

## Mitchell's Musings 4-2-12: Losing Face

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A recent news item that some employers were asking job applicants for their Facebook passwords so they could explore the applicants' private files provoked an outcry.<sup>1</sup> One reaction seemed to be that there must be something inherently illegal about such requests. I'm not a lawyer but that reaction seemed to me to be a symptom of a tendency of the public to believe that there are more protections in American labor law than there really are. Note that potential hires are not even employees. In any event, unless there is some specific statutory limit, e.g., race, sex, age discrimination, protections are quite limited. What may seem to be invasions of privacy – unless such invasions especially affect some protected groups – are likely to be legal, even if seen as objectionable by the job applicant.

Of course, there is no requirement that a job applicant provide his/her Facebook password. But then again, there is no requirement that the employer should not take account of such a refusal in the hiring decision. And in a soft labor market with lots of job seekers, refusing to cooperate would likely mean no job offer.

At first, it appeared job seekers had an ally in Facebook. The social networking firm seemed prepared to undertake some kind of legal action – not clear what – against employers who wanted its passwords. But then Facebook appeared to step back from the threat, perhaps because it wasn't clear what legal action it could take or perhaps because it didn't want to annoy the employer community.<sup>2</sup> That reversal left the field open to editorials that just denounced the idea of demanding passwords even if legal and to legislators who wanted to make such demands illegal.<sup>3</sup>

In the aftermath of the Great Recession, there have been other complaints about employer hiring practices that are legal but distasteful. Employers who indicated in help-wanted ads that they did not want to consider unemployed job seekers were similarly castigated and new laws were proposed. In an atmosphere of job rationing, cities that were paying for construction projects imposed requirements for contractors to hire local residents, a zero-sum game since the gains of a worker on one side of the city

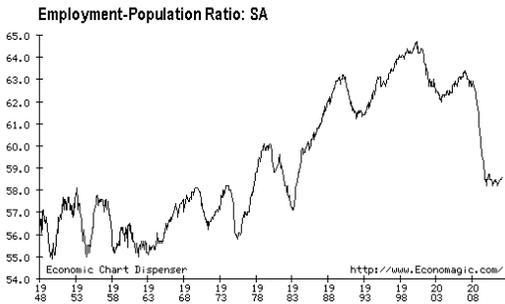
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<sup>1</sup> Manual Valdes, "Job seekers getting asked for Facebook passwords," *Associate Press*, March 20, 2012, available at <http://finance.yahoo.com/news/job-seekers-getting-asked-facebook-080920368.html>.

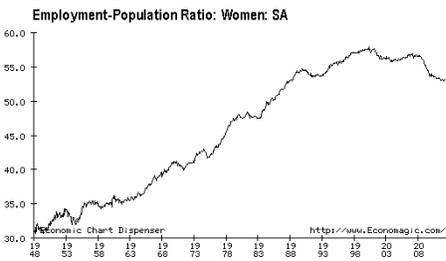
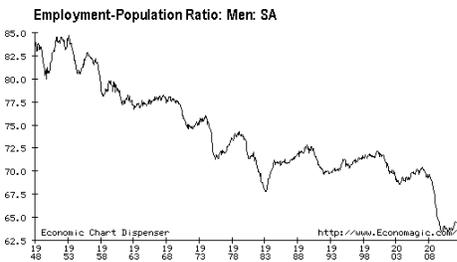
<sup>2</sup> Michelle Maltais, "Facebook softens its stand on bosses violating applicant privacy," *Los Angeles Times*, March 23, 2012, available at <http://www.latimes.com/business/technology/la-fi-tn-facebook-softens-its-stand-20120323,0,650705.story>.

<sup>3</sup> Mary Ann Milbourn, "Calif. bill would ban employers from asking Facebook passwords," *Orange County Register*, March 28, 2012, available at <http://economy.ocregister.com/2012/03/28/calif-bill-would-ban-employers-from-asking-facebook-passwords/106522/>; "Employers asking for passwords is just wrong," *San Jose Mercury-News*, March 26, 2012 (editorial), available at [http://www.mercurynews.com/opinion/ci\\_20260551/mercury-news-editorial-employers-asking-passwords-is-just](http://www.mercurynews.com/opinion/ci_20260551/mercury-news-editorial-employers-asking-passwords-is-just) .

line were offset by the loss of a job opportunity of someone on the other side.<sup>4</sup> Underlying these stories is the unpleasant fact of a labor market where there are more job seekers than jobs. So in that environment, is there anything special about the Facebook story?



As the chart above suggests, the employment-to-population ratio began rising in the early 1960s, a trend (with cyclical interruptions) that began in the early 1960s and ended at the peak of the dot-com boom of the late 1990s.<sup>5</sup> The general rise was the project of a long-term decline in the ratio for males and a long-term rise for females, as shown below.



<sup>4</sup> John Coté, "S.F. local-hire law passes 1st 'test,' backers say," *San Francisco Chronicle*, March 28, 2012, available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2012/03/27/BALA1NPK9N.DTL>.

<sup>5</sup> The employment-to-population ratio is obviously affected by the business cycle. But unlike concepts such as being unemployed, it does not require arbitrary lines to be drawn that are affected by the cycle. To be counted as unemployed, there are various job seeking tests applied and when the labor market is soft, there are varying degrees of discouragement that can keep some people who might otherwise want work from meeting the unemployment definition.

There are many factors might cite to explain the reverse trends for males and females. But let's put those aside and look for factors that might make the Facebook story an especially volatile issue, i.e., that would make it "go viral."

One guesses that there is an inverse correlation between heavy use of social networking tools such as Facebook and age. If we add a tendency to have items on Facebook that one might not want prospective employers to see, the inverse correlation might well be stronger. After all, how many fifty year olds are going to rummage through old photos of themselves behaving badly as teenagers or young adults, scan them into digital files, and then post them on Facebook? For younger folks with smartphone cameras, such pictures are readily available.

If we use the employment-to-population ratio as an indicator of the state of the labor market for different age groups, what do we find? A series of charts in the Appendix to this musing breaks down the employment-to-population ratio by age group. The youngest age group, 16-19 year olds, seems to be most adversely affected by the Great Recession and its aftermath according to that metric. The ratio for that age bracket is at its lowest recorded historical level. For the next group, 20-24 year olds, the ratio is at historic lows for males and seems to have undone four decades of progress for increased presence of women in employment.

In the intermediate group, 25-54 years, males are at an historic low although arguably in keeping with their long-term downward trend (with some cyclical adjustment). Women seem to have held up pretty well in that prime age group. For the oldest group, 55 years and over, the ratio is on a rising trend, after a temporary plateau in the 1980s. For men in that group, the ratio has been rising since the early 1990s and, after a brief Great Recession hiatus, seems to be rising again.

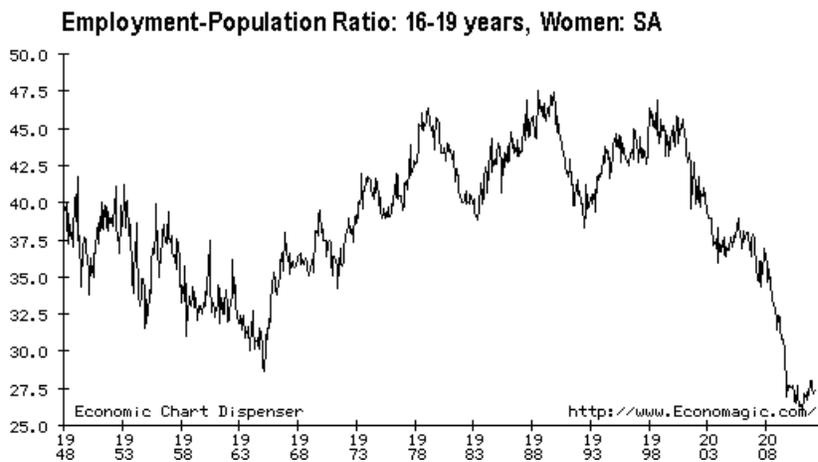
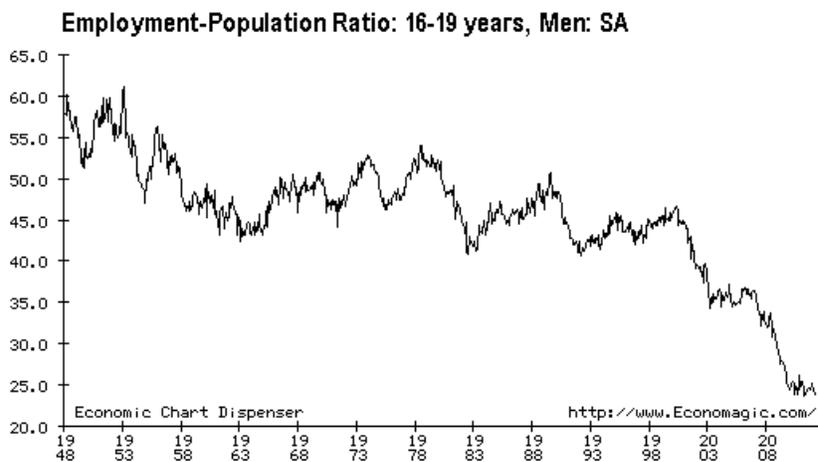
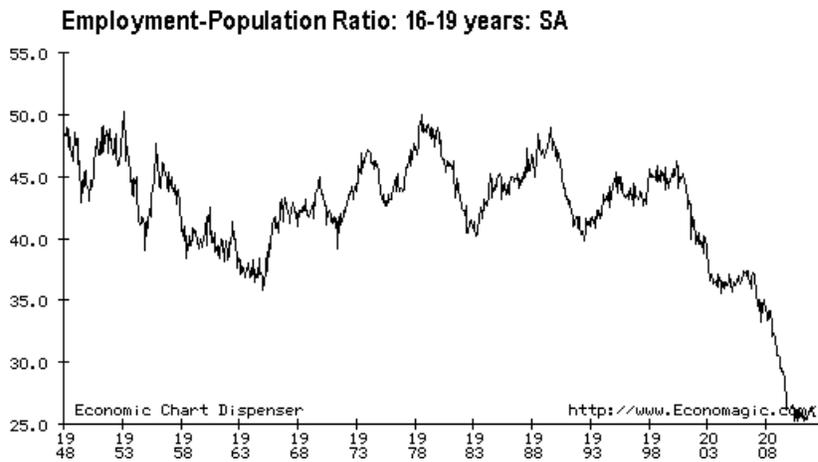
What makes a story go viral is presumably something that especially interests younger persons. Perhaps that is why the Facebook story received so much attention. It particularly hit the group most likely to be sensitive to a) problems in finding jobs and b) the Internet/social media angle. If you are desperately seeking work and have some things on Facebook you might not want prospective employers to access, the story must have carried a double wallop.

Is there anything positive that comes out of the Facebook/password episode? Perhaps it is that a new generation has learned first that U.S. labor law is not all that protective and second that when jobs are rationed, even social niceties (such as privacy) tend to erode.

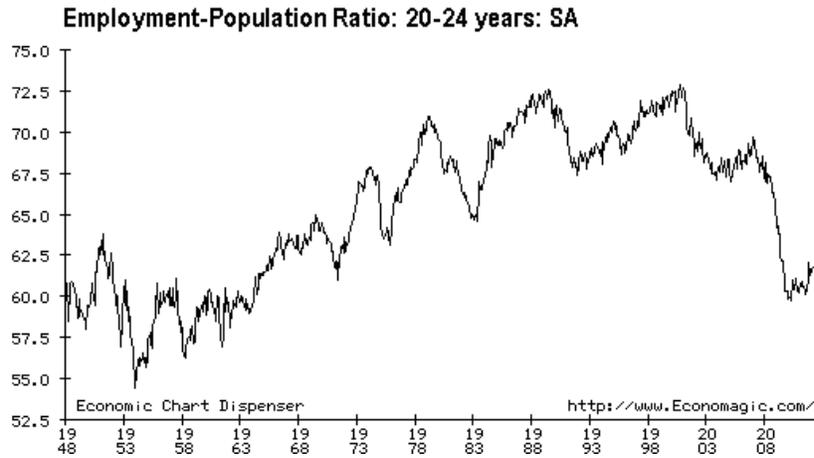
## Appendix

### Employment-to-Population Ratios: 16-19 (All, Male, Female)

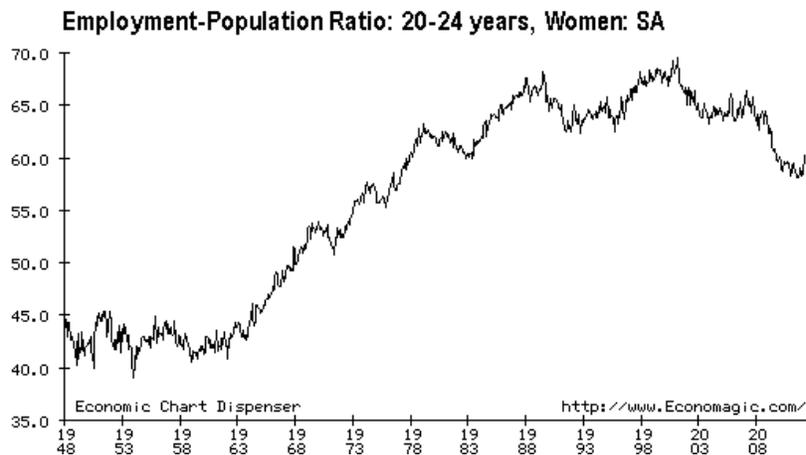
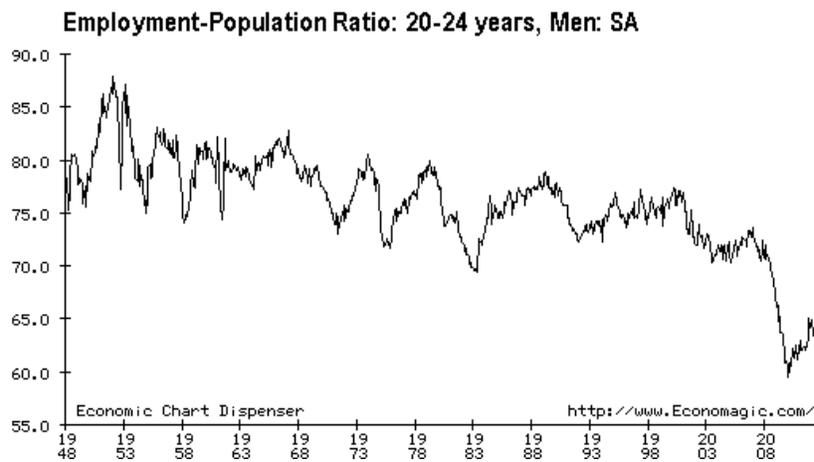
Note: The employment-to-population ratio is currently at its lowest recorded level for the youngest age group.



## Employment-to-Population Ratios: 20-24 (All, Male, Female)



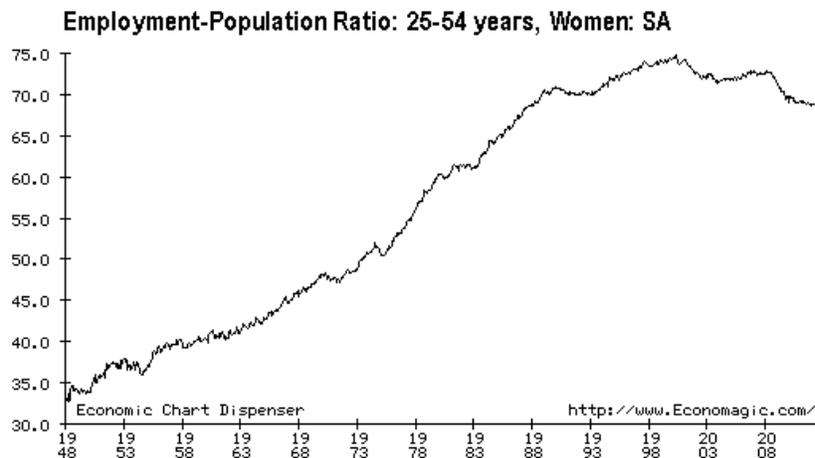
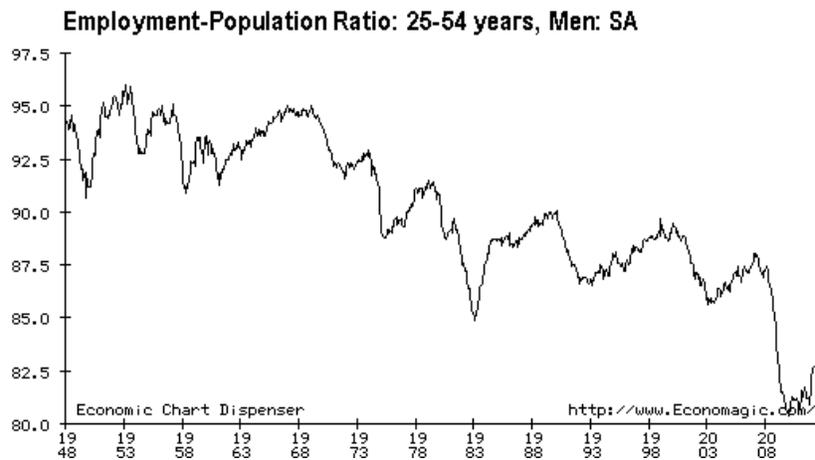
Note: The employment-to-population ratio for the second-youngest age group (both sexes) is back to the level of the mid-1960s. For males, it is at the lowest-ever recorded level. For females, it's back to mid-1970s levels.



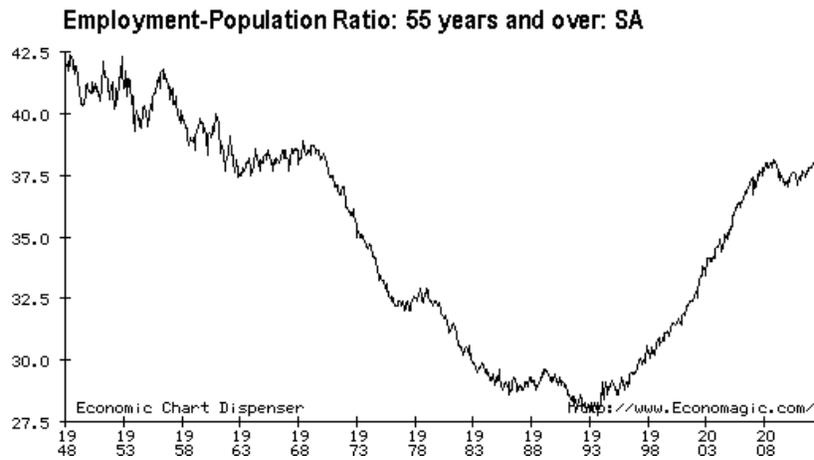
## Employment-to-Population Ratios: 25-54 (All, Male, Female)



Note: The employment-to-population ratio for the prime age group (both sexes) is back to mid-1980s levels. For males, it is at a recorded historic low. For women, it is at late-1980s/early-1990s levels.



## Employment-to-Population Ratios: 55 and over (All, Male, Female)



Note: The employment-to-population ratio for the oldest age group (both sexes and males-only) is rebounding from the low reached in the early 1990s. For females, it is rebounding from the lows of the mid-1980s.

