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Abstract

[Excerpt] In 1972, Karen Dion, Ellen Berscheid, and Elaine Walster set out to determine whether people hold “stereotyped notions of the personality traits possessed by individuals of varying attractiveness.” The results of the study were astonishing: based only on the photographs provided, participants predicted attractive subjects would be happier, possess more socially desirable personalities, practice more prestigious occupations, and exhibit higher marital competence. Their findings were published in an article entitled “What is Beautiful is Good” and gave rise to an enduring theory of the same name.

In the decades since the Dion et al. experiment, the “what is beautiful is good” hypothesis has played a particularly meaningful role in occupational studies. Given the high-stakes nature of job acquisition, many researchers have asked, for example, whether attractive job candidates are more likely to be hired than their peers.

In short, attractive individuals will receive more job offers, better advancement opportunities, and higher salaries than their less attractive peers—despite numerous findings that they are no more intelligent or capable. This article aims to explore the sources and potential resolution of appearance-based employment decisions. In other words, now that we know appearance-based employment discrimination exists, where does it come from and what do we do about it? Part I examines the psychology of attractiveness, exploring what registers as attractive and what unconscious responses attractiveness commonly evokes. It begins with a definition of beauty in terms of both biological and performed traits and concludes with a discussion of beauty facts versus fictions. Part II provides an overview of existing legal remedies to victims of appearance-based discrimination and explains why legal reform is an ill-suited solution. After ruling out the law, this article concludes that appearance-based employment decisions should be curbed internally, via management and human resources efforts.

Keywords

HR Review, Human Resources, Candidate Attractiveness, Employment Decisions, Hiring Decisions, Starting Salary, Promotion Opportunity, Discrimination, Bias

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CORNELL HR REVIEW

MAY THE BEST (LOOKING) MAN WIN: THE UNCONSCIOUS ROLE OF ATTRACTIVENESS IN EMPLOYMENT DECISIONS

Enbar Toledano

In 1972, Karen Dion, Ellen Berscheid, and Elaine Walster set out to determine whether people hold “stereotyped notions of the personality traits possessed by individuals of varying attractiveness.”¹ Their study provided participants with photographs of subjects previously classified as attractive, moderately attractive, or unattractive and asked them to record their impressions of each.² The results were astonishing: based only on the photographs provided, participants predicted attractive subjects would be happier, possess more socially desirable personalities, practice more prestigious occupations, and exhibit higher marital competence.³ Their findings were published in an article entitled “What is Beautiful is Good” and gave rise to an enduring theory of the same name.

In the decades since the Dion et al. experiment, the “what is beautiful is good” hypothesis has played a particularly meaningful role in occupational studies. Given the high-stakes nature of job acquisition, many researchers have asked, for example, whether attractive job candidates are more likely to be hired than their peers. Overwhelmingly, the answer is yes.⁴ And attractive applicants are deemed not only more hireable than less attractive candidates, but also more likeable as individuals and likely “to have all it takes to be successful in life.”⁵ This is true regardless of an applicant’s gender and whether the evaluating participants are college students or actual personnel professionals.⁶ The advantage persists even when reviewers are provided with other job-relevant information: studies pairing applicants’ photographs with information like college major, relevant work experience, and performance reviews failed to attenuate the effects of the beauty bias.⁷ Furthermore, physically attractive job candidates are also offered higher starting salaries than their less attractive peers.⁸

Once on the job, the benefits continue. Attractive employees receive more favorable job performance evaluations than their co-workers.⁹ Even attractive college professors see an average 0.8 jump in student evaluation scores on a five-point scale.¹⁰ And, in conjunction with higher evaluations, attractive employees are also more likely to be selected for management training and promoted to managerial positions.¹¹ It bears mention that, while most studies in this area manipulate attractiveness with head shots, facial attractiveness is not the only predictor of success: women with lower body-mass indexes reach more prestigious occupations in their careers, and taller men reach higher earnings over theirs.¹² Malcolm Gladwell discusses a greater phenomenon with respect to men’s height in his book *Blink*: among CEOs of Fortune 500 companies, 58 percent stand six feet or taller—among the U.S. population of men as a whole, that figure is a mere 14.5 percent.¹³

And contrary to expectations, the professional advantages enjoyed by attractive individuals persist throughout their careers. A longitudinal study of MBA graduates revealed that the earnings gap between attractive and unattractive employees only widens over time: for every additional unit of attractiveness on a five-point scale, men earned on average an extra \$2,600 annually and women an additional \$2,150 over their peers.¹⁴ Another study found that “an American worker who was among the bottom one-seventh in looks . . . earned 10 to 15 percent less per year than a similar worker whose looks were assessed in the top one-third—a lifetime difference, in a typical case, of about \$230,000.”¹⁵

In short, attractive individuals will receive more job offers, better advancement opportunities, and higher salaries than their less attractive peers—despite numerous findings that they are no more intelligent or capable. This article aims to explore the sources and potential resolution of appearance-based employment decisions. In other words, now that we know appearance-based employment discrimination exists, where does it come from and what do we do about it? Part I examines the psychology of attractiveness, exploring what registers as attractive and what unconscious responses attractiveness commonly evokes. It begins with a definition of beauty in terms of both biological and performed traits and concludes with a discussion of beauty facts versus fictions. Part II provides an overview of existing legal remedies to victims of appearance-based discrimination and explains why legal reform is an ill-suited solution. After ruling out the law, this article concludes that appearance-based employment decisions should be curbed internally, via management and human resources efforts.

I. THE PIECES AND PAY-OFFS OF ATTRACTIVENESS

Before we examine the effects beauty has on its beholder, it is worth attempting to craft a definition of attractiveness. This undertaking is beneficial for a number of reasons: first, it establishes a common understanding of what is meant when we say “physical attractiveness”; second, it demonstrates the extent to which one can influence his or her own attractiveness; and finally, it dispels the notion that attractiveness is too subjective to quantify or discuss in any meaningful way. For despite variations in personal and cultural predilections, studies have found that certain traits and combinations of traits emerge as more-or-less universally attractive.¹⁶ While some preferred features are biological—say, for example, a fetching waist-to-hip ratio¹⁷ or a symmetrical face,¹⁸ others are a matter of presentation. For women especially, perceived attractiveness is largely influenced by wardrobe,¹⁹ hair color or style,²⁰ and cosmetics choices.²¹ The following sections will discuss the elements of each type of beauty, biological and performed, in turn. The final section will discuss the positive assumptions we commonly make about attractive people and how often those individuals fall short of our expectations.

A. *The Biological Aspects of Attractiveness*

Researchers consistently find that physical attractiveness is defined in terms of gender. In other words, the traits that contribute most significantly to female and male attractiveness

are positively correlated with femininity and masculinity, respectively. For instance, the most significant predictors of an attractive female figure are a small waist-to-hip ratio and a light body weight.²² Women are also considered more attractive the longer they wear their hair.²³ The ideal male figure, on the other hand, features a larger waist-to-hip ratio and a muscular, rather than slender, build.²⁴ And men's attractiveness ratings increase with height.²⁵

Our preference for gendered (or “sexually dimorphic”) features holds especially true with respect to facial features. Female facial attractiveness is commonly linked with a small size of the lower face, while the attractive male face possesses a “longer, broader lower jaw.”²⁶ Other features commonly associated with female facial attractiveness are wide eyes, a thick mouth and upper lip, and high, prominent cheekbones.²⁷ In contrast, female faces are rated less attractive when they exhibit characteristically masculine features like a pronounced brow ridge and a wide nose or chin.²⁸ In addition to the proportions of certain features, facial attractiveness is also influenced by their appearance. The color and texture of skin, for example, play a considerable role in determining facial attractiveness: the attractive female face has smooth skin with a “slightly reddish” tint²⁹ and heightened luminance contrast between skin and lip color (referring to the contrast between brighter and darker tones).³⁰ Not surprisingly, increasing luminance contrast has been found to detract from masculinity and male facial attractiveness.³¹

B. *The Performed Aspects of Attractiveness*

To some extent, our features are biologically fixed. There are, however, some traits that are more open to manipulation than others. With the aid of cosmetics, women can alter their skin texture, tint, and contrast. They can vary hair length and style. And a woman may strategically emphasize or downplay aspects of her figure through her manner of dress. Even men's attractiveness can be manipulated, to a lesser extent, by increasing muscularity,³² dressing in a manner that signals status,³³ and wearing light facial stubble.³⁴ Thus attractiveness is not only biologically determined, but also performed.

A recent New York Times article entitled “Up the Career Ladder, Lipstick in Hand” examined the effects of cosmetics on perceptions of women, with an eye toward wrangling any identified benefits for professional gain.³⁵ By gauging participants' reactions to images of women with increasing quantities of makeup, the study concluded that makeup can not only enhance women's attractiveness but also increase their perceived “likeability,” “competence,” and “trustworthiness.”³⁶ Interestingly, the benefits held true past the point of “professional” makeup and into the “glamorous” aesthetic.³⁷ These results indicate that like biological determinants of attractiveness, the performed elements of attractiveness can affect an individual's experience and status. More importantly, they suggest the status and privilege associated with beauty may be attained through individual effort, in addition to biological good fortune.

Having discussed the biological aspects of female facial appeal, we see that makeup application tends to mimic our biological predilections: foundation satisfies the

preference for smooth, homogenous skin;³⁸ concealer camouflages blueish tones that detract from facial attractiveness;³⁹ blush increases skin saturation, which is perceived as “attractive and healthy”;⁴⁰ and lipstick creates the desired luminance contrast between skin and lip color.⁴¹ Not even the structural elements of facial attractiveness are beyond the reach of skillful makeup application, as glamour magazines regularly offer tutorials on applying makeup to create the illusion of wider eyes,⁴² fuller lips,⁴³ and higher cheekbones.⁴⁴ It is, therefore, unsurprising to discover that women are considered more attractive when wearing makeup.⁴⁵

In addition to using cosmetics, women can also influence their perceived attractiveness by manipulating their hair length, style, or color. A 2004 study found that long and medium-length hair worn down significantly improves a woman’s physical attractiveness, regardless how attractive she was initially rated with her hair pulled back.⁴⁶ In fact, women who were initially rated less attractive experienced nearly twice the improvement in ratings as their more attractive counterparts just by wearing longer hair.⁴⁷ Participants in another study rated blonde women not only more attractive than brunettes but also “more feminine, emotional, and pleasure seeking.”⁴⁸

Clothing choices, too, play a role in determining attractiveness. Researchers in one study attempted to identify the social cues communicated by various types of women’s dress.⁴⁹ They photographed subjects in five different outfits (formal skirt, formal pants, casual skirt, casual pants, and jeans) and gauged participants’ reactions to the subjects in each form of attire.⁵⁰ The results indicated that both males and females consider a woman wearing a formal skirt outfit most “happy, successful, feminine, interesting, attractive, intelligent, and wanted as a friend.”⁵¹ Conversely, subjects wearing jeans were rated lowest among each category.⁵² These results demonstrate once again that women can not only influence their attractiveness, but can also elicit other desirable inferences generally bestowed upon attractive people simply by manipulating their appearance.

C. *Why Beauty Isn’t All It’s Cracked Up to Be*

But what are these desirable inferences? On the basis of appearance alone, we attribute a number of positive characteristics to our attractive peers: on the whole, we perceive them to be more competent, happy, and successful than the general population.⁵³ We expect them to attain more prestigious jobs, enjoy happier marriages, and lead richer social lives.⁵⁴ Moreover, our positive assumptions about attractive people lead us to treat them better at every point in their lives.⁵⁵ In primary school, attractive students are called on more often than their peers⁵⁶ and judged more leniently for their transgressions.⁵⁷ In college, attractive students get more dates⁵⁸ and are more often elected to leadership positions.⁵⁹ And “lookism,” as this form of bias has been termed,⁶⁰ is perhaps most acutely observed in the workplace, where (as discussed above) attractive employees and job candidates are more often hired over their peers, more readily promoted, and paid more.⁶¹

But are attractive people, in fact, more capable than their less attractive peers? According to psychologist Alan Feingold, the answer is no.⁶² Feingold amassed decades' worth of attractiveness research to discern what traits we attribute to attractive people, what traits actually prove to be most prevalent among them, and how wide the gap is between our expectations and reality. In its first stage, Feingold's study confirmed that people undoubtedly ascribe more socially desirable attributes to physically attractive individuals.⁶³ Specifically, people anticipated attractiveness would bear a modest correlation with intelligence, a moderate correlation with sociability, dominance, and mental health, and the strongest correlation with social skills.⁶⁴ In the study's second stage, however, Feingold found "no notable differences" in levels of sociability, dominance, general mental health, or intelligence between attractive and unattractive people.⁶⁵ In fact, social skills were the only area in which attractive people were both expected to, and then actually did, exhibit an advantage—but even that correlation fell significantly short of expected values.⁶⁶

Despite the general myth-busting nature of Feingold's findings, his study did reveal certain traits with which attractiveness seemed to be correlated. For instance, attractive people are generally less lonely, less prone to social anxiety, and more comfortable interacting with members of the opposite sex than their peers.⁶⁷ For women, attractiveness served as a stronger predictor for self-esteem, opposite-sex popularity, better grades, and sexual permissiveness than for men.⁶⁸ Among men, attractiveness came with greater popularity and social comfort, but also lower intelligence and heightened public self-consciousness.⁶⁹ On the whole, Feingold found that while attractiveness tends to correspond with heightened social comfort and other related behaviors, it generally served as a poor predictor for measures of ability.

Feingold did, however, uncover one additional relationship of note: the relationship between the traits we expect to find in attractive people and a person's rating of his or her own attractiveness.⁷⁰ Unlike objective attractiveness, self-rated attractiveness actually did correlate with measures of sociability, dominance and mental health (including self-esteem)—attributes that were expected in higher measure among objectively attractive people.⁷¹ And like objectively attractive individuals, those who rated themselves as attractive also demonstrated higher levels of social comfort (including freedom from loneliness, from general social anxiety, and from anxiety with regard to opposite-sex interactions).⁷² Thus, Feingold's findings provide two insights with respect to self-rated attractiveness: (1) considering oneself attractive is more predictive of many socially desirable traits than actually being attractive, and (2) even the attributes that are more often found among objectively attractive individuals—namely, social skills and comfort—are present among those who merely consider themselves attractive.

More recent studies confirm Feingold's conclusion that looks do not live up to their reputation.⁷³ One notable example is the Judith Langlois et al. 2000 study entitled "Maxims or Myths of Beauty? A Meta-Analytic and Theoretical Review."⁷⁴ Langlois et al. discovered that attractive people are not only judged more favorably than their peers, but are also treated significantly better.⁷⁵ Consequently, they found positive correlations with both internal and external measures of social advantages: compared with

unattractive adults, attractive people experienced more occupational success, were better liked, had more dating and sexual experience, and generally exhibited better physical health.⁷⁶ Moderately correlated with attractiveness were measures of extroversion, traditionalism, self-esteem, social skills, and mental health.⁷⁷ In addition, Langlois et al. found that attractive adults hold somewhat more favorable self-perceptions than their peers, perceiving themselves to be more mentally healthy and more competent.⁷⁸ In the end, the correlation between attractiveness and intelligence remained very slight.⁷⁹

Another study conducted in the mid-1990s focused specifically on the relationship between attractiveness and intellectual competence.⁸⁰ The study, entitled “Physical Attractiveness and Intellectual Competence: A Meta-Analytic Review,” reaffirmed the finding that attractive individuals are perceived as more competent than their less attractive peers.⁸¹ After aggregating the results of 113 attractiveness studies, however, it concluded that the actual correlation between physical attractiveness and intellectual competence is “virtually zero.”⁸²

Thus, the opportunities afforded attractive people are proven not only unfounded but also unfair—for any advantages bestowed upon attractive people necessarily translate into disadvantages for their less attractive peers. Because these differences often lead to palpable disparities in wealth and opportunity between the attractive and unattractive, many argue that appearance-based discrimination should carry legal implications. The following Part will discuss the current role of the law in this context and explain why expanding legal recourse for the unattractive is an ill-suited reform.

II. APPEARANCE-BASED DISCRIMINATION AND THE LAW

The professional disadvantages faced by unattractive individuals mirror in many ways the forms of employment discrimination that gave rise to Title VII of the Civil Rights Act of 1964 (“Title VII”),⁸³ the Age Discrimination in Employment Act (ADEA),⁸⁴ and the Americans with Disabilities Act (ADA).⁸⁵ Indeed, the advantages bestowed upon attractive people are not only parallel to, but also entangled with the advantages of whiteness, health, and youth. As evidenced by our current federal employment-discrimination regime, discrimination on such bases is not only socially undesirable but often legally prohibited. The following section summarizes the legal remedies currently available to some victims of appearance-based discrimination. It is followed by a discussion of the arguments commonly advanced in favor of appearance-specific legal reform and, finally, an explanation of the law’s inadequacy to resolve this issue.

A. *An Overview of Appearance-Based Legal Protections*

Currently, victims of appearance-based discrimination are not wholly without recourse: federal anti-discrimination laws (and a handful of state and local laws) may already prohibit certain forms of employment discrimination if an individual’s appearance is sufficiently linked to some other legally protected classification. Thus, certain victims of appearance-based discrimination may fall within the protections of Title VII,⁸⁶ the

ADEA,⁸⁷ or the ADA.⁸⁸ A brief overview of each statute and its applicability to appearance-based discrimination follows.

Title VII prohibits employers with at least fifteen full-time employees from discriminating on the basis of “race, color, religion, sex, or national origin.”⁸⁹ Discrimination for the purposes of Title VII means any action with respect to an applicant’s or employee’s “compensation, terms, conditions, or privileges of employment,” including hiring and firing decisions.⁹⁰ Given Title VII’s broad reach, some victims of appearance-based discrimination have successfully alleged race or sex discrimination on the basis of physical characteristics like grooming and attire. In the well-known case *Price Waterhouse v. Hopkins*, for example, the Supreme Court ruled that a female accountant who was denied partnership in part for her failure to “dress more femininely, wear make-up, have her hair styled, and wear jewelry” had been a victim of unlawful gender discrimination under Title VII.⁹¹ In another case, an African-American man who suffered from pseudofolliculitis barbae, a skin condition which prevents approximately fifty-percent of African-American men from shaving comfortably, was found to have suffered race discrimination on account of his employer’s no-beard policy.⁹² Overall, however, protection for victims of appearance-based discrimination under Title VII has been inconsistent, even in cases where appearance seems inextricably linked with a plaintiff’s otherwise protected status.⁹³

The ADEA extends Title VII’s protections to employment decisions made on the basis of an employee’s age, for persons forty years of age and older.⁹⁴ To establish a claim of age discrimination, a plaintiff must demonstrate that he or she was over 40, qualified for the position in question, was subjected to an adverse employment action, and subsequently replaced by a sufficiently younger person to create an inference of age discrimination.⁹⁵ Given our tendency to define beauty in terms of youth, it is unsurprising that some victims of appearance-based discrimination have successfully established claims of age discrimination after being replaced with younger, more attractive employees.⁹⁶ Like cases brought under Title VII, however, age-discrimination cases on the basis of appearance have met mixed results in courts.⁹⁷

Finally, employees may also seek recourse for appearance-based discrimination under the ADA, which protects qualified individuals from discrimination on the basis of an actual or perceived disability.⁹⁸ A qualified individual is defined as one who can perform a job’s essential functions, even if doing so would require some level of accommodation by an employer.⁹⁹ To qualify as disabled under the ADA, an individual must (1) be substantially limited in a major life activity (e.g., walking or reading) by a physical or mental impairment, (2) have a record of such impairment, or (3) be perceived as having such an impairment.¹⁰⁰ An “impairment” for purposes of the ADA does not include “ordinary physical characteristics, height, weight, or muscle tone within ‘normal’ range and not resulting from an underlying physiological condition.”¹⁰¹ Thus, a victim of appearance-based discrimination may only seek legal protection under the ADA if his or her appearance is either symptomatic of an impairment or leads an employer to perceive that individual as being impaired.

Beyond federal discrimination laws, victims of appearance-based discrimination may also fall under a handful of state and local protections. In 1977, Michigan became the first state to outlaw appearance-based discrimination on the basis of height and weight.¹⁰² Today, Michigan remains the only state to prohibit appearance-based discrimination, but it has since been joined by a number of localities. The District of Columbia, for example, prohibits discrimination on the basis of “the outward appearance of any person, irrespective of sex, with regard to bodily condition or characteristics, manner or style of dress, and manner or style of personal grooming, including, but not limited to, hair style and beards.”¹⁰³ Similarly, the city of Santa Cruz, California adopted an ordinance in 1992 prohibiting discrimination on the basis of height, weight, and “physical characteristic.”¹⁰⁴ Other jurisdictions to have adopted appearance-based employment protections include Madison, Wisconsin,¹⁰⁵ San Francisco, California,¹⁰⁶ Urbana, Illinois,¹⁰⁷ and Howard County, Maryland.¹⁰⁸

B. *The Appeal and Ultimate Inadequacy of Legal Reform*

As the more insidious forms of employment discrimination arguably subside, appearance-based discrimination becomes the subject of increased attention and scrutiny. Additionally, given the demonstrated inadequacy of our current antidiscrimination regime to offer protections to all of its victims, many scholars have advanced arguments in favor of legal reform. Economist David Hamermesh proposes, for example, that unattractiveness should be construed as a disability, thereby shielding all unattractive individuals from discrimination under the ADA.¹⁰⁹ Stanford law professor Deborah Rhode advocates a wholesale prohibition on discrimination “based on appearance in employment, housing, public accommodations, and related contexts.”¹¹⁰ Yet, despite the inherent appeal of combating lookism in the same way we have overcome other forms of discrimination, this article argues legal reform is not the answer.

For one, most elements of physical attractiveness are not capable of being confined to discrete, protectable criteria in the way that religion, ethnicity, gender and age are. Physical attractiveness is an amalgamation of several traits, some of which are highly susceptible to manipulation and all of which may be valued differently under different circumstances. For instance, an individual may be considered more or less attractive depending upon the other members of the relevant pool; in contrast, one does not become more or less Chinese when compared with others. This is not to mention the inherent difficulty in asking discrimination victims to self-identify as legally ugly.

Furthermore, attractiveness is not one trait, but rather the composite of multiple social values and aesthetic signals—many of which are already protected in some form by the current employment discrimination regime. Put differently, attractiveness is not purely a function of looks; instead, our minds process the way people look and then glean from different aspects of their appearances certain positive or negative inferences. As an illustration, obesity presents a significant detriment to job applicants and employees.¹¹¹ On a superficial level, this could be explained by classifying obesity as a form of unattractiveness.¹¹² But studies show that obesity latently communicates more: because it

is most prevalent among minorities and white individuals of lower socioeconomic status,¹¹³ obesity carries racial and class implications as well.

A cursory glance at interview attire reveals another outlet for classist thought in appearance-based judgments. As stated in “The Perfect Interview Outfit,” an article in *Forbes* magazine, “Your interview attire indicates your socioeconomic status and it can actually impact your salary offer. . . . If someone looks like they need a job they are probably not going to get it.”¹¹⁴ From silk ties and leather shoes to professionally pressed suits,¹¹⁵ it is clear that dressing professionally is meant to communicate a level of affluence.

And all of these signals—combined with race, age, and gender judgments—are communicated simultaneously by one’s appearance, rendering “attractiveness” more of an umbrella term than a single characteristic. This is not to say that attractiveness is incapable of isolation; the many studies that analyze the effects of attractiveness have accomplished this task by displaying only headshots or controlling such variables as hairstyle, wardrobe, and skin color. In reality, however, these variables are not standardized or isolated. And so protections on the basis of appearance would practically translate to some amalgamation of protections on the basis of race plus age plus gender plus socioeconomic status, and so on.

And finally, more significant than the complexity of appearance-based judgments is the fact that they are made unwittingly.¹¹⁶ For, while we embrace a legal system that punishes bad behaviors, we have yet to develop or approve of a legal mechanism that penetrates the unconscious. As one scholar has noted, “[o]ne of the most important discoveries in empirical social psychology in the twentieth century is that people’s perceptions and behavior are often shaped by factors that lie outside their awareness and cannot be fully understood by intuitive methods.”¹¹⁷ In addition, most would agree that legal protections on the basis of race, gender, ethnicity, and so on reflect a general consensus that these traits would be illegitimate bases for judgment in *any* context—professional or otherwise. Consistent with this understanding, Congress drafted antidiscrimination laws with the goal of counteracting and, in time, eradicating people’s innate prejudices. This begs the question whether we as a society are similarly prepared or desire to eliminate appearance-based judgments entirely. Unlike whiteness or maleness, attractiveness is still widely and overtly celebrated. It is perfectly acceptable to compliment someone by saying, “You look beautiful.” It would be ill-advised and repugnant, on the other hand, to congratulate someone on her whiteness or lack of disability. Employment discrimination laws work because they reflect widely held cultural beliefs about what we should and should not value. With respect to attractiveness, however, it is unreasonable to expect employers to act—and to think—differently in the workplace than they are encouraged to think everywhere else. To render such judgments illegal would, therefore, prove unreasonable and ineffective.

CONCLUSION

As this paper has demonstrated, attractiveness is not well-suited to legal protection for a number of reasons. Given the evidence that lookism results in markedly differential treatment and opportunities for the unattractive, however, it is a problem that deserves attention. If the law falls short as an exogenous force to individual thought and organizational action, perhaps the solution lies in internal reform. Interview protocols, hiring strategies, and compensation—the roots of organization inequality—all reside within the purview of human resources and management personnel.

Appearance-based discrimination has already received some attention in managerial literature. *The International Journal of Management, Personnel Psychology*, and other periodicals have identified and discussed the effects of attractiveness across the spectrum of job-related outcomes.¹¹⁸ The question, then, is how to facilitate the transition from literature observing the phenomenon of lookism to proposing solutions. Unlike legal discourse, which asks how to do a job fairly, internal management discourse asks how to do a job better. Accordingly, the question of lookism should be framed not as a fairness issue and how to artificially disadvantage the attractive, but as a strategic challenge—i.e., how to avoid missing out on superior candidates whose unattractiveness would otherwise cause them to be underestimated and overlooked. By reframing the issue in this way, organizations can internalize the harms threatened by appearance-based discrimination in a way that incentivizes reform and addresses the problem at its source. ✎

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¹ Karen Dion et al., *What is Beautiful is Good*, 24 J. OF PERSONALITY AND SOCIAL PSYCHOLOGY 285 (1972).

² *Id.* at 286–87. The subjects’ levels of attractiveness had been determined in a separate study and remained consistent based on the second study’s ratings.

³ *Id.* at 288–89.

⁴ See, e.g., Pascale Desrumaux et al., *Effects of Facial Attractiveness, Gender, and Competence of Applications on Job Recruitment*, 68 SWISS J. OF PSYCHOLOGY 33 (2009); Nadia R. Bardack & Francis T. McAndrew, *The Influence of Physical Attractiveness and Manner of Dress on Success in a Simulated Personnel Decision*, 125 J. OF SOCIAL PSYCHOL. 777, 778 (1985); Megumi Hosoda et al., *The Effects of Physical Attractiveness on Job-Related Outcomes: A Meta-Analysis of Experimental Studies*, 56 PERSONNEL PSYCHOL. 431, 434 (2003).

⁵ Desrumaux et al., *supra* note 4, at 39.

⁶ See Hosoda, *supra* note 4, at 451, 453.

⁷ *Id.* at 452.

⁸ Linda A. Jackson, *The Influence of Sex, Physical Attractiveness, Sex Role, and Occupational Sex-Linkage on Perceptions of Occupational Suitability*, 13 J. OF APPLIED SOCIAL PSYCHOL. 31 (1983).

⁹ Lisa M. Drogosz & Paul E. Levy, *Another Look at the Effects of Appearance, Gender, and Job Type on Performance-Based Decisions*, 20 PSYCHOL. OF WOMEN Q. 437 (1996).

¹⁰ Todd C. Riniolo et al., *Hot or Not: Do Professors Perceived as Physically Attractive Receive Higher Student Evaluations?*, 133 J. OF GENERAL PSYCHOLOGY 19 (2006).

- ¹¹ See Thomas F. Cash & Robert N. Kilcullen, *The Aye of the Beholder: Susceptibility to Sexism and Beautyism in the Evaluation of Managerial Applicants*, 15 J. OF APPLIED PSYCHOL. 591 (1985).
- ¹² Mads Meier Jæger, “A Thing of Beauty if a Joy Forever”? Returns to Physical Attractiveness over the Life Course, 89 SOCIAL FORCES 983, 988 (2011). Interestingly, the same study could not identify a positive effect on women’s earnings by virtue of attractiveness. *Id.*
- ¹³ MALCOLM GLADWELL, BLINK 90 (2005).
- ¹⁴ Irene Hanson Frieze et al., *Attractiveness and Income for Men and Women in Management*, 21 J. OF APPLIED SOCIAL PSYCHOLOGY 1039 (1991).
- ¹⁵ Daniel S. Hamermesh, *Ugly? You May Have a Case*, N.Y. TIMES, Aug. 28, 2011, at SR12.
- ¹⁶ See Karl Grammar et al., *Darwinian Aesthetics: Sexual Selection and the Biology of Beauty*, 78 BIOL. REV. 385, 388 (2003) (“[R]ecent studies suggest that the constituents of beauty are neither arbitrary nor culture bound.”).
- ¹⁷ See Barnaby J. Dixson et al., *Eye-Tracking of Men’s Preferences for Waist-to-Hip Ratio and Breast Size of Women*, 40 ARCHIVES OF SEXUAL BEHAVIOR 43 (2011) (finding men rated women with an hourglass figure and small waist as most attractive). Waist-to-hip ratio is “an index of fat deposition, calculated by dividing the circumference of the waist . . . by the circumference of the hips.” Maryanne L. Fisher & Martin Voracek, *The Shape of Beauty: Determinants of Female Physical Attractiveness*, 5 J. OF COSMETIC DERMATOLOGY 190, 191 (2006).
- ¹⁸ See, e.g., Bernhard Fink et al., *Facial Symmetry and Judgments of Attractiveness, Health, and Personality*, 41 PERSONALITY AND INDIVIDUAL DIFFERENCES 491 (2006).
- ¹⁹ See Hilda Mayer Buckley, *Perceptions of Physical Attractiveness as Manipulated by Dress: Subjects Versus Independent Judges*, 114 J. OF PSYCHOL. 243, 246 (1983) (finding that “physical attractiveness was successfully manipulated using dress”).
- ²⁰ See, e.g., Michael R. Cunningham et al., *Angels, Mentors, and Friends: Trade-offs among Evolutionary Variables in Physical Appearance*, in EVOLUTIONARY SOCIAL PSYCHOL. 109 (Jeffrey A. Simpson & Douglas T. Kenrick eds., 1997) (finding “blondes were rated as more attractive, feminine, emotional, and pleasure seeking” than brunettes).
- ²¹ See Thomas F. Cash et al., *Effects of Cosmetics Use on the Physical Attractiveness and Body Image of American College Women*, 129 J. OF SOCIAL PSYCHOL. 349, 353 (2001) (finding that males judged women wearing cosmetics as more attractive than the same women without cosmetics).
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- ²⁷ Jean-Yves Baudouin & Guy Tiberghien, *Symmetry, Averageness, and Feature Size in the Facial Attractiveness of Women*, 117 ACTA PSYCHOLOGICA 313, 325 (2004).
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- ³⁰ Ian D. Stephen, *Lip Colour Affects Perceived Sex Typicality and Attractiveness of Human Faces*, 39 PERCEPTION 1104 (2010).
- ³¹ *Id.*
- ³² Louise Wasylikiw et al., *Perceptions of Male Ideals: The Power of Presentation*, 9 INT’L J. OF MEN’S HEALTH 144, 144 (2010).
- ³³ Elizabeth M. Hall et al., *Physical Attractiveness: Manipulation by Physique and Status Displays*, 8 ETHOLOGY & SOCIOBIOLOGY 143 (1987).
- ³⁴ Nick Neave & Kerry Shields, *The Effects of Facial Hair Manipulation on Female Perceptions of Attractiveness, Masculinity, and Dominance in Male Faces*, 45 PERSONALITY AND INDIVIDUAL DIFFERENCES 373 (2008).

- ³⁵ Catherine Saint Louis, *Up the Career Ladder, Lipstick in Hand*, N.Y. TIMES, Oct. 13, 2011, at E3.
- ³⁶ *Id.* To ensure that the results were not skewed by participants' corresponding levels of confidence, the women were not permitted to see themselves in a mirror during the study. *Id.*
- ³⁷ *Id.*
- ³⁸ See Grammar et al., *supra* note 16, at 397.
- ³⁹ See Fink et al., *supra* note 29, at 97.
- ⁴⁰ See *id.*
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- ⁵⁴ Dion et al., *supra* note 1, at 288.
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- ⁵⁶ ELAINE HATFIELD & SUSAN SPRECHER, MIRROR, MIRROR: THE IMPORTANCE OF LOOKS IN EVERYDAY LIFE 49–50 (1986).
- ⁵⁷ Karen Dion, *Physical Attractiveness and Evaluations of Children's Transgressions*, 24 J. OF PERSONALITY AND SOCIAL PSYCHOL. 207, 212 (1972).
- ⁵⁸ Murray Webster, Jr. & James E. Driskell, Jr., *Beauty as Status*, 89 AM. J. OF SOCIOLOGY 140, 144 (1983).
- ⁵⁹ Janet R. Goktepe & Craig Eric Schneider, *Role of Sex, Gender Roles, and Attraction in Predicting Emergent Leaders*, 71 J. OF APPLIED PSYCHOLOGY 166 (1989).
- ⁶⁰ Samantha Kwan & Mary Nell Trautner, *Judging Books by Their Covers: Teaching about Physical Attractiveness Biases*, 39 TEACHING SOCIOLOGY 16, 17 (2011) (“‘Lookism’ has meant that physically attractive people are in fact treated better in many arenas of social life.”).
- ⁶¹ See generally Johnson et al., *supra* note 53 (describing the advantages bestowed upon attractive individuals in the workplace).
- ⁶² Alan Feingold, *Good-Looking People Are Not What We Think*, 111 PSYCHOL. BULLETIN 304 (1992).
- ⁶³ *Id.* at 327.
- ⁶⁴ *Id.*
- ⁶⁵ *Id.*
- ⁶⁶ *Id.* at 328, 331.

⁶⁷ *Id.* at 313.

⁶⁸ *Id.* at 318.

⁶⁹ *Id.*

⁷⁰ *Id.* at 331.

⁷¹ *Id.*

⁷² *Id.* at 319.

⁷³ See, e.g., Linda A. Jackson et al., *Physical Attractive and Intellectual Competence: A Meta-Analytic Review*, 58 SOCIAL PSYCHOL. Q. 108 (1995); Judith H. Langlois et al., *Maxims or Myths of Beauty? A Meta-Analytic and Theoretical Review*, 126 PSYCHOL. BULLETIN 390 (2000).

⁷⁴ Langlois et al., *supra* note 73.

⁷⁵ *Id.* at 401.

⁷⁶ *Id.* at 402.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.*

⁸⁰ See Jackson et al., *supra* note 73.

⁸¹ *Id.* at 113.

⁸² *Id.* at 115. This conclusion was reached after the researchers removed one outlier study and a potentially invalid study.

⁸³ 42 U.S.C.A. § 2000e-2 (2006).

⁸⁴ 29 U.S.C.A. § 623 (2006).

⁸⁵ 42 U.S.C.A. § 12112 (2006).

⁸⁶ 42 U.S.C.A. § 2000e-2 (2006).

⁸⁷ 29 U.S.C.A. § 623 (2006).

⁸⁸ 42 U.S.C.A. § 12112 (2006).

⁸⁹ 42 U.S.C.A. §§ 2000e(a), 2000e-2(a)(1) (2006).

⁹⁰ *Id.*

⁹¹ Price Waterhouse v. Hopkins, 490 U.S. 228, 235 (1989).

⁹² Bradley v. Pizzaco of Nebraska, Inc., 7 F.3d. 795, 796 (8th Cir. 1993).

⁹³ See, e.g., *Jespersen v. Harrah's Operating Company*, 444 F.3d 1104, 1107 (9th Cir. 2006) (upholding a grooming policy requiring female employees to wear face makeup and lipstick and their hair “teased, curled, or styled.”).

⁹⁴ 29 U.S.C.A. § 623 (2006).

⁹⁵ See *Sempier v. Johnson & Higgins*, 45 F.3d 724, 728 (3d Cir. 1995).

⁹⁶ See, e.g., *Holopirek v. Kennedy and Coe, LLC*, 303 F.Supp.2d 1223, 1242–43 (D. Kansas 2004) (denying summary judgment to employer who replaced plaintiff with “a younger, more attractive female”); *Jackson v. R.I. Williams & Associates, Inc.*, No. 98-1741, 1998 WL 316090 at *1–4 (E.D. Penn. June 8, 1998) (denying motion to dismiss plaintiff’s ADEA claim when she was directed to fill her previous position with someone younger and more attractive).

⁹⁷ See, e.g., *Block-Victor v. CITG Promotions, LLC*, 665 F.Supp.2d. 797, 808 (E.D. Mich. 2009)

(“Plaintiffs’ evidence tending to show [defendant] was transforming its sales force into sexually attractive women does not support the plaintiffs’ ADEA claims.”).

⁹⁸ 42 U.S.C.A. § 12112 (2006).

⁹⁹ *Id.*; 42 U.S.C. § 12111(8) (2006).

¹⁰⁰ See *id.*; Elizabeth M. Adamitis, *Appearance Matters: A Proposal to Prohibit Appearance Discrimination in Employment*, 75 WASH. L. REV. 195, 200 (2000) (“When an appearance trait constitutes a disabling condition, the ADA may provide relief.”); Deborah L. Rhode, *The Injustice of Appearance*, 61 STAN. L. REV. 1033, 1078 (2009).

¹⁰¹ Adamitis, *supra* note 100, at 201–02.

¹⁰² Rhode, *supra* note 100, at 1088; see Elliott-Larsen Civil Rights Act, Mich. Comp. Laws Ann. § 37.2202(1)(a) (West 2008) (effective Mar. 31, 1977).

¹⁰³ D.C. Code Ann. § 1-2512 (1981).

¹⁰⁴ Santa Cruz Prohibition Against Discrimination, Santa Cruz, Cal., Code § 9.83 (1995); see also Rhode, *supra* note 100, at 1081.

¹⁰⁵ See Madison, Wis., Code of Ordinances §§ 39.03(1), 39.03(2)(bb) (2007).

¹⁰⁶ See S.F., Cal., Admin. Code § 12A.1 (2008).

¹⁰⁷ See Urbana, Ill., Mun. Code § 12-37 (2007).

¹⁰⁸ See County of Howard, Md., Code §§ 12.200(II), 12.201(XIV) (1992).

¹⁰⁹ DAVID S. HAMERMESH, *BEAUTY PAYS: WHY ATTRACTIVE PEOPLE ARE MORE SUCCESSFUL* 148–68 (2011).

¹¹⁰ Rhode, *supra* note 100, at 1097–98.

¹¹¹ See Dan-Olof Rooth, *Obesity, Attractiveness, and Differential Treatment in Hiring: A Field Experiment*, 44 J. HUMAN RESOURCES 710 (2009).

¹¹² See Dalton Conley & Brian J. McCabe, *Body Mass Index and Physical Attractiveness: Evidence from a Combination Image-Alteration/List Experiment*, 40 SOCIOLOGICAL METHODS RESEARCH 6 (2011).

¹¹³ See Melissa Scharoun-Lee et al., *Obesity, Race/Ethnicity, and the Multiple Dimensions of Socioeconomic Status During the Transition to Adulthood: A Factor Analysis Approach*, 68 SOCIAL SCIENCE & MEDICINE 708 (2009).

¹¹⁴ Leah Bourne, *The Perfect Interview Outfit*, FORBES, July 30, 2009, <http://www.forbes.com/2009/07/30/interview-outfit-fashion-forbes-woman-style-budget.html>.

¹¹⁵ See Career Planning Manual, DUKE LAW, available at <http://www.law.duke.edu/career/pdf/2011careermanual.pdf>; Business Attire, PENN STATE LAW, available at https://law.psu.edu/intranet/career_services/job_search/interviews/business_attire.

¹¹⁶ For a discussion of implicit bias, see the works of sociologist William Bielby, who has testified to such in numerous employment discrimination cases, including *Dukes v. Wal-Mart, Inc.*, 434 F.3d 1214 (9th Cir. 2007) and *EEOC v. Morgan Stanley & Co.*, 324 F.Supp.2d 451 (S.D.N.Y. 2004).

¹¹⁷ David L. Faigman et al., *A Matter of Fit: The Law of Discrimination and the Science of Implicit Bias*, 59 HASTINGS L.J. 1389, 1404 (2008).

¹¹⁸ See, e.g., Comila Shahani-Denning et al., *The Effects of Physical Attractiveness and Gender on Selection Decisions: An Experimental Study*, 28 INTERNATIONAL JOURNAL OF MANAGEMENT 16, 16 (2011).; Hosoda, *supra* note 4; Madeline E. Heilman & Melanie H. Stopeck, *Being Attractive, Advantage or Disadvantage? Performance-Based Evaluations and Recommended Personnel Actions as a Function of Appearance, Sex, and Job Type*, 35 ORGANIZATIONAL BEHAVIOR AND HUMAN DECISION PROCESSES 202, 207 (1985)..