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The better path to black progress.

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## BEYOND CIVIL RIGHTS

BY GLENN C. LOURY

**T**HERE IS TODAY a great deal of serious discussion among black Americans concerning the problems confronting them. Many, if not most, people now concede that not all problems of blacks are due to discrimination, and that they cannot be remedied through civil rights strategies or racial politics. I would go even further: using civil rights strategies to address problems to which they are ill-suited thwarts more direct and effective action. Indeed, the broad application of these strategies to every case of differential achievement between blacks and whites threatens to make it impossible for blacks to achieve full equality in American society.

The civil rights approach has two essential aspects: first, the cause of a particular socioeconomic disparity is identified as racial discrimination; and second, advocates seek such remedies for the disparity as the courts and administrative agencies provide under the law.

There are fundamental limitations on this approach deriving from our liberal political heritage. What can this strategy do about those important contractual relationships that profoundly affect one's social and economic status but in which racial discrimination is routinely practiced? Choice of marital partner is an obvious example. People discriminate here by race with a vengeance. A black woman does not have an opportunity equal to that of a white woman to become the wife of a given white man. Since white men are on the whole better off financially than black men, this racial inequality of opportunity has substantial monetary costs to black women. Yet surely it is to be hoped that the choice of husband or wife will always be beyond the reach of the law.

The example is not facetious. All sorts of voluntary associations—neighborhoods, friends, business partnerships—are the result of choices often influenced by racial criteria, but which lie beyond the reach of civil rights laws. A fair housing law cannot prevent a disgruntled white resident from moving away if his neighborhood becomes predominantly or even partly black. Busing for desegregation cannot prevent unhappy parents from sending their children to private schools. Withdrawal of university support for student clubs with discriminatory selection rules

cannot prevent student cliques from forming along racial lines. And a vast majority of Americans would have it no other way.

As a result, the nondiscrimination mandate has not been allowed to interfere much with personal, private, and intimately social intercourse. Yet such exclusive social connections along group lines have important economic consequences. An extensive literature in economics and sociology documents the crucial importance of family and community background in determining a child's later success in life. Lacking the right "networks," blacks with the same innate abilities as whites wind up less successful. And the elimination of racial discrimination in the economic sphere—but not in patterns of social attachment—will probably not be enough to make up the difference. There are thus elemental limits on what one can hope to achieve through the application of civil rights strategies to what must of necessity be a restricted domain of personal interactions.

The civil rights strategy has generally been restricted to the domain of impersonal, public, and economic transactions such as jobs, credit, and housing. Even in these areas, the efficacy of this strategy can be questioned. The lagging economic condition of blacks is due in significant part to the nature of social life *within* poor black communities. After two decades of civil rights efforts, more than three-fourths of children in some inner-city ghettos are born out of wedlock; black high school dropout rates hover near 50 percent in Chicago and Detroit; two-fifths of murder victims in the country are blacks killed by other blacks; fewer black women graduate from college than give birth while in high school; more than two in five black children are dependent on public assistance. White America's lack of respect for blacks' civil rights cannot be blamed for all these sorry facts. This is not to deny that, in some basic sense, most of these difficulties are related to our history of racial oppression, but only to say that these problems have taken on a life of their own, and cannot be effectively reversed by civil rights policies.

Higher education is a case in point. In the not too distant past, blacks, Asians, and women faced severe obstacles to attending or teaching at American colleges and universities, especially at the most prestigious institutions. Even after black scholars studied at the great institutions, their only possibilities for employment were at the historically

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black colleges, where they faced large teaching loads and burdensome administrative duties. Their accomplishments were often acknowledged by their white peers only grudgingly, if at all.

Today opportunities for advanced education and academic careers for blacks abound. Major universities throughout the country are constantly searching for qualified black candidates to hire as professors, or to admit to study. Most state colleges and universities near black population centers have made a concerted effort to reach those in the inner city. Almost all institutions of higher learning admit blacks with lower grades or test scores than white students. There are special programs funded by private foundations to help blacks prepare for advanced study in medicine, economics, engineering, public policy, law, and other fields.

**Y**ET, WITH ALL these opportunities (and despite improvement in some areas), the number of blacks advancing in the academic world is distressingly low. The percentage of college students who are black, after rising throughout the 1970s, has actually begun to decline. And though the proportion of doctorates granted to blacks has risen slightly over the last decade, a majority of black doctorates are still earned in the field of education. Despite constant pressure to hire black professors and strenuous efforts to recruit them, the percentage of blacks on elite university faculties has remained constant or fallen in the past decade.

Meanwhile, other groups traditionally excluded are making impressive gains. Asian-Americans, though less than two percent of the population, make up 6.6 percent of U.S. scientists with doctorates; they constitute 7.5 percent of the students at Yale, and nine percent at Stanford. The proportion of doctorates going to women has risen from less than one-seventh to nearly one-third in the last decade. Less than two percent of Harvard professors at all ranks are black, but more than 25 percent are women.

Now, it is entirely possible that blacks experience discrimination at these institutions. But as anyone who has spent time in an elite university community knows, these institutions are not racist in character, nor do they deny opportunities to blacks with outstanding qualifications. The case can be made that just the opposite is true—that these institutions are so anxious to raise the numbers of blacks in their ranks that they overlook deficiencies when making admissions or appointment decisions involving blacks.

One obvious reason for skepticism about discrimination as the cause of the problem here is the relatively poor academic performance of black high school and college students. Black performance on standardized college admissions tests, though improving, still lags far behind whites. In 1982 there were only 205 blacks in the entire country who scored above 700 on the math component of the SAT. And, as Robert Klitgaard shows convincingly in his book *Choosing Elites*, post-admissions college performance by black students is less than that of whites, even

when controlling for differences in high school grades and SAT scores. These differences in academic performance are not just limited to poor blacks, or to high school students. On the SAT exam, blacks from families with incomes in excess of \$50,000 per year still scored 60 to 80 points below comparable whites. On the 1982 Graduate Record Exam, the gap between black and white students' average scores on the mathematics component of this test was 171 points. According to Klitgaard, black students entering law school in the late 1970s had median scores on the LSAT at the eighth percentile of all students' scores.

Such substantial differences in educational results are clearly a matter of great concern. Arguably, the government should be actively seeking to attenuate them. But it seems equally clear that this is not a civil rights matter that can be reversed by seeking out and changing someone's discriminatory behavior. Moreover, it is possible that great harm will be done if the problem is defined and pursued in those terms.

**T**AKE THE CONTROVERSY over racial quotas at the Boston Latin School, the pride and joy of the city's public school system. It was founded before Harvard, in 1635, and it has been recognized ever since as a center of academic excellence. Boston Latin maintains its very high standards through a grueling program of study, including Latin, Greek, calculus, history, science, and the arts. Three hours of homework per night are typical. College admissions personnel acknowledge the excellence of this program; 95 percent of the class of 1985 will go to college.

The institution admits its students on the basis of their marks in primary school and performance on the Secondary School Admissions Test. In 1974, when Boston's public schools became subject to court-ordered desegregation, Judge Arthur Garrity considered closing Boston Latin, because the student population at the time was more than 90 percent white. In the end, a racial admissions quota was employed, requiring that 35 percent of the entering classes be black and Hispanic. Of the 2,245 students last year, over half were female, 57 percent white, 23 percent black, 14 percent Asian, and six percent Hispanic.

Historically the school has maintained standards through a policy of academic "survival of the fittest." Those who were unable to make it through the academic rigors simply transferred to another school. Thus, there has always been a high rate of attrition; it is now in the range of 30 percent to 40 percent. But today, unlike the pre-desegregation era, most of those who do not succeed at Boston Latin are minority students. Indeed, though approximately 35 percent of each entering class is black and Hispanic, only 16 percent of last year's senior class was. That is, for each non-Asian minority student who graduates from Latin, there is one who did not. The failure rate for whites is about half that. Some advocates of minority student interest have complained of

discrimination, saying in effect that the school is not doing enough to assist those in academic difficulty. Yet surely one reason for the poor performance of the black and Hispanic students is Judge Garrity's admissions quota. To be considered for admission, whites must score at the 70th percentile or higher on the admissions exam, while blacks and Hispanics need only score above the 50th percentile.

**R**ECENTLY THOMAS Atkins, former general counsel of the NAACP, who has been representing the black plaintiffs in the Boston school desegregation lawsuit, which has been going on for ten years, proposed that the quota at Boston Latin be raised to roughly 50 percent black, 20 percent Hispanic and Asian, and 30 percent white—a reflection of the racial composition of the rest of Boston's public schools. Unless there were a significant increase in the size of the school, this could only be accomplished by doubling the number of blacks admitted while cutting white enrollment in half. This in turn, under plausible distributional assumptions, would require that the current difference of 20 points in the minimum test scores required of black and white students accepted be approximately doubled. Since the additional black students admitted would be less prepared than those admitted under the current quota, one would expect an even higher failure rate among minorities were this plan to be accepted. The likely consequence would be that more than three-fourths of those leaving Boston Latin without a degree would be blacks and Hispanics. It is also plausible to infer that such an action would profoundly alter, if not destroy, the academic climate in the school.

This is not simply an inappropriate use of civil rights methods, though it is surely that. It is an almost wanton moral surrender. By what logic of pedagogy can these students' difficulties be attributed to racism, in view of the fact that the school system has been run by court order for over a decade? By what calculus of fairness can those claiming to be fighting for justice argue that outstanding white students, many from poor homes themselves (80 percent of Latin graduates require financial aid in college), should be denied the opportunity for this special education so that minority students who are not prepared for it may nonetheless enroll? Is there so little faith in the aptitude of the minority young people that the highest standards should not be held out for them? It would seem that the real problem here—a dearth of academically outstanding black high school students in Boston—is not amenable to rectification by court order.

Another example from the field of education illustrates the "opportunity costs" of the civil rights strategy. In 1977 the Ann Arbor public school system was sued by public interest lawyers on behalf of a group of black parents with children in the primary grades. The school system was accused of denying equal educational opportunity to these children. The problem was that the black students were not learning how to read at an acceptable rate, though the white youngsters were. The suit alleged that by failing to

take into account in the teaching of reading to these children the fact that they spoke an identifiable, distinct dialect of the English language—Black English—the black students were denied equal educational opportunity. The lawsuit was successful.

As a result, in 1979 the court ordered that reading teachers in Ann Arbor be given special "sensitivity" training so that, while teaching standard English to these children, they might take into account the youngsters' culturally distinct patterns of speech. Ann Arbor's public school system has dutifully complied. A recent discussion of this case with local educators revealed that, as of six years after the initial court order, the disparity in reading achievement between blacks and whites in Ann Arbor persists at a level comparable to the one before the lawsuit was brought. It was their opinion that, though of enormous symbolic importance, the entire process had produced little in the way of positive educational impact on the students.

This is not intended as a condemnation of those who brought the suit, nor do I offer here any opinion on whether promotion of Black English is a good idea. What is of interest is the process by which the problem was defined, and out of which a remedy was sought. In effect, the parents of these children were approached by lawyers and educators active in civil rights, and urged to help their children learn to read by bringing this action. Literally thousands of hours went into conceiving and trying this case. Yet, in the end only a hollow, symbolic victory was won.

But it is quite possible that this line of attack on the problem caused other more viable strategies not to be pursued. For example, a campaign to tutor the first and second graders might have made an impact, giving them special attention and extra hours of study through the voluntary participation of those in Ann Arbor possessing the relevant skills. With roughly 35,000 students at the University of Michigan's Ann Arbor campus (a fair number of whom are black), it would have required that only a fraction of one percent of them spare an afternoon or evening once a week for there to be sufficient numbers to provide the needed services. There were at most only a few hundred poor black students in the primary grades experiencing reading difficulties. And, more than providing this needed aid for specific kids, such an undertaking would have helped to cultivate a more healthy relationship between the university and the town. It could have contributed to building a tradition of direct services that would be of more general value. But none of this happened, in part because the civil rights approach was almost reflexively embraced by the advocating parties concerned.

**T**HE DANGER to blacks of too broad a reliance on civil rights strategies can be subtle. It has become quite clear that affirmative action creates uncertain perceptions about the qualifications of those minorities who benefit from it. In an employment situation, for example, if it is

known that different selection criteria are used for different races, and that the quality of performance on the job depends on how one did on the criteria of selection, then in the absence of other information, it is rational to expect lower performance from persons of the race that was preferentially favored in selection. Using race as a criterion of selection in employment, in other words, creates objective incentives for customers, co-workers, and others to take race into account after the employment decision has been made.

The broad use of race preference to treat all instances of "underrepresentation" also introduces uncertainty among the beneficiaries themselves. (See "Rumors of Inferiority" by Jeff Howard and Ray Hammond, September 9.) It undermines the ability of people confidently to assert, if only to themselves, that they are as good as their achievements would seem to suggest. It therefore undermines the extent to which the personal success of any one black can become the basis of guiding the behavior of other blacks. Fewer individuals in a group subject to such preferences return to their communities of origin to say, "I made it on my own, through hard work, self-application, and native ability, and so can you!" Moreover, it puts even the "best and brightest" of the favored group in the position of being supplicants of benevolent whites.

And this is not the end of the story. In order to defend such programs in the political arena—especially at the elite institutions—it becomes necessary to argue that almost no blacks could reach these heights without special favors. When there is internal disagreement among black intellectuals, for example, about the merits of affirmative action, critics of the policy are often attacked as being disingenuous, since (it is said) they clearly owe their own prominence to the very policy they criticize. The specific circumstances of the individual do not matter in this, for it is presumed that all blacks, whether directly or indirectly, are indebted to civil rights activity for their achievements. The consequence is a kind of "socialization" of the individual's success. The individual's effort to claim achievement for himself (and thus to secure the autonomy and legitimacy needed to deviate from group consensus, should that seem appropriate) is perceived as a kind of betrayal. There is nothing wrong, of course, with acknowledging the debt all blacks owe to those who fought and beat Jim Crow. There is everything wrong with a group's most accomplished persons feeling that the celebration of their personal attainments represents betrayal of their fellows.

**I**N HIS RECENT, highly esteemed comparative history of slavery, *Slavery and Social Death*, sociologist Orlando Patterson defines slavery as the "permanent, violent domination of natively alienated and generally dishonored persons." Today's policy debates frequently focus on (or perhaps more accurately, appropriate) the American slave experience, especially the violent character of the institution, its brutalization of the Africans, and its destructive effects on social life among the slaves. Less attention is

paid nowadays to the *dishonored* condition of the slave, and by extension, of the freedman. For Patterson this dishonoring was crucial. He sees as a common feature of slavery wherever it has occurred the parasitic phenomenon whereby masters derive honor and standing from their power over the slaves, and the slaves suffer an extreme marginality by virtue of having no social existence except that mediated by their masters. Patterson rejects the "property in people" definition of slavery, arguing that relations of respect and standing among persons are also crucial. But if this is so, it follows that emancipation—the ending of the master's property claim—is not of itself sufficient to convert a slave (or his descendant) into a genuinely equal citizen. There remains the intractable problem of overcoming the historically generated "lack of honor" of the freedman.

**T**HIS PROBLEM, in my judgment, remains with us. Its eventual resolution is made less likely by blacks' broad, permanent reliance on racial preferences as remedies for academic or occupational under-performance. A central theme in Afro-American political and intellectual history is the demand for respect—the struggle to gain inclusion within the civic community, to become coequal participants in the national enterprise. This is, of course, a problem that all immigrant groups also faced, and that most have overcome. But here, unlike some other areas of social life, it seems that the black population's slave origins, subsequent racist exclusion, and continued dependence on special favors from the majority uniquely exacerbates the problem.

Blacks continue to seek the respect of their fellow Americans. And yet it becomes increasingly clear that, to do so, black Americans cannot substitute judicial and legislative decree for what is to be won through the outstanding achievements of individual black persons. That is, neither the pity, nor the guilt, nor the coerced acquiescence in one's demands—all of which have been amply available to blacks over the last two decades—is sufficient. *For what ultimately is being sought is the freely conveyed respect of one's peers.* Assigning prestigious positions so as to secure a proper racial balance—this as a permanent, broadly practiced policy—seems fundamentally inconsistent with the attainment of this goal. It is a truth worth noting that not everything of value can be redistributed.

If in the psychological calculus by which people determine their satisfaction such status considerations of honor, dignity, and respect are important, then this observation places basic limits on the extent to which public policy can bring about genuine equality. This is especially so with respect to the policy of racially preferential treatment, because its use to "equalize" can actually destroy the good that is being sought on behalf of those initially unequal. It would seem that, where the high regard of others is being sought, there is no substitute for what is to be won through the unaided accomplishments of individual persons. □

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