

# Wounds That Will Not Heal

*Affirmative Action  
and Our Continuing  
Racial Divide*

RUSSELL K. NIELI

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*To the memory of Mohandas K. Gandhi and  
Martin Luther King, Jr., who spoke to  
our common humanity and taught us  
the dignity and worth of all  
God's children regardless  
of race or class.*



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*Not only has the politics of rights spread to increasing numbers of groups in American society since the 1960s, it has also expanded its goal. The relatively narrow goal of equalizing opportunity by eliminating discriminatory barriers developed toward the far broader goal of affirmative action—government policies or programs that seek to address past injustices against specified groups by making special efforts to provide members of these groups with access to educational and employment opportunities. An affirmative action policy tends to involve two novel approaches: (1) positive or benign discrimination in which race or some other status is actually taken into account as a positive rather than negative factor; and (2) compensatory action to favor members of the disadvantaged groups who themselves may never have been the victims of discrimination.*

—BENJAMIN GINSBERG ET AL., *WE THE PEOPLE: AN INTRODUCTION TO AMERICAN POLITICS, SEVENTH ESSENTIALS EDITION* (NEW YORK: W. W. NORTON & COMPANY, 2009), pp. 128–30.

## INTRODUCTION

Racial preferences in the U.S. first arose in response to the widespread rioting in the urban black ghettos of America during the late 1960s. As a result of these urban upheavals, concerned elites in the federal bureaucracy and federal courts, as well as in the top universities and law schools, concluded that much more had to be done to deal with the pressing problem of black poverty and alienation in America than could be achieved through the prevailing ideal of color-blind justice, which had done so much to inspire the 1950s and 1960s era civil rights movement.<sup>1</sup>

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1. On racial preference policy as a response to urban rioting, see John David Skrentny, *The Ironies of Affirmative Action* (Chicago: University of Chicago Press, 1996); and Hugh Davis Graham, *The Civil Rights Era: The Origins and Development of National Policy, 1960–1972* (New York: Oxford University Press, 1990). Many would trace the transition from the color-blind civil rights ideal to color-conscious preferences to an address by President Johnson at Howard University in June 1965: “You do not take a man who, for years, has been hobbled by chains, liberate him, bring him to the starting line of a race saying, ‘You are free to compete with all the others,’ and still believe you have been fair. This is the next and more profound state of the battle for civil rights. We seek not just freedom of opportunity, not just legal equity, but human ability; not just equality as a right and theory, but equality as a right and result.” Although Johnson himself at this time was probably thinking of a huge expansion of Great Society training and other programs rather than racial preferences—two years after this speech he issued Executive Order 11375 reaffirming in unmistakably clear and forceful terms the requirement for color-blind, nondiscriminatory, merit-focused hiring for all federal contractors—the speech was interpreted by many supporters of racial preferences and racial quotas as an endorsement of their ideas.

From the very beginning, however, racial preference policy was anathema to large segments of the American public, including many of those who had fought the good fight to end segregation and racial oppression in the Jim Crow South. For them, racial preferences were a shameful betrayal of the highest ideals of the civil rights movement, and of Justice Harlan's magisterial pronouncement in the *Plessy* case that "our Constitution is color-blind and neither knows nor tolerates classes among citizens." And today, more than four decades after their introduction, preferentialist policies continue to be a source of loathing and offense to their many critics, despite the notable shift in their supporters' preferred justifications from "compensatory justice" and "pressing social needs" to the sweeter sounding note of "diversity."

In *Wounds That Will Not Heal*, I address the continuing controversy over racial preference policies in America, particularly those in university admissions and in employment. Reworking a series of essays compiled over a period of more than three decades, I offer a no-holds-barred critique of race-based employment and university admissions policies, whose consequences for the social harmony and well-being of America, I believe, are almost wholly negative. Until they are removed, racial preferences, I contend, will continue to gnaw at the inter-ethnic norm of reciprocity and fairness, which is the very linchpin holding together racially and ethnically diverse societies like the United States.

The fact that their supporters must continue to refer to racial preferences through an elaborate double-speak of euphemisms and code words—"affirmative action," "diversity," "goals and timetables," "race-sensitive admissions"—should tell us something. The need to speak in such euphemisms and code words indirectly acknowledges the fact that preferences based on race run counter to deeply ingrained ideals of justice and fair play in

America and require verbal dodges and prettifying obfuscations to be defended before the general public.

In his insightful study, *The Ironies of Affirmative Action*, political scientist John David Skrentny makes the telling point that toward the end of both world wars bills were introduced in Congress granting preferences in government employment to those who had recently served in the military. Without euphemisms or verbal dodges they were simply called “veterans preference bills.” And they passed overwhelmingly.

Although one can dispute the wisdom of granting job preferences to veterans, even to those who have taken time out of their personal careers to serve their country in time of war (wise voices argue compellingly that there are more appropriate ways to reward veterans than through means compromising the worthy principle of merit-based selection),<sup>2</sup> it is clear that for many Americans granting job preferences *for the right reasons* breaches no generalized principle of justice. This is why job preferences for veterans can be called by their proper name—“preferences.” But simply being a member of an “underrepresented” racial or ethnic minority group is not seen by most people in America as one of these “right reasons”—hence the need for deceit and deception by their defenders when racial preferences are publicly discussed. Does anyone have the slightest doubt about the legislative fate or the level of public support for an honestly labeled “Underrepresented Minorities Preference Bill”? For a “Racial Quota Employment Bill”? A “Minorities First Act”?

But advocates for racial preferences have other reasons for employing deceit and deception in the packaging of their wares than the perceived unfairness of such preferences and their lack of public support. Social philosopher Michael Walzer explained this all very well long ago in his book *Spheres of*

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2. See Michael Walzer, *Spheres of Justice* (New York: Basic Books, 1983), p. 154 n.

*Justice*. “In our culture,” Walzer wrote, “careers are supposed to be open to talents; and people chosen for an office will want to be assured that they were chosen because they really do possess, to a greater degree than other candidates, the talents that the search committee thinks necessary to the office. The other candidates will want to be assured that their talents were seriously considered. And all the rest of us will want to know that both assurances are true. That’s why reserved offices [i.e., racial preferences and racial quotas in jobs and university admissions] in the United States today have been the subject not only of controversy but also of deception. Self-esteem and self-respect, mutual confidence and trust, are at stake as well as social and economic status.”<sup>3</sup>

Does anyone really want to be told, “Congratulations, Ms. Jones, you’re our newest affirmative action hire!”? Or presented with an equivalent announcement of acceptance to a prestigious college? The answer, of course, is no, and because no one wants to be told such things, no one is. And so a hiatus develops between what is actually going on—which must be hidden, suppressed, distorted, or denied—and open public discussion. Self-esteem and self-respect are on the line, as Walzer says, as well as the overall group image of those targeted for the preferences both in their own minds and in the minds of those in the nonbeneficiary categories. Despite the elaborate concealment and deception, however, most people come to understand pretty well exactly what is going on with all the harmful consequences that follow. One could hardly create a more devilish system than our current policies of racial preferences for reinforcing in the minds of all parties concerned the belief that blacks and other beneficiaries of affirmative action are intellectually inferior to whites and Asians.

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3. Ibid., pp. 152–3.

Economist and social critic Thomas Sowell, a long-time preference opponent, explains the matter this way in his book *Black Education: Myths and Tragedies*:

The actual harm done by quotas is far greater than having a few incompetent people here and there—and the harm that will actually be done will be harm primarily to the black population. What all the arguments and campaigns for quotas are really saying, loud and clear, is that *black people just don't have it*, and that they will have to be *given* something in order to have something. The devastating impact of this message on black people—particularly black young people—will outweigh any few extra jobs that may result from this strategy. Those black people who are already competent, and who could be instrumental in producing more competence among this rising generation, will be completely undermined as black becomes synonymous—in the minds of black and white alike—with incompetence, and black achievement becomes synonymous with charity and payoffs.<sup>4</sup>

Having debated the issue of racial preferences in many forums, I can attest from personal experience that preference proponents have no answer to the charge that preference policies reinforce negative stigmas and negative stereotypes about the competence of their intended beneficiaries. Proponents will sometimes point out in this context that preference policies did not create the negative stigmas and negative stereotypes about the abilities of blacks and other oppressed minorities. Such debilitating stigmas and stereotypes, they will say, existed long before compensatory preferences came around and have deep

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4. Thomas Sowell, *Black Education: Myths and Tragedies* (New York: David McKay, 1972), p. 292 (emphasis in original).

roots in our racist culture. So don't blame racial preference policies for American racism, they say.

Much of what is claimed in this context is true, of course, since negative stigmas and negative stereotypes existed long before the late 1960s and early 1970s, when racial preference policies first came on the scene. But while racial preferences usually do not *create* negative stigmas and negative stereotypes (although they can), they most certainly *reinforce* and *perpetuate* existing stigmas and stereotypes about the abilities of blacks and other denigrated minorities, and they do so in a powerful way. And this surely must be considered an overwhelming strike against them. Preference proponents, I have found, typically sink into silence in the face of such unanswerable criticisms.

Some will feel that in the following material I have been much too harsh on preference policies and their supporters, that I look only at the downside of the policies, and that I ignore all the good that they have done. In response to such criticisms, I will just say that on balance not only have 40+ years of racial preference policies had overwhelmingly negative consequences, but that if one looks closely enough at the various "goods" they are supposed to have achieved, these "goods" almost always turn out to be so intimately tied to countervailing "bads" that their supposedly positive value cannot be unambiguously placed in any plus column.

It is said, for instance, that preference policies create greater diversity and an enriched cultural environment on competitive college campuses. But whatever truth such claims may contain, the cold fact is that one school's diversity gain is always purchased at the expense of another's diversity loss. Stanford siphons off black and Latino students who otherwise would have enrolled at UCLA or UC Riverside, thus depriving such schools of the diversity-enhancement value of these students.

And by upwardly ratcheting visible minorities into institutions one, two, or three degrees of selectivity above the level in which they would have enrolled in the absence of racial preferences, a stigma- and stereotype-reinforcement factor enters the equation that means good diversity is always being replaced by bad. The healthy kind of equal-status mixing is replaced by a very unhealthy mixing of people of very divergent talents and accomplishments. And these divergent talents and accomplishments differ by the readily visible factor of race. Negative stigmas and negative stereotypes are inevitably confirmed.

The same picture emerges from the employment arena. Preference policies, their supporters say, have been the major factor in creating a large and stable black middle class and a large number of successful black professionals who can serve as role models for black youth. The greatest growth in the black middle class, however, occurred in the 1940s and 1950s—long before the institution of racial preferences—as a result of the greater returns to formal education and the move of upwardly mobile Southern blacks into the more industrialized and less prejudiced regions of the North and Midwest. The best research by labor economists shows that very little of the growth in the black middle class since the 1940s can be attributed to racial preferences.<sup>5</sup> And while racial preferences in more recent years have no doubt made it easier for many blacks to become doctors, lawyers, MBAs, and other high-status professionals, they have done so by dramatically lowering the standards and expectations for black

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5. On the issue of black economic progress since the 1940s, see Finnis Welch and James P. Smith, *Closing the Gap: Forty Years of Economic Progress for Blacks* (Santa Monica, CA: Rand Corporation, 1986; and Ronald Ferguson, “Shifting Challenges: Fifty Years of Economic Change Toward Black-White Earnings Equality,” *Daedalus* 124 (1995): 37–76.

entrants into medical schools, law schools, business schools, and other professional schools in America.<sup>6</sup>

The message sent out is that those in the beneficiary categories don't need to achieve at the same level required of their white and Asian classmates to gain entry to the prestige professions, and as a result they have less need to compete with such students and less incentive to do their best. They know that their race will count as a huge "plus factor" in applying to graduate and professional schools and corporate-sector jobs. Not surprisingly, black undergraduates achieve much lower grades and rank-in-class standings when matched with white and Asian classmates who have the same entering SAT scores and high school grade-point averages (GPAs). This "underperformance problem" has been well documented since the very beginning of racial preference policies in the 1970s, yet preference supporters claim to be baffled by it. "We don't know why black college students underperform their SAT scores and high school grades," they say, unwilling to acknowledge the obvious. To lay the blame for black underperformance on the disincentive effects of policies they have long championed would require a level of honesty and integrity that few possess.

This same disincentive dynamic is at work, studies suggest, among college-bound, black high school students, even those attending the highest-quality public schools in communities like Shaker Heights, Ohio, and Chapel Hill, North Carolina. These

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6. This statement must be qualified in the case of lawyers. While racial preference policies have made it much easier for blacks to get into American law schools, UCLA law professor Richard Sander has made a powerful statistical case for his claim that the upward ratcheting of black students into competitive law schools that proceed at a pace too advanced for their individual needs leads to high drop-out rates, less law learned, and high rates of failure on state bar exams. Many more black lawyers would be produced, his statistical models indicate, if there were no racial preferences in law school admissions and blacks attended law schools where the white and Asian students had academic qualifications more similar to their own. Pedagogically it is a very unwise strategy, Sander believes, to place a student in a law school environment where the vast majority of the other students are better prepared or more academically talented. See the treatment of Sander's research in Chapter III.

students and their parents both know, as essayist Shelby Steele once put it, that mediocre performance can win for them what only excellent performance wins for their white and Asian classmates. And in virtually any mixed-race public school system in the country, when black students from middle- and upper-middle-class backgrounds are matched with whites from similar backgrounds, the black students do substantially worse on average in their grades and rank in class. It is difficult to avoid the conclusion that racial preference policies have lulled substantial segments of the black middle class into complacency and half-hearted performance in our increasingly education-focused world.

If I had to suggest an historical parallel to what I describe here as the overall disaster of post-60s racial preference policies it would be the high-rise public housing craze of the 1940s and 1950s. Like racial preference supporters in the late 1960s, the urban planners who sought to improve the lot of the inner-city poor by creating high-rise housing projects were not motivated by evil or depraved designs. On the contrary, they wanted to help the urban poor and believed that creating structurally sound, fire-safe modern high-rises was the way to do this. And no doubt the high-rises had some important advantages over the dwellings they replaced, which were often poorly ventilated, unsound firetraps, frequently lacking in the amenities of modern plumbing and modern heating. But “the projects,” as they came to be called, often turned into urban nightmares, as high concentrations of delinquent youth, in combination with vast expanses of difficult-to-patrol vertical space, often turned the high-rises into scenes of deadly shoot-outs, gang wars, vandalism, and an all-pervasive climate of violence and fear. The final acknowledgment of their failure came when officials in cities like St. Louis and Chicago moved people out of some of the worst crime-infested projects to lower-density housing and had the high-rise buildings themselves demolished. Like prohibition,

the high-rise craze was a noble experiment that failed—and at considerable cost in human suffering. Racial preferences, I contend, constitute a similar policy failure.

The material presented in this book draws on extensive social science research, including in some cases research going back to the 1930s. But the work as a whole is intended more as an exercise in social policy criticism than a new addition to social research more narrowly conceived. In this sense it stands in a venerable tradition of public policy critique that includes such spirited classics as Friedrich Hayek's *The Road to Serfdom*, Jane Jacobs's *The Death and Life of Great American Cities*, Edward Banfield's *The Unheavenly City*, Nathan Glazer's *Affirmative Discrimination*, and Arthur Schlesinger, Jr.'s *The Disuniting of America*. To all those of goodwill who sincerely believe that America's embrace of racial preferences over the past four decades has been a wholesome and healthy national project, I ask only that they confront the arguments and ideas presented in these pages with an open mind.

I ask them, too, to consider the material in the final chapter, which is the only one that does not deal directly with racial preference policy, but with the origin and development in the decades following the Second World War of a large black underclass in America's major cities. Part of the purpose of this chapter is to show the continuing relevance of the older theories of E. Franklin Frazier and Daniel Patrick Moynihan, which stressed the enormous difficulties of adjusting to a bewildering urban environment by involuntarily dispossessed rural peasants who lacked strong traditions of education, entrepreneurship, and self-improvement. Another purpose of this chapter is to draw attention to the extreme oppression and depravity of the Jim Crow system and to suggest that this might have something to do with why its victims were so ill-equipped to meet the task of preparing their offspring for the challenges of urban life.

The last chapter is in many ways the most important in the book, because it draws attention to the continuing dilemma of the very people—those “hobbled by chains,” as Lyndon Johnson called them in his famous Howard University address—whose suffering and disadvantage provided much of the initial impetus in the late 1960s for white liberals and others to abandon Justice Harlan’s commanding call for a color-blind justice and replace it with the racial quota and racial preference regime that has become so familiar to us today. The sympathy, pity, and guilt that privileged whites felt over the plight of the black urban poor were effectively hijacked by elements of the black middle class—and subsequently the Latino middle class as well—to serve their own middle-class ends, while the more pressing concerns of “the truly disadvantaged” were ignored.<sup>7</sup> For the latter, the worst consequence of this development was a general “civil rights fatigue,” and a “we gave at the office” mentality. “We’ve given the blacks their quotas and preferences as compensation for their past mistreatment,” the common thinking goes, and so our nation’s debt to them is done.

It is hoped that the final chapter will explain better than most other accounts how past oppression, negative conditioning, and the involuntary nature of the black sharecropper exodus out of the rural South combined to produce in the second half of the twentieth century the explosive growth in America’s cities of a downwardly mobile and painfully disoriented black underclass. And it is hoped that this will create some renewed sympathy toward, and better understanding for, today’s Southern-origin

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7. The claim that racial preference policies have largely served to enhance the position of the black middle class, while having little or no effect upon the “truly disadvantaged” black poor, is made by William Julius Wilson in his influential—and now classic—study, *The Truly Disadvantaged: The Inner-City, the Underclass, and Public Policy* (Chicago: University of Chicago Press, 1987). Wilson writes from a social democratic perspective, although much of what he says on this matter is strongly endorsed by libertarian and conservative critics of current racial preference policies.