REDEFINING CIVIL RIGHTS

by Terry Eastland

On May 17, 1954, the Supreme Court launched the modern quest for racial equality in America when it struck down public school segregation in *Brown* v. *Board of Education*. That quest has developed slowly into a controversy about the meaning of civil rights and the idea of equality—a controversy that continues to inject itself into our politics today.

After the Civil War, black leaders and civil-rights advocates generally believed that the law should make no distinctions on the basis of race. As Richard Cain, a black who represented North Carolina in Congress, explained during the House debate on the Civil Rights Act of 1875: "We do not want any discriminations. I do not ask for any legislation for the colored people of this country that is not applied to the white people. All that we ask is equal laws. . . ."

In 1896, this position was eloquently defended by Supreme Court Justice John Harlan. In his dissent from the infamous decision (*Plessy* v. *Ferguson*) that upheld segregation, Harlan stated that "Our Constitution is colorblind, and neither knows nor tolerates classes among citizens. In respect of civil rights all citizens are equal before the law. . . . The law regards man as man, and takes no account of his surroundings or of his color when his civil rights are involved."

The *Brown* decision seemed to reflect Harlan's dissent. Over the next 20 years, however, many of those Americans united in the effort to eliminate racial discrimination either rejected or temporarily shelved the idea of colorblind justice, accepting the alternative view that the law should indeed make some major distinctions based on race. In time, the federal government itself promoted the notion that only "race-preferential" policies could ensure (or accelerate) black gains in education, employment, and politics. Not only in government but in many areas of business and education, the idea took hold that blacks—and, later, other groups that could point to present or historic deprivation—now deserved compensation, even if it came at the expense of other American citizens.

A new, revised, and enlarged dictionary of civil rights appeared. It included terms such as "busing," "set-asides," "available pools," and "goals and timetables." The philosophy

underlying race preference was well summarized by Justice Harry A. Blackmun in 1978: "To get beyond racism, we must first take account of race."

Ironically, the same *Brown* decision that struck the fatal blow to segregation helped bring about the race-conscious policies of the future. The 1954 ruling *seemed* to say that it is constitutionally impermissible for government to make any distinctions based on race. The National Association for the Advancement of Colored People (NAACP) had urged the Court to adopt exactly this principle, arguing that no government anywhere should be allowed to "confer" or "deny" benefits on the basis of color or race.

But in fact, the *Brown* decision nowhere explicitly said that racial distinctions made by government are unconstitutional per se. Had it done so, a precedent would have been established that later courts would have found most difficult to overcome. Instead, *Brown* left the nation's courts a grant of flexibility in dealing with matters involving race.

Other features of *Brown* augured the future evolution of the idea of civil rights. In particular, the decision reflected the judiciary's growing interest in the findings of social science—an interest that in time spread to other branches of government. Chief Justice Earl Warren's unanimous opinion leaned heavily on social scientists' judgments about the effects of segregation on minority schoolchildren.

Making Haste Slowly

What were these effects? "A feeling of inferiority as to their status in the community"—a feeling "that may affect their hearts and minds in a way unlikely ever to be undone." Maintaining that "this finding is amply supported by modern authority," Warren cited seven scholarly works in his famous Footnote 11, among them psychologist Kenneth B. Clark's *Effect of Prejudice and Discrimination on Personality Development* (1950). Footnote 11 disturbed constitutional scholars: After all, "modern authorities" could be found to support a contrary view. But the application of social science data, especially statistics, to legal questions involving race became a common exercise in subsequent years. As Jesse Jackson observed 25 years after *Brown*: "Equality can be measured. It can be turned into numbers."

No less a portent was the Warren Court's treatment of blacks as a *group*. Looking beyond the individual plaintiffs in the case, the Court saw a class of Americans—blacks—and undertook to address the problem of discrimination endured by so

many of them. Instead of enjoining the school districts involved from segregating on the basis of race and then ordering the victorious *Brown* plaintiffs admitted, the Court, concerned about the broad implications of its decision, asserted that the question of relief "presents problems of considerable complexity." It asked for further argument the following year, and even then it temporized. As Columbia's Louis Lusky observed a decade later, what the plaintiffs actually received was "a promise that, some time in the indefinite future, other people would be given the rights which the Court said [they] had."

Not Enough

Thus, while the Supreme Court in *Brown* erased the color line of school segregation, it failed to shake off the old habit of regarding blacks as members of a group needing different treatment. This group approach, applied later in an effort to *help* blacks, became the foundation of the race-preferential policies of the 1960s and '70s. In common with *Brown*, these policies sought less to give relief to specific individuals suffering from specific acts of discrimination than to improve the economic, political, and educational condition, in group terms, of blacks and other minorities.

In 1954, of course, none of this was foreseen. The issues seemed simpler then. Asked by Justice Felix Frankfurter to "spell out in concrete what would happen" if the Court ruled for the plaintiffs in *Brown*, NAACP special counsel Thurgood Marshall said that his hope was that school district boundaries everywhere would be drawn "on a natural basis, without regard to race or color."

To Marshall, assistant counsel Robert L. Carter, and other civil-rights leaders, overturning Jim Crow laws and advancing the principle that nondiscrimination was a *moral* as well as a constitutional imperative seemed to go hand-in-hand. That principle was also deemed essential to black advancement: Eliminating race-based distinctions would *in itself* lead to progress in education and employment that in time would bring blacks fully into the American mainstream.

Yet, before long, many blacks began to wonder whether this theory ever would receive a fair test. For in the absence of pres-

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Riot, U.S.A. *(1968), by William Curtis. In a year marked by racial violence, poor people marched on Washington, athletes gave a Black Power salute at the Olympics, and Yale announced a new B.A. in Afro-American studies.*

sure from the Supreme Court or the President, white Southern governors and state legislators successfully defied the *Brown* decision. Virtually all of the Southern states adopted "pupil-placement schemes" that were race-neutral on their face but in practice were employed to minimize desegregation if not keep blacks out of white schools entirely. By 1962, fewer than two percent of all black students in Texas, Georgia, Virginia, North Carolina, Arkansas, Louisiana, Tennessee, and Florida were enrolled in biracial schools. In Mississippi, South Carolina, and Alabama, there were no biracial schools at all.

As the Rev. Martin Luther King, Jr., assailed "institutionalized tokenism" in the South, the NAACP began taking aim at a different sort of problem in the North and West, where four million Southern blacks had taken up residence since World War II. There, school segregation existed not by law but because of residential segregation. In 1962, the NAACP launched its first successful attacks on de facto school segregation in a dozen communities, from Coatesville, Pennsylvania, to Eloy, Arizona.

Inevitably, some civil-rights leaders began to question

whether simply pulling down the color barriers would bring tangible educational gains in either North or South. In 1962, a group of blacks sued the Philadelphia school board, contending through its attorney that the city's race-neutral policy of pupil assignment was "not enough." The lawyer argued that the board "cannot be colorblind," but must make decisions "in such a way as to accomplish . . . integration."

Scaling New Peaks

The idea that colorblind policies might not be "enough" was seconded by social scientists in government and academe who, during the early 1960s, were beginning to produce reams of data showing that blacks as a group still lagged far behind whites, and not only in education. Blacks were less likely than whites to finish high school, more heavily concentrated in low-wage occupations, and afflicted with higher rates of joblessness. In 1964, the National Urban League's Whitney Young cited the "serious disabilities resulting from historic handicaps" when he spoke of the need for a "special effort" on behalf of American blacks.

Young did not call for hiring quotas, only the granting of preference in hiring situations where a black and a white were equally qualified. Others, however, were bolder, couching their arguments less in practical than in moral, almost theological, terms. Charles Silberman, for example, wrote in a 1962 *Fortune* article that past oppression of blacks was a "sin" for which "all Americans owe some act of atonement." In his 1964 book, *Crisis in White and Black*, Silberman maintained that "as soon as we agree that special measures are necessary, the question of numbers—of how many Negroes are to be hired in what job categories—inevitably arises." Calling them a "meaningful measure of change," Silberman became one of the first to endorse quotas for blacks, though his view was still that of a distinct minority.

On Capitol Hill, testifying on the 1964 Civil Rights Act, NAACP executive director Roy Wilkins emphasized that a quota system would be "unfair whether it is used for [blacks] or against [blacks]. . . . We feel people ought to be hired because of their ability, irrespective of their color." Most civil-rights spokesmen and congressional liberals were of the same opinion regarding employment quotas and race-conscious policies in general. As a result, the Civil Rights Act specified that no employer would be required to grant "preferential treatment to any group" because of an "imbalance in [his] work force" and also that desegregation "shall not mean the assignment of students to public schools in order to overcome racial imbalance."

The Civil Rights Act and the subsequent Voting Rights Act of 1965 were designed to outlaw all remaining legal barriers to schools, jobs, public facilities, and voting booths. Educational and economic opportunity were explicitly made independent of race, color, religion, sex, or national origin. The two acts also granted the federal government broad enforcement powers, including the power to withhold funds and initiate lawsuits.

Having pushed the pivotal rights bills through Congress, President Lyndon Johnson looked for new peaks to scale. Drawing on Daniel Patrick Moynihan's observation that the next phase of "the Negro revolution" would include demands for jobs and income roughly comparable to those of whites, the President declared in his celebrated 1965 Howard University commencement address: "We seek not just freedom but opportunity—not just legal equity . . . but equality as *a fact and a result*." The Great Society programs, from Head Start to the Job Corps, were designed in part to help bring about this "equality as a result." So was a little-noticed executive order signed in 1965 by Lyndon Johnson—Executive Order 11246—which backed an as yet ill-defined concept called "affirmative action."

But 1965 also brought signs of trouble. The President committed major U.S. forces to the Vietnam War. In the predominantly black neighborhood of Watts, in Los Angeles, the National Guard had to be called in to quell a week of rioting and looting. Meanwhile, black leaders were increasingly divided over whether the movement should continue to endorse Martin Luther King, Jr.'s nonviolent means and integrationist ends, or join the militant proponents of Black Power in the Student Non-Violent Coordinating Committee and the Congress of Racial Equality. Black separatism, championed by Elijah Muhammad and Malcom X, revived as an ideology.

Numbers

Despite this turbulence—indeed, in part because of it—federal authorities continued to seek ways of integrating blacks into the American mainstream. The first big target was school segregation.

Brandishing the government's new power to withhold federal funds from public schools practicing racial discrimination, the U.S. Department of Health, Education, and Welfare (HEW) in 1966 issued guidelines prohibiting "freedom-of-choice" plans and requiring school systems to bring about "some faculty integration" in each school and, as far as students were concerned,

BLACKS AND POLITICS: A NEW MATURITY

Politically, black Americans have entered Stage Three.

Stage One (1945–1964) was the postwar era of mobilization. New civil-rights groups such as CORE joined older ones such as the NAACP to make the condition of black citizens a *national* issue that Washington would be forced to address.

Stage Two (1964–1980) was the era of federalization. Passage of the Civil Rights Act of 1964 and the Voting Rights Act of 1965 removed the crudest constraints on blacks' social and political participation in American life; the Great Society programs created jobs and a new middle class. The civil-rights movement was rent by fissures that would not close, even as a new generation of black leaders emerged on the scene via politics, not protest.

During the 1970s, Republican and Democratic administrations alike expanded affirmative action, enforced the voting rights laws, and appointed blacks to cabinet posts. Today, there are more than 5,500 black elected officials nationwide (versus fewer than 300 in 1965), including 247 mayors and 21 Congressmen.

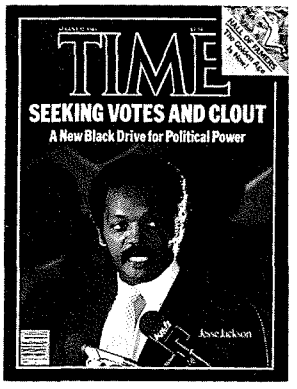
Stage Three is the era of sophistication, as blacks improve the quality and extend the range of their political behavior. It is essential for blacks to diversify their political stands and their political strategies—and thereby expand the potential pool of political allies —if they are to avoid a repetition of the early Reagan years.

The Reagan administration has been at best indifferent to the concerns of black Americans. At its mindless worst, it has sought to weaken provisions of the Voting Rights Act and to allow tax exemptions for private schools that refuse to admit blacks. The administration's budget cuts have curbed programs (such as food stamps and Medicaid) on which millions of poor blacks depend. The black community received barely enough support in Congress and the courts to contain the damage.

Blacks need new friends. They will find new friends when their political opinions and behavior more closely match those of other Americans. Though largely unremarked in the press, this transformation is already under way. Consider the findings of a study conducted by Data Black, a polling firm, in 1980. Of the blacks surveyed, 50 percent answered "harmful" or "unsure" when asked about the effects of welfare programs; 51 percent answered "increase" or "unsure" when asked about defense spending. *Public Opinion Quarterly*, meanwhile, has reported that 41 percent of blacks favor the death penalty for murder, and 72 percent favor tuition tax credits; roughly 60 percent oppose abortion for married women. This sample of black opinion would probably surprise most Americans.

Increasingly, black voters are making up their own minds. In Alabama in 1982, one-third of all black voters defied Coretta Scott King and other civil-rights leaders (who supported a white liberal, George

McMillan, in his race for governor) and helped hand former Governor George Wallace a victory in the Democratic primary. After his triumph in the general election, Wallace rewarded blacks swiftly, appointing two blacks (Alabama's first) to his cabinet and backing four others for committee chairmanships in the legislature. There is a lesson here for the Republican Party, if it would only open its eyes.



Jesse Jackson, 1983

There were other portents in 1982. In California, Los Angeles Mayor Tom Bradley fashioned a broad coalition of whites, blacks, Hispanics, and Orientals, and came within 100,000 votes (out of 7.9 million cast) of becoming America's first black governor. Ironically, rather than hailing Bradley's achievement, civil-rights leaders such as the National Urban Coalition's Carl Holman depicted the outcome as the result of "racism-as-usual." Holman would have done better to chastize the 600,000 black Californians who did not register to vote. He might also have leveled some criticism at the 5,000 members of Alpha Phi Alpha who attended the fraternity's annual convention in California during the summer of 1982 but never even contemplated financing perhaps 100 of their number to stay behind and help with voter registration.

The fact is, political maturity demands self-criticism. Civil-rights leaders, who are no longer at the forefront of black politics but still wield considerable influence, need to understand this. Most black politicians already do.

Certainly Jesse Jackson does. Jackson is enough of a realist to know that he will not become the Democratic presidential nominee; he is intelligent enough to know that his candidacy can nevertheless accomplish a great deal. He has already jolted hundreds of thousands out of political apathy—like the many newly registered blacks in Chicago who helped elect Harold Washington mayor in April 1983. Some 41 percent of the 17.8 million eligible blacks are still not registered to vote. But, across the nation, efforts such as Operation Big Vote, now active in 50 cities, have already begun to reverse this situation. Jackson will provide new momentum.

"My running," he says, "will stimulate thousands to run [for elective office]; it will make millions register. If you can get your share of legislators, mayors, sheriffs, school-board members, tax assessors, and dogcatchers, you can live with whoever is in the White House."

—Martin Kilson

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to meet "performance criteria."

Specifically, districts in which eight to nine percent of the community's black students were enrolled in integrated schools had to double this proportion within a year; those with only four to five percent had to triple it. The HEW guidelines, focused on (but not confined to) Southern schools, represented the first time that Washington had mandated percentage requirements as a measure of desegregation.

The guidelines upset Congress. The House of Representatives (but not the Senate) promptly passed legislation prohibiting the use of cross-town "busing" to achieve integration, the first of several antibusing amendments the House was to pass. But HEW's actions were immediately upheld by the Fifth Circuit Court of Appeals in New Orleans. This same court subsequently declared that public school officials "have the affirmative duty . . . to bring about an integrated, unitary school system in which there are no Negro schools and no white schools—just schools." The Fifth Circuit rejected the view that the Constitution requires only that schools not discriminate. In the court's opinion, the Constitution requires actual integration. And integration has to be total—in terms of "students, faculties, facilities, and activities."

Zoning, Pairing, Busing

After 14 years of almost complete silence on the issue, the Supreme Court in 1968 finally declared its impatience with the slow pace of school desegregation. In a case arising in Virginia, *Green* v. *New Kent County School Board*, the Court ruled that public schools must not only eliminate discrimination "root and branch," but also devise a plan for doing so "that promises realistically to work, and promises realistically to work now."

The proportion of blacks attending biracial schools began to rise rapidly—to 32 percent in 1968, and 86 percent in 1970. Even as many whites were fleeing big-city public schools, federal judges used a variety of means to try to bring about school integration, including geographical zoning, school "pairing"—and, of course, compulsory busing of schoolchildren. In 1971, the Supreme Court, now headed by a Nixon appointee, Warren Burger, unanimously upheld the legality of such busing in *Swann* v. *Charlotte-Mecklenburg Board of Education*. The path left open by Brown was now taken in *Swann*: The law may indeed take account of color. "Just as the race of students must be considered in determining whether a constitutional violation has occurred," said the Court, "so also must race be considered

in formulating a remedy."

Meanwhile, even as busing became a court-sanctioned school integration strategy, often amid considerable local conflict, other "race-conscious" policies were being devised and adopted. During the mid-1960s, many whites were worried about (and frightened by) both urban riots and the strident new emphasis on black separatism. As Theodore Draper noted in *The Rediscovery of Black Nationalism* (1970), only a few years earlier "the tendency [had been] overwhelmingly 'integrationist' within the black community and among black leaders." Now, however, integrationism "had become a bad word, and some form of 'separatism'—cultural, political, or both—was all the rage, especially in black intellectual and youthful circles."

What Is 'Affirmative Action'?

Intellectually, many highly placed whites, particularly those staffing foundations and teaching in universities, had also come to accept the militants' proposition that blacks deserved recompense; the legacy of past injuries, they believed, lingered on, preventing blacks from competing on equal terms with whites. "To treat our black students equally," said Vanderbilt University Chancellor Alexander Heard, "we have to treat them differently." Besides increasing black student enrollment and taking on more black faculty members, university officials agreed to create "black studies" programs and even separate black student centers. There was irony in this, for here the demands of young blacks bitterly denouncing integration were being granted by white academics who deeply believed in that very goal.

As hundreds of universities and some major corporations voluntarily opened their doors to more blacks, federal agencies began experimenting with Lyndon Johnson's executive order on "affirmative action."

LBJ's Executive Order 11246, amended in 1967, not only prohibited most businesses with more than 50 employees on the payroll or with government contracts worth more than $50,000—a group that then included some 325,000 employers with a total of about 30 million workers—from discriminating "against any employee or applicant for employment because of race, color, religion, sex, or national origin." The order also required such businesses to "take affirmative action to ensure that applicants are employed and that employees are treated" without regard to those characteristics.

But what did "affirmative action" really mean?

In the Kennedy administration, the term had been used in directives calling for race-neutral actions: Recruit more widely; offer job training; rid employment tests of racial bias. While the U.S. Department of Labor did press contractors during the Johnson years to hire more minorities (defined as blacks, Hispanics, American Indians, and Asians and Pacific Islanders), it did not attempt to say *how many* more such people an employer should hire. It was the Nixon administration that first began to require hiring on the basis of numerical goals.

Thus, in 1969, the Nixon Labor Department drew up its "Philadelphia Plan," under which construction firms in that city were required to increase their percentage of minority craftsmen from the existing two percent to as much as 26 percent within four years. The Labor Department also began leaning on contractors in cities across the nation to hire more minorities, even when racial discrimination against identifiable individuals had not been demonstrated. The Labor Department's affirmative action effort aimed at gradually producing proportional minority representation. "Very few [contractors] are willing . . . to fight . . . through litigation," Under Secretary of Labor Laurence Silberman explained to Congress in 1971. "They usually come into compliance."

Pools and Goals

The Nixon administration's interest in more minority hiring in construction would fade as union opposition mounted. (Neither the Philadelphia Plan nor a similar program in Washington, D.C., ever met its goals.) But in other agencies, the drive for affirmative action remained strong. At HEW, for example, officials developed guidelines for achieving "equality as a result" in academe. Universities with government contracts were required to determine the "available pools" of labor, by race, qualified for each job, from janitor and secretary to professor and provost. The universities then had to compare the number of minorities working in each job category with their estimated "availability" in the "pools"—and hire more minorities if any "deficiencies" were apparent. Meeting such numerical "goals" was (and remains) an arduous task.*

*As administrators in academe, business, and the public sector have discovered, merely determining the proper "pool" can be tricky. In *Blacks and the Military* (1982), Martin Binkin listed some of the many yardsticks against which black representation in the armed forces (now about 20 percent) could theoretically be measured. They include the proportion of blacks among 1) all Americans (12 percent), 2) those from age 18 to 23 (13 to 14 percent), 3) high school graduates from age 18 to 22 (12 percent), 4) military-age people who would be expected to qualify for enlistment (five to eight percent), 5) noncollege males from age 18 to 23 (20 percent), 6) all blue-collar workers (14 percent).

During the early 1970s, HEW's Office of Civil Rights cited 20 universities—among them Harvard, the University of Michigan, Vanderbilt, New Mexico State, and the University of Texas—for falling short of their assigned goals. In a 1975 settlement with the University of California at Berkeley, hailed by Washington officials as a model for affirmative action in higher education, the institution was required to place at least 100 additional women and minorities in teaching positions over the next 30 years. The seemingly modest number of jobs involved under the Berkeley Plan reflected the proportion of women and minorities in various labor pools, which for some academic specialties is very small.

Many of the top officials at universities that had pioneered in adopting their own race-preferential admissions policies during the late 1960s, and had applauded the affirmative action requirements imposed by Washington on business, now lamented HEW intrusions into faculty hiring. They argued that the dissimilarity between higher education and industry, and the special need of institutions of learning for autonomy, should restrain government zeal. But Washington did not readily back off. Said Stanley Pottinger, director of HEW's Office of Civil Rights from 1970 to 1973: "We have a whale of a lot of power and we're prepared to use it if necessary."

An Uncertain Court

That same spirit animated yet another federal agency with muscle: the U.S. Equal Employment Opportunity Commission (EEOC), which was responsible for enforcing the provisions against job discrimination in the 1964 Civil Rights Act. As early as 1969, the EEOC took the position that private firms' equal employment opportunity programs must include consideration of their results—or lack of results—in terms of actual numbers of jobs for minorities and women.*

Does affirmative action of this sort violate the Constitution? The Supreme Court has strained to avoid answering this question. But its rulings have permitted educational and employment practices that *do* make distinctions on the basis of race.

The Court first addressed the issue in 1978 in *Bakke* v. *Regents of the University of California*. Allan Bakke, the white plain-

*The direct impact of federal affirmative action pressures on improved job opportunities for blacks is extremely difficult to reckon, especially in the private sector. The clearest gains have come in federal employment. Between 1970 and 1980, as the total of federal civilian employees rose by 13 percent, to 3,762,000, the number of blacks among them increased by 24 percent, to 693,000. Public sector employment now accounts for 53 percent of the jobs held by black managers and professionals.

tiff, had been denied admission to the University of California at Davis medical school in 1973, even though he was far more academically qualified than the minority candidates accepted under the school's quota program. The Court agreed that Bakke had been wronged and ordered him admitted to the medical school. But it refused to bar universities from considering race in admissions decisions.

A year later, the Court handed down its decision in *United Steelworkers of America* v. *Weber*. Brian Weber, the "blue-collar Bakke," had sued when his employer, Kaiser Aluminum & Chemical Corp., turned him down for an in-house training program in which half the places were reserved for minorities. The court ruled that the Civil Rights Act does not prohibit private employers from *voluntarily* giving job preference to minorities.

A Matter of Health

Subsequently, in *Fullilove* v. *Klutznick* (1980), the Supreme Court upheld the validity of a "set-aside" program, established by Congress in 1977, under which a fixed percentage of some federal public works funds was earmarked for minority-owned businesses. In a plurality opinion, the Court understood the program as being of benefit to minority businesses actually disadvantaged by previous discrimination in the award of public construction contracts.

More recently, in cases involving police and firemen in Boston (1983) and police in Detroit (1984), the Court has declined to render any decision at all. In Boston, the demands of affirmative action quota plans had collided with the seniority principle of "last hired, first fired"; veteran white employees were laid off in budget-cutting moves, while blacks and other minorities were retained, even though they had far less seniority. A similar case from Memphis, *Firefighters* v. *Stotts*, is still before the court.

Overall, despite the Court's air of uncertainty, the race-conscious policies set into place by the early 1970s have become more entrenched. They have also provoked increasing debate.

The controversy over busing has involved issues of educational quality, racial understanding, and "white flight" (and, now, even some "black flight") to suburbs and private schools. In the matter of voting rights, the argument has focused on whether the purpose of the Voting Rights Act was simply to ensure and increase minorities' access to the polls, thereby yielding an integrated vote; or, in fact, to create conditions, via redistricting, in which minorities can elect public officials in

rough proportion to their numbers in the general population. The dispute over affirmative action, in the form of "goals" or "quotas," has centered on issues of academic standards and job qualifications; on the socio-economic advancement of minorities; and on "reverse discrimination" against nonminorities.

The fact that the courts, not to mention labor unions, employers, academics, and politicians, feel uncomfortable grappling with the question of whether and how distinctions should be made on the basis of race suggests the degree to which the civil-rights movement's first principle–that of nondiscrimination—remains compelling. That principle routed the diehard segregationists in the South and gave the civil-rights movement its remarkable moral force nationwide.

The polls hint at Americans' underlying beliefs. Even in 1963, a National Opinion Research Center survey reported that 80 percent of whites believed that "Negroes should have as good a chance as whites to get any kind of job." But in 1977, when the widely publicized Bakke case was argued before the Supreme Court, a Gallup poll on the question of whether any groups in America should have "preferential treatment" in finding jobs or places in college found support for the idea among only 11 percent of all those in the sample—and, interestingly, among only 30 percent of black respondents. Polls since then have yielded similar results.

The three decades since *Brown* have, unfortunately, been filled with instances in which the principle of nondiscrimination was variously denied, honored in the breach, or rationalized away. Despite all that, Americans have made considerable progress in treating one another as individuals *without* regard to race, and in expanding the range of opportunities available to everyone.

But it is worth pondering whether the civic climate would be healthier today had the nation acted firmly and rapidly in accordance with the principle of nondiscrimination in 1954, and then stuck to the principle after its clear articulation in the Civil Rights Act of 1964.