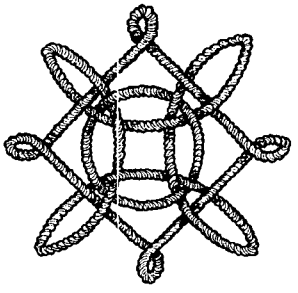
COLOR-BLINDED

By Glenn C. Loury

A basic principle of liberalism, the "nondiscrimination principle," holds that personal characteristics like race, sex, or ethnicity should have no moral relevance. People are to be valued as individuals, not as representatives of groups. In the economic theory of social choice, this idea is captured by the concept of "anonymity": the legitimacy of any given government benefit depends upon the fact that it is distributed without regard to the social identities of those who get the benefit and those who do not.

Ordinary people, of course, are not so fastidious. They do care, sometimes passionately, about the social identities of those who are helped or harmed by their government's policies. And, if, as Tip O'Neill said, all politics is local, then no politics can truly be anonymous. Government must be responsive to a public that is often motivated by group loyalties and antagonisms. But it must not distribute benefits or burdens to citizens based on traits that are morally irrelevant, such as race.



For multiracial, multiethnic America, this poses a permanent, intractable dilemma. How can we manage it? Some say that all government policies should be "color-blind." And, given our troubled racial history, the simplicity and clarity of this color-blind formulation can, indeed, seem compelling. But I nevertheless find it deeply inadequate. It fails to account for the distinction between procedural and substantive fairness. By focusing intensely on how government treats citizens in discrete encounters, advocates of color-blindness give too little weight to the purposes government is trying to achieve when it acts.

Plainly, procedural fairness is neither a necessary nor a sufficient condition for the attainment of substantive justice in a racially divided democracy. Public policy can be color-blind yet unfairly contrary to the interests of a racial minority—"benign neglect" being the most obvious example. Conversely, policies that are intended to have wide beneficial impact, regardless of race, may require that cognizance be taken of the reality of racial identity. This occurs, for example, when a president, to enhance the legitimacy of his government among the nation as a whole, tries to ensure that his top appointments are, to some degree, racially representative.

The distinction between procedure and substance, means and ends, is of little interest to the color-blind purist, however. In fact, these days you often hear conservatives spuriously likening the defenders of affirmative action to the southern segregationists. "Forty years ago, many Americans felt anger and disgust toward segregationists such as Arkansas Governor Orval Faubus who earned their place in history as leaders of the massive resistance to desegregation," Todd Gaziano wrote in the May-June 1998 issue of *Policy Review*, published by the Heritage Foundation. "Today's massive resistance to racial equality is led by another former governor of Arkansas, Bill Clinton."

Of course, any governmental effort to encourage the employment of racial minorities, even one that doesn't involve outright "quotas," could be construed as leading to reverse discrimination—if one is determined to construe it that way. That's what happened last April, in *Lutheran Church-Missouri Synod* v. *FCC*. The U.S. Court of Appeals for the District of Columbia Circuit voided a federal requirement that radio and television stations engage in recruitment and outreach efforts—but not quotas—to seek minority job applicants. Judge Laurence Silberman, writing for a three-judge panel, declared: "We do not think it matters whether a government hiring program imposes hard quotas, soft quotas, or goals. Any one of these techniques induces an employer to hire with an eye toward meeting the numerical target. As such, they can and surely will result in individuals being granted a preference because of their race."

Now consider the speech last May by Defense Secretary William S. Cohen to ROTC cadets at predominantly black Norfolk State University. He flatly declared that the military takes race into account in the training and selection of officers. "[W]e are right," he said, "to recognize that it takes a decade or more to develop military leaders. We cannot have more African American generals and admirals simply by wishing it to be the case." And, according to *The New York Times*, when officials at UCLA saw a dramatic decline in the admissions rate for black and Hispanic freshmen in 1998 (thanks to the new color-blind policy imposed by Proposition 209), the chancellor, Albert Carnesale, began calling minority admitees to assure them that they would be welcome at UCLA.

Yes, these minority soldiers and students have received preferential attention from governmental agents because of their race. But is there really anything wrong with the racial ethics of Secretary Cohen or of Chancellor Carnesale? They are simply trying to integrate blacks and Hispanic Americans into important venues in our society without using quotas or lowering their standards. Their "offense" was inevitable once they became interested in the racial composition of their respective institutions. Yet, given America's history in racial matters, how could they have responsibly done otherwise? •