

Introduction to paperback edition of *The Shape of the River*, William Bowen and Derek Bok, 1999

by Glenn C. Loury

I

Affirmative action is a fiercely disputed moral issue. On this, if this alone, all of the disputants can agree. Our tacit understanding that we engage in moral argument when we discuss affirmative action explains why the rhetoric is sometimes so heated, and why a book like *The Shape of the River* will never be read simply as an exercise in empirical policy analysis. To be sure, William G. Bowen and Derek Bok have issued findings – based on a sound analysis of the best available data – about the net effects of racially preferential admissions policies at selective colleges and universities. But, the impact of their book cannot be fully accounted for by its presentation of those numbers.

Most provocatively, *The Shape of the River* asserts a prerogative for the administrators of our great educational philanthropies: that these decision-makers be granted sufficient autonomy in their affairs to pursue a vitally important educational objective – more racial diversity in their student populations. It is the forceful assertion of this prerogative by Bowen and Bok, and their passionate defense of its legitimacy, that animates the moral argument in their book. Their stance has engendered considerable controversy. It is worth asking why.

Leaders of elite higher education in the United States, public and private, seek to include more blacks among those inducted under their auspices into the upper ranks of American society. The data presented by Bowen and Bok suggest that, through the prudent use of racial identity in the admissions process, this goal is being achieved at a tolerable cost. The net social benefits from this undertaking, graphic and quantifiable, are impressive. The central message of *The Shape of the River* is that these gains are real, that preferential policies must continue if the gains are to be maintained, and that administrators at selective colleges and universities, acting as just and responsible stewards, can do no less than to stay the course. The evidence offered in support of these claims persuades me, though, of course, readers must make up their own minds. In any case, judging by their reactions, opponents of affirmative action, who for years have insisted that the policy failed on its own terms, find this evidence most unwelcome.

Yet, even if the evidence were more equivocal, the authors' articulate defense of their goal – to integrate elite higher education consciously by race – would still be both enormously important, and highly controversial. This is so for two reasons. First, the goals and purposes openly espoused by our leading colleges and universities are public purposes. (And, given their considerable influence on national life and culture, this is no less true of the private institutions. What a Harvard or a Princeton

seeks to achieve is, in some measure, what America strives after.) Public purposes are worth arguing about, and these arguments necessarily entail disputed moral judgments.

Second, the venue of this dispute – elite higher education – heightens its intensity. Education is a special, deeply political, almost sacred, civic activity. It is not a merely technical enterprise – providing facts to the untutored. Inescapably, it is a moral and aesthetic enterprise – expressing to impressionable minds a set of convictions about how most nobly to live in the world. Moreover, this is a venue where access to influence and power is rationed. As a result, the selection of young people to enter prestigious educational institutions amounts to a visible, high-stakes exercise in civic pedagogy. These "selection rituals" are political acts, with moral overtones. Their perceived legitimacy is crucial in our stratified society, where one's place in the status hierarchy can turn on access to the elite institutions. (Consider, for example, what it would mean for our civic life if, due to the expense, only wealthy families could send their children to the most prestigious institutions.) It therefore matters a great deal – not just for the colleges and universities in question, but for all of us – how these admissions decisions are made.

II

Thus, when debating the questions taken-up in *The Shape of the River* we are engaged in a basic moral argument about public values. But, just what are the principles at issue? Two normative concerns seem to be elemental in this debate:

(1) To establish non-discrimination, or color-blindness, as a procedural ideal. (People should be treated without regard to their racial identity. Race is a morally irrelevant trait.)

(2) To pursue racial equality, or racial justice, as a substantive public good. (Given a history marred by racial injustice, we should try to reduce group inequalities in wealth and power.)

Both of these concerns bear on the issue of race and ethics, but in different ways. The first looks to how people are treated in discrete encounters, affirming as a value that such treatment should not be conditioned on race. The second normative concern looks to broad patterns of social disparity between racial groups, advancing as an ethical ideal that such differences should be reduced. The first concern deals with the rights of individuals; it is process-oriented, and a-historical. The second concern is motivated by the status of groups; it is focused on outcomes, and rooted in history.

Among the most important conclusions emerging from *The Shape of the River* is that, though not mutually inconsistent, these two ideals are in tension with one another: pursuit of racial justice can be powerfully abetted by violating color-blindness. Given the differences in test score distributions among blacks and whites, achieving racial integration at highly selective colleges and universities virtually

requires that the probability of admission, conditional on test scores, be higher for black than for white applicants. As a matter of simple logic, a college with limited places to fill can achieve more racial diversity only if some black applicants are admitted who would otherwise have been rejected, while some non-black applicants are rejected who would otherwise have been admitted. Academically selective institutions will naturally try to reject the least qualified of the otherwise admissible non-black applicants, while admitting the most qualified of those black applicants who would otherwise have been rejected. Yet, by doing so, the college necessarily uses a racially preferential admissions policy. Thus, with resources limited, and with a college committed to remaining highly selective, the two normative concerns come clearly into conflict with one another. A choice between them must be made.

III

Maintaining this conceptual distinction – between procedural and substantive moral interests in matters of race – is absolutely critical for clear thinking about the affirmative action problem. Because the courts have spoken so often on the constitutional status of racial preferences, there has been a tendency to frame the discussion in terms of individuals' rights, and to emphasize procedural matters. This, I submit, is regrettable, because achieving substantive racial justice is actually the more fundamental moral concern.

To develop this point, permit me to suggest a terminological convention: Let us adopt the term "color-blind" to identify the practice of not using race when carrying out a policy. And, let us employ a different term – "color neutral" – to identify the practice of not thinking about race when determining the goals and objectives on behalf of which some policy is adopted. If a selection rule for college admissions can be applied without knowing the racial identity of applicants, call that rule "color-blind." On the other hand, if a selection rule is chosen with no concern as to how it might impact the various racial groups, then call the choice of that rule "color-neutral." I can now restate my claim: the key moral questions in matters of race are most often about neutrality, not blindness. (This is not to deny, of course, that "blindness questions" can sometimes matter a great deal.)

The power of this distinction between color-neutrality and color-blindness becomes clear when one considers that both ameliorating the social disadvantage of blacks, or exacerbating this disadvantage, can alike be achieved with color-blind policies. Yet, whereas a color-blind policy explicitly intended to harm blacks could never be morally acceptable, such policies adopted for the purpose of reducing racial inequality are commonplace, and uncontroversial. Put differently, given our history departures from color-neutrality that harm blacks are universally suspect, whereas, non-neutral undertakings that assist blacks are widely recognized as necessary to achieve just social policy.

For example, when a court ruling forbade the practice of affirmative action in college admissions in Texas, the legislature responded by guaranteeing a place at any public university to the top ten percent of every high school class in the state. This law mainly benefits students with low test scores and good

grades at less competitive high schools – disproportionately blacks and Hispanics – and certainly this was the intent. That is, this "ten percent" rule is color-blind, but it most decidedly is not color-neutral. Thus, we have a situation in Texas where the explicit use of race in a college admissions formula is forbidden, while the intentional use of a proxy for race publicly adopted so as to reach a similar result is allowed. Can there be any doubt that, had a different color-blind proxy had been adopted in order to exclude black and Hispanic students from public institutions in Texas, this would have been morally unacceptable?

This example illustrates why the key moral issues having to do with race are most often about color-neutrality, and not color-blindness. Intuitively, Americans understand that reversing the effects of our history of immoral race relations is a good, while perpetuating those effects is an evil. The choice of instruments used to achieve these ends is often of less moment than the choice among the ends, themselves. Indeed, this is the case in other policy arenas as well: the primary normative concern is not discrimination as such, but rather, it involves deciding how much account to take of racially disparate consequences when choosing among what may be alternative, non-discriminatory policies.

Thus, a governor who can defend each judicial appointment on procedural grounds, but whose administration manages to elevate no blacks to the bench, needlessly jeopardizes the moral legitimacy of the state's legal processes. Conversely, a state university's chancellor who, while spending billions of tax dollars to educate future leaders, also strives mightily to see that youngsters from every community in the state participate in the enterprise, promotes an important public value bearing powerfully on questions of equity and justice. While gerrymanders to create black majorities in voting districts can be criticized, the move from at-large to district-based balloting in a city – undertaken so as to ensure that more blacks can get elected – has been widely accepted. These examples are meant to convey the idea that the propriety (in terms of social justice) of an undertaking cannot be assessed solely on the basis of the instruments used to implement it; reference needs also to be made to its substantive consequences.

IV

We can now discern more clearly what is at stake in the fight over affirmative action and, more specifically, in the debate engendered by *The Shape of the River*. I have just asserted a priority of moral concerns – racial justice before color-blindness. The broad acceptance of this moral ordering in our society would have profound consequences. When exclusive colleges and universities use racial preferences to ration access to their ranks, they tacitly and publicly confirm this ordering, in a salient and powerful way. This confirmation is the key civic lesson projected into our national life by these disputed policies. At bottom, this struggle for priority among competing public ideals is what the racial preference argument in college admissions is really all about.

The priority of moral concerns asserted above has far-reaching implications. It implies, for example, that an end to formal discrimination against blacks in this post-civil rights era should in no way foreclose a

vigorous public discussion about racial justice. More subtly, elevating racial equality above color-blindness as a normative concern inclines us to think critically, and with greater nuance, about the value of color-blindness. In particular, it reminds us that our moral queasiness about using race in public decisions arises for historically specific reasons – slavery and enforced racial segregation over several centuries. These reasons involved the caste-like subordination of blacks – a phenomenon whose effects still linger, and that was an essential tool for excluding blacks from the full benefit of their labor. As such, to take account of race while trying to mitigate the effects of this subordination, though perhaps ill advised or unworkable in specific cases, can not plausibly be seen as the moral equivalent of the discrimination that produced the subjugation of blacks in the first place. To do so would be to mire oneself in a-historical formalism.

Yet, this is precisely what some critics of affirmative action have done, putting forward as their fundamental moral principle that admissions policies be color-blind. "America, A Race-Free Zone," screams the headline from a recent article by Ward Connerly, leader of the successful 1996 ballot campaign against affirmative action in California, and now at the helm of a national organization working to promote similar initiatives in other jurisdictions. Mr. Connerly wants to rid the nation of what he calls "those disgusting little boxes" – the ones applicants check to indicate their racial identities. He and his associates see the affirmative action dispute as an argument between people like themselves, who want simply to eliminate discrimination, and people like the authors of *The Shape of the River*, who want permission to discriminate if doing so helps the right groups.

This way of casting the question is very misleading. It obscures from view the most vital matter at stake in the contemporary affirmative action debate – whether public purposes formulated explicitly in racial terms are morally legitimate, or even morally required. Anti-preference advocates suggest not, arguing from the premise that an individual's race has no intrinsic moral relevance, to the conclusion that it is always either wrong or unnecessary to formulate public purposes in racial terms. But, this argument is a non sequitur. Moral irrelevance neednot imply instrumental irrelevance. Nor does the postulate that racial identity should add nothing to an assessment of individual worth require the conclusion that patterns of unequal racial representation in important public venues have no bearing on the moral health of our society.

The failure to make these distinctions is dangerous, for it leads inexorably to doubts about the validity of discussing social justice issues in the United States at all in racial terms. Or, more precisely, it reduces such a discussion to the narrow ground of assessing whether or not certain policies are color-blind. Whatever the anti-preference crusaders may intend, and however desirable in the abstract their color-blind ideal may be, their campaign has the effect of devaluing our collective and still unfinished efforts to achieve greater equality between the races.

Americans are now engaged in deciding whether the pursuit of racial equality will continue in the century ahead to be a legitimate and vitally important purpose in our public life. Increasingly, doubts are

being expressed about this. Jails overflow with young black men; welfare reforms threaten the income security of a fourth of black children; infant mortality and HIV infection rates are dramatically higher among blacks. Even so, critics can be heard to ask, in effect: "If no one individual has been discriminated against, what has any of this to do with racial injustice?" In other words, fervency for color-blindness has left some observers simply blind to a basic fact of American public life: we have pressing moral dilemmas in our society that can be fully grasped only when viewed against the backdrop of our unlovely racial history.

It is no small irony that the political dynamics of what has become a national movement against affirmative action demonstrate this very point. Here we have a campaign for color-blindness that stands a pretty good chance of heightening, not diminishing, race-consciousness. It is simply not possible in America to build popular support for ending a policy that advantages blacks at the expense of whites without crystallizing 'white interests,' and, whether one intends so or not, mobilizing "white people" on behalf of those interests. Being white does not make one immune from the seductive lure of victim status. As anti-preference activists form institutions, amass funds, solicit plaintiffs, and rally troops to make America a "race free zone," they necessarily help to construct a racial – that is to say, "white" – interest. I hold here neither that this is right nor that it is wrong – merely that it is not color-blind.

Nor is the rhetorical structure of the argument for color-blindness free of racial taint. Here is Mr. Connerly, an African American whose national prominence owes a considerable debt to his racial identity, announcing his intention to create a "race-free zone." In point of fact, prominent black opponents of affirmative action exist as social critics mainly because of their race. If what they have to say were said by a white person, it would be of considerably less interest. This is no ad hominem attack, but an observation about the deep structures of racial awareness on which, because of our history, our public interactions necessarily rest. The very nature of public communication in our society is influenced by racial identity. The meaning of utterances – the sincerity or profundity of them – can depend on a speaker's race. What can it mean when a black opponent of preferences is introduced at the conservative rally as a courageous critic of the civil rights establishment? The civil rights establishment is at no loss for critics. The black opponent, by publicly objecting to policies that most blacks endorse, is doing more than stating an opinion. He or she will be understood as having taken a principled stand, contra filial attachment. It is this posture, more so than its content, that makes the criticism novel and interesting. Ironically, advocates of color-blindness are busy denying the relevance of race even as race helps to make relevant their denial.

V

This brings me to my final theme – the stubborn social reality of race consciousness in America. A standard concern about racial preferences in college admissions is that they promote an unhealthy fixation on racial identity among students. By classifying by race, it is said, we are further distanced from the goal of achieving a color-blind society. Although support for this position is not provided by the retrospective attitude data described in *The Shape of the River*, no single survey could possibly dispose

of the issue. Nevertheless, there is a basic point that needs emphasis here: The use of race-based instruments is typically the result, rather than the cause, of the wider awareness of racial identity in society. To forego cognizance of the importance of race, out of fear that others will be encouraged to think in racial terms, is a bit like closing the barn door after the horses have gone.

Many proponents of color-blindness as the primary moral ideal come close to equating the use of racial information in administrative practices with the continued awareness of racial identity in the broad society. Yet, consciousness of race in the society at large is a matter of subjective states of mind, involving how people see and understand themselves, and how they perceive others. It concerns the extent to which race is taken into account in the intimate, social lives of citizens. The implicit assumption of color-blind advocates is that, if we would just stop putting people into these boxes, they would oblige us by not thinking of themselves in these terms. But, this assumption is patently false. Anti-preference advocates like to declare that we cannot get beyond race while taking race into account – as if someone has proven a theorem to this effect. But, no such demonstration is possible.

One easily produces compelling examples where the failure to take race into account serves to exacerbate racial awareness. Consider the extent to which our public institutions are regarded as legitimate by all the people. When a public executive recognizes the link between the perceived legitimacy of institutions and their degree of racial representation, and acts on that recognition, he or she has acted so as to inhibit, not to heighten, the salience of race in public life. When the leaders of elite educational philanthropies worry about bringing a larger number of black youngsters into their ranks, so as to increase the numbers of their graduates from these communities, they have acted in a similar fashion. To acknowledge that institutional legitimacy can turn on matters of racial representation is to recognize a basic historical fact about the American national community, not to make a moral error. (The U.S. Army has long understood this.) It is absurd to hold that this situation derives from the existence of selection rules – in colleges and universities, in the military, or anywhere else – that take account of race.

No understanding of the social order in which we operate is possible that does not make use of racial categories, because these socially constructed categories are embedded in the consciousness of the individuals with whom we must reckon. Because they use race to articulate their own self-understandings, we must be mindful of race as we conduct our public affairs. This is a cognitive, not a normative point. One can hold that race is irrelevant to an individual's moral worth, that individuals and not groups are the bearers of rights, and nevertheless affirm that, to deal effectively with these autonomous individuals, account must be taken of the categories of thought in which they understand themselves.

So much may seem too obvious to warrant stating but, sadly, it is not. In the 5th U.S. Circuit Court of Appeals' Hopwood opinion, Judge Smith questions the diversity rationale for using racial preferences in higher education admissions. He argues that, because a college or university exists to promote the

exchange of ideas, defining diversity in racial terms entails a pernicious belief that blacks think one way, whites another. But, this argument is fallacious for reasons just stated. Suppose one begins with the contrary premise, that there is no "black" or "white" way of thinking. Suppose further that conveying this view to one's students is a high pedagogic goal. Then, some racial diversity may be required to achieve the pedagogic goal. Teaching that "not all blacks think alike" will be much easier when there are enough blacks around to show their diversity of thought. That is, conveying effectively the ultimate moral irrelevance of race in our society may require functional attention by administrative personnel to the racial composition of the learning environment. Whether, and to what extent, this may be so is a prudential, not a principled, question. It cannot be resolved a priori.

The data can help us make these prudential judgments, but they cannot resolve our principled disputes. The Shape of the River provides a valuable model of the empirical policy analysis that is much needed in the affirmative action debate. Bear in mind that the numbers might have turned out differently, and our views about these policies would have been affected accordingly. For this reason, it is essential that we confront our fears and speculations about controversial public undertakings with the facts, as best they can be discerned. But, the facts alone are never enough. Bill Bowen and Derek Bok are appalled at the prospect that blacks might become as few as two or three percent of the students on elite college campuses. They think this would be bad for the social and political health of our nation, to be sure, but they also think it would be morally wrong. I agree with them, but not everyone does. With an intense political campaign being mounted against affirmative action, it is clear that much persuasion on this point will be needed if such policies are to continue. I suggest that we start by drawing a bright, clear distinction between the procedural morality of color-blindness, and the historical morality of racial justice.

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