim that there was insufficient evidence that she was not made a partner because of her gender. (Price Waterhouse v. Hopkins)

**Legal and Ethical Facts**

* Ms. Hopkins worked for a law firm and had successfully handled large cases. She was proposed as a partner at the firm, and this proposal was rejected. (Price Waterhouse v. Hopkins)
* The evidence regarding the organizational decision process for the rejection contained elements of gender discrimination. In some instances, she was criticized for not being sufficiently feminine. One response indicated that the reviewer would not accept any female as a partner in the firm. (Price Waterhouse v. Hopkins)
* There is also evidence of non-gender related performance problems that kept Ms. Hopkins from attaining partner status. These included communication problems.
* There is no evidence that Price Waterhouse took any action to correct the gender discrimination in the firm. (Price Waterhouse v. Hopkins)
* One year later, Ms. Hopkins was to be proposed as a candidate partner, but the fact of a proposal was rejected. (Price Waterhouse v. Hopkins)
* A Court of Appeals found that the firm needed to provide and had not provided “clear and convincing evidence” that it would not have chosen to accept Ms. Hopkins’ candidacy for partner even if there had been no gender discrimination. (Price Waterhouse v. Hopkins)

**Key Legal Issues**

The key legal issue in this case is the level of evidence required for an employer to demonstrate that their policies did not result in a disparate impact.

**Applicable Legal Rules and Observations**

The Title VII statute was amended in 1991, in part due to this case. The amendment specifically stated that an employer could be held liable if discrimination were a motivating factor in a decision, even if evidence were provided to demonstrate that the same decision would have been made in the absence of discrimination. (EEOC - 1991)

The version of Title VII that was in force at the time of this case included statements that the discrimination in this case must be shown to be “because of” Ms. Hopkins’ gender:

* + “It shall be an unlawful employment practice for an employer - (1) to…otherwise to discriminate against any individual with respect to his compensation, terms, conditions, or privileges of employment, because of such individual’s race, color, religion, sex, or national origin”(42 U.S.C.S. § 2000e-2(a)(1)).

Title VII includes a lengthy section entitled “Burden of proof in disparate impact cases” that explicitly describes how to consider evidence for a complaint. This section of Title VII shifts the burden of proof from the employee to the employer in specific instances. In § 2000e-2(k)(1)(A)(i), if the employee can show that there was an employment practice that caused a disparate impact, the employer must demonstrate that the practice is a business necessity. § 2000e-2(k)(1)(B)(ii) suggests that the burden of proof also shifts to the employer in demonstrating that their business practice does not cause a disparate act.

* + “(i) a complaining party demonstrates that a respondent uses a particular employment practice that causes a disparate impact on the basis of race, color, religion, sex, or national origin and the respondent fails to demonstrate that the challenged practice is job related for the position in question and consistent with business necessity; or”… (42 U.S.C.S. § 2000e-2(k)(1)(A)(i))
	+ (B) (i) With respect to demonstrating that a particular employment practice causes a disparate impact as described in subparagraph (A)(i), the complaining party shall demonstrate that each particular challenged employment practice causes a disparate impact, except that if the complaining party can demonstrate to the court that the elements of a respondent’s decision making process are not capable of separation for analysis, the decision making process may be analyzed as one employment practice. (42 U.S.C.S. § 2000e-2(k)(1)(B)(i))
	+ (ii) If the respondent demonstrates that a specific employment practice does not cause the disparate impact, the respondent shall not be required to demonstrate that such practice is required by business necessity.” (42 U.S.C.S. § 2000e-2(k)(1)(B)(ii))

The level of the burden of proof is not specified, and therefore, one must look to judicial precedents for guidance. The relevant case is Mt. Healthy City Bd. of Ed. v. Doyle, 429 U.S. 274 (1977), where the Supreme Court only required proof of discrimination by a “preponderance of evidence”, not the more stringent standard of “clear and convincing” evidence. (Price Waterhouse v. Hopkins)

**Legal Conclusion**

 At the time that the incident occurred, the 1991 modifications to Title VII were not in place. There was also no text in Title VII regarding the burden of proof for the employer. Thus, using prior precedent, the Court found correctly that Price Waterhouse need not provide “clear and convincing” evidence that it would have taken the same employment action if gender discrimination had not been present. (Price Waterhouse v. Hopkins) This weights other performance factors cited about Ms. Hopkins higher than any gender discrimination, but does not forbid some element of gender discrimination from being included in the decision.

The same situation, occurring after the Civil Rights Act of 1991, would have a very different outcome. The 1991 update to the statute states that the employee need only demonstrate that discrimination was a motivating factor in the decisions made. The employer is liable regardless of any evidence that shows they would have made the same decision had the discrimination been absent.

**Key Ethical Issues**

 One of the key ethical issues is whether or not Ms. Hopkins should have had a right to due process regarding the rejection of her proposed partner status. Another key issue is the applicability of Kant’s categorical imperative, where all people should be treated “as a free person equal to everyone else”, with respect to the ethics of care and organizations. (Velasquez)

**Support for Ethical Issues**

The right to due process allows an employee to partake in decision making. (Velasquez) In this case, becoming a partner in a law firm is a very important milestone in the career of a lawyer. If Price Waterhouse were to participate in the right to due process, Ms. Hopkins would have had an internal method for appealing the decision to not accept her as a partner – perhaps through a human resources professional who could assess the fairness of the decision.

The ethics of care focus on building positive relationships and caring for dependents. In organizational terms, this includes creating a safe work environment where all employees feel they are encouraged to achieve their career goals. (Velasquez) As a caring organization, when signs of gender discrimination were presented, Price Waterhouse would have taken steps to educate employees on discrimination as well as to be clear about the organization’s policies on discrimination. They also would have ensured a fair assessment of Ms. Hopkins’ capabilities and potential was conducted without gender bias.

**Ethical Alternatives**

The ethical alternative to due process is employment at will. (Velasquez) This is the alternative Price Waterhouse chose – Ms. Hopkins was informed that she would not be a partner in the firm, and given some snippets of the reasons why the decision was made. She had no capability to appeal the decision and also did not receive a full account of the factors used.

The ethical alternative to not exercising care is to focus on employment at will. This is what Price Waterhouse chose – the organization made no effort to reduce or eliminate discrimination in its processes and decisions.

**Ethical Conclusions**

Price Waterhouse may have avoided lengthy and expensive legal proceedings by allowing Ms. Hopkins to exercise her right to due process as well as by better exercising the ethic of care in their leadership organization. Allowing due process would have enabled the firm to more clearly present any non-gender related performance problems to Ms. Hopkins. Better implementation of the ethic of care would have led the firm’s leadership to actively reduce or eliminate gender discrimination in their organization.

 **References**

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