

Br- david hochschild

I. ADOPTION --

The Problem (Heritage Foundation numbers)

- Each year, 15,000 children in foster care turn 18 with no permanent family.
- State agencies consistently fail to recruit enough families for the children eligible for adoption every year. Potential parents are often turned down because of racial considerations when there are waiting lists of families willing to take in even the most emotionally troubled and physically handicapped children.
- 40% of all foster children leaving the system end up on welfare.
- America spends \$10 billion a year on foster care and adoption services through public agencies (federal \$ are about a third of all foster care funding).
- In LA, 39% of homeless youth are former foster children

The Solution

Hold states accountable for reporting their progress in finding homes for children in foster care. Require states to make public the number of children in foster care, the number of foster children free to be adopted, and the number of state-recruited families with completed home studies.

Prohibit race-based delays in adoption. This seems to mean disallowing race from being considered at all when matching children with adoptive families.

End government funding that creates incentives to keep children in substitute care for longer than 12 months. Create penalties for states that have too many bureaucratic delays.

Require that states find adoptive homes for children within 30 days after the termination of parental rights. The foster child who is freed for adoption typically has been in the system for at least two years. However, once that child becomes legally free to be adopted, there are often additional delays of many months.

State-level reforms

Make entrance requirements for foster families as stringent as those for adoptive families. This might shrink the pool of foster parents but the author disagrees, arguing that it will increase the number of people who want to be foster parents because a high-caliber, more efficient system will be more attractive to potential foster parents.

Allow no more than 12 months for biological parents to prove their fitness to resume custody of their children. This would create an incentive for troubled parents to get their lives together or risk losing their right to get their child back.

Allow no more than 30 days from the birth of the child for biological fathers to formalize paternity. The "Baby Jessica" case was an example of the problem of allowing biological fathers

to come from nowhere and claim their children after they have been adopted.

II. TIME WORK ISSUES: BETTY FRIEDAN

I asked for a summary of Betty Friedan's Beyond Gender with a look at the time work issue. I think it is interesting, and that she often says things that don't please her normal allies. Note at the end that she asked DPC for a conference on this.

Friedan wants to see feminism expand its focus from elevating the status of women in the economy to the improving the nature of the economy as a whole. Her thesis rests on the idea that the economy is changing in ways that benefit women slightly but hurt society as a whole. Therefore, she argues, we need to do more than just eradicate sexism. The two main trends she points out:

- Labor force participation is increasing among women and declining among men. Service sector jobs (mostly held by women) are increasing rapidly, creating more employment opportunities for women than ever before.
- Industries are finding that it is cheaper to pay more money to fewer workers working longer hours than to pay pension and benefits for a larger number of employees working normal hours. This downsizing has been directed mostly toward middle age men but it has terrible consequences for everyone because it creates both unemployment and overwork. Families suffer either way.

In a nutshell, Friedan is arguing that the women's movement must now work to change the economy in a way that will help men and women live healthier, more balanced lives. She wants to see more flexibility in the workplace and a shorter work week. She cites a few examples of the kind of changes she supports:

- Montgomery County government allows its employees to work nine hour days for nine days and then receive the tenth day off, which can be either a Friday or a Monday once every two weeks. They also allow two employees to share a single job. She claims the result is lower stress levels and less staff turnover.
- The Federal Reserve Bank in Minneapolis has 15% of its staff working part-time. This has created a capacity to expand their workforce when the workload increases and reduced the training costs they incur when overworked employees quit. Happier employees will stay longer.
- Volkswagon's European factories added an extra shift to create more jobs and reduce the amount of time that people who were employed on the regular shifts were working.

But Friedan points out that there is a cultural obstacle to some of these changes. She thinks Americans sometimes view diminished hours as a loss of prestige. When Voice of America suffered budget cuts, for example, the director tried to offer everyone a reduced work week rather than lay off employees. He put it up for a vote and the employees voted to keep the same work schedules and lay off the people that the budget couldn't pay for. Friedan thinks this is largely because there is a stigma about working less than a full work week and she wants to change it.

Her basic point is that feminism has succeeded in many of its goals. Women in the US now receive more than half of the bachelors and masters degrees, make up almost half of the labor force and earn almost half the income in a growing number of families. More Americans work for companies owned or run by women than in the Fortune 500. Now the question is how to make our economy more family friendly. This means encouraging part-time, flex-time and other creative solutions to make time for healthy family life.

However, she makes a point of noting (with some disappointment) that she wrote to the White House after the '94 elections to suggest hearings by a Presidential Commission on Economic Changes and Family Stress but received only a "perfunctory note" that her letter had been forwarded to the Domestic Policy Council.

III. HOMELESS

Characteristics of homeless, some successful homeless programs, and VA's proposal to us for homeless vets.

Characteristics of America's homeless population at-large:

- one third of all homeless people suffer from severe mental illness
- 35-45% suffer from chronic alcohol problems
- 10-20% have problems with drugs other than alcohol
- 20-30% are families, often single mothers with kids
- more than half are people of color
- total number is between 600,000 - 750,000

Characteristics of homeless veterans:

- the mean age of homeless veterans is 44.5
- 98% are male
- 45% suffer from mental illness
- 73% are dependent on alcohol or drugs
- 85% have either a substance abuse or a psychiatric problem
- 50% are Vietnam vets (the number of homeless Vietnam vets is greater than the number of servicemen who died during that war)
- total number is 250,000 (although up to 500,000 may become homeless for a period at some point during the course of the year)

Conclusions that can be drawn from the studies and fact sheets

- *Three main causes of homelessness: the decline in the affordable rental housing stock, decline of earnings for unskilled labor and the release of mental patients from state hospitals.* In the 1970's and 1980's, both the number of affordable rental units and the earnings for unskilled labor declined, leaving poor people with less buying power and fewer options for housing. In addition, state hospitals began to reduce the number of mentally ill people that they cared for. Only half of the planned federal community mental health centers that were intended to absorb the mental patients were built, leaving many people who suffered from severe mental illness with no place to go.
- *The need exceeds the funding.* There is a consensus among homeless service providers that the funding to combat homelessness is insufficient to deal with the problem. A GAO study of FEMA's homeless assistance providers showed that for every 100 requests for rent and mortgage assistance that are met, 130 eligible requests had to be denied.
- *Newly homeless people are not the main problem.* 70% of all newly homeless people find housing on their own within a year, most in the first few months after becoming homeless. Those who have been homeless for more than a year are likely to remain homeless the longest. Veterans are disproportionately represented among this group.
- *The McKinney Act was a good start but it has not done enough.* The McKinney Act, which provides funds to local service providers (\$4.2 billion from '87 to '92), has helped leverage more funds to fight homelessness by legitimizing more providers in the eyes of foundations. But the act also frustrated some, who complain that it has not given them funding to sustain or expand programs that were already successful but did not meet the criteria of being a food, shelter or long-term housing program (such as substance abuse treatment and mental health care).
- *For the homeless who have problems other than unemployment, the most successful programs have these three goals:* (1) all addicts should become drug-free. (2) All mentally ill people should be using regular medication. (3) All drug-addicted or otherwise troubled heads of families should be enrolled in life skills classes.

Profiles of successful locally based homelessness prevention programs

Connecticut's Rent Bank/Eviction Prevention Program:

Started nine years ago to prevent homelessness in New Haven, this program mediates disputes between landlords and tenants. For those cases which cannot be resolved purely through mediation, the Rent Bank pays up to two months rent to fill the gap between what the tenant can afford and what the landlord needs. In FY 1990, funds were \$1.2 million for mediation and \$2 million for the Rent Bank.

Maryland's Rental Allowance Program (RAP):

MEMORANDUM

TO: TOM FREEDMAN, MARY L. SMITH
FROM: DREW HANSEN
RE: INITIATIVES FROM POLICY RESEARCH ORGANIZATIONS
DATE: AUGUST 6, 1997

SUMMARY

The following is a list of some general visions for America's future and proposed initiatives to achieve that vision. Each category contains a brief description of the vision and the names of some prominent policy research organizations or individuals who advocate it, as well as an outline of some policy initiatives that the groups or individuals have suggested.

1. REPUBLICAN

Most Republican policy research and advocacy organizations seem to assume four fundamental principles. First, they are fervently anti-Washington. In a recent survey of the 1994 election, *Washington Post* reporters Dan Balz and Ronald Brownstein point out that the rise of the Republican party in recent years has been driven by the rise of anti-government forces within the party: the NRA, the Christian Coalition, talk shows, and conservative intellectuals such as Charles Murray and William Bennett.¹ Second, Republican policy organizations believe in market-oriented solutions to most social problems. As Dick Armey put it, "The market is rational and the government is dumb." Third, most Republican policy organizations are concerned with what they see as the moral and cultural decline of American society, driven by the cultural changes of the 1960s and 1970s and by the expansion of "big government" programs. Fourth, much of the newer Republican thinking focuses on the role of civil society. They contend that the government should not attempt to "solve" most social problems, but should instead try to strengthen local voluntary associations, what Burke called the "little platoon."

The **Heritage Foundation** believes in "principles of free enterprise, limited government, individual freedom, traditional American values, and a strong national defense." The Heritage Foundation advocates a flat tax and deregulation, as well as a number of smaller, targeted policy initiatives.

A few new Republican policy research organizations have appeared in recent years. **Empower America**, founded in 1993 by William Bennett, Jack Kemp, Jeane Kirkpatrick, and Vin Weber, is a public policy and political advocacy group supporting "progressive-conservative policies based

¹Dan Balz and Ronald Brownstein *Storming the Gates: Protest Politics and the Republican Revival* (Boston: Little, Brown, 1996).

on the principles of economic growth, international leadership, and cultural renewal.” Empower America is particularly concerned with domestic social issues such as school reform, welfare, and the revitalization of civil society. A centerpiece of Empower America’s thought is the “Project for American Renewal,” a legislative proposal introduced by Bennett and Senator Dan Coats, which includes a variety of programs based around the principles of effective compassion, community empowerment, and fathering, mentoring, and family.

The **Progress and Freedom Foundation**, which has been called “an extension of Gingrich’s brain,”² identifies its mission as “to restore, to renew and to recreate America’s sense of its future, a future woven inextricably with the ideas of progress and freedom.” The Progress and Freedom Foundation is especially concerned with the removal of barriers to technological advancement, such as regulations by the FCC or restrictions on the Internet.

Some Republican policy initiatives:

- **“A Cop Next Door” (Heritage).** In 1991, the police department of Columbia, SC began to offer low-interest mortgages to any policeman willing to live in a high-crime or deteriorating area. Local banks provided 50% financing at below-market rates, and each bank volunteered to provide at least one loan. Eleven officers have relocated under the program, and department officials credit the program as contributing to the area’s 16% decrease in crime since 1991. Similar programs exist in Sarasota, FL (which also offers participants a take-home police car), Elgin, IL, and Atlantic City, NJ.
- **Serious Habitual Offenders Comprehensive Action Program (SHOCAP) (Heritage).** The SHOCAP program allows local officials to develop and share crime analysis and case management files on serious habitual offenders. Under the program, local officials establish an interagency council composed of representatives from relevant agencies (police, probation service, prosecutors, judges, schools, social services, and public housing), crime analysis in local police departments is strengthened, and case files of serious habitual offenders are developed and shared. SHOCAP exists in over 150 communities throughout the United States and Canada. In Oxnard, CA, implementation of the program in the 1980s led to a decrease in violent crime by 38% and murder by 60% in a three-year period. Several evaluations by the Justice Department have demonstrated the program’s effectiveness in long-term crime prevention.
- **Jury Reform (Heritage).** In a 1996 *Policy Review* article, legal scholars Akhil Reed Amar and Vikram David Amar proposed a number of reforms in the jury system. They suggest, among other reforms, that jury service should be made mandatory on an annual basis for all Americans, that peremptory challenges should be limited or abolished, that jurors should be paid more, and that nonunanimous

²Balz and Brownstein, p. 296.

verdicts should be upheld in certain cases.

- **Adopt A Special Kid (AASK) (Heritage).** AASK Midwest uses the Internet to match willing families with so-called “special needs” children: older children, sibling groups, the severely disabled, the emotionally damaged, or those with life-threatening diseases. AASK maintains a Web site with pictures and biographies of children, which are changed monthly. Interested families can fill out an application on-line. Twenty-two families in fourteen states serve as “field representatives,” screening prospective applicants and providing support after the adoption. The program maintains 973 children and 1032 families in its database. Since its inception in 1985, it has placed about 1200 children, at a cost of around \$2,500 per placement.
- **Charity Tax Credit (Empower America/Project for American Renewal).** The centerpiece of the Project for American Renewal is a \$500 tax credit for contributions to charitable organizations. The tax credit is intended to refocus government anti-poverty efforts away from federal and state programs and toward small-scale efforts by local charities. Charitable organizations who benefit from the credit must have prevention or alleviation of poverty as their primary purpose and must ensure that at least 75% of their expenses go to poverty programs. Contributions to religious groups are allowed if they treat their poverty programs as separate entities. Funding for the tax credit would come partly from federal social welfare funds and partly from cuts in corporate welfare.
- **Compassion Credit (Empower America/Project for American Renewal).** A \$500 tax credit would be created for taxpayers who provide home care for individuals in need, including the homeless, battered women, hospice care patients, and unmarried pregnant women. Referrals would be provided by a nonprofit organization whose primary activity is to provide care for that particular class of the needy.
- **Medical Volunteer Tort Coverage (Empower America/Project for American Renewal).** Supported by the American Medical Association, this proposal would extend federal tort claim coverage to any health care professional who provides free medical services to a medically underserved person. (Federal tort coverage is already provided for medical services in Indian health facilities and in community, migrant, homeless, and public housing health centers.) This program would particularly assist OB/GYN providers and those who provide health care to individuals in rural areas.
- **Restitution Enforcement (Empower America/Project for American Renewal).** Expanding restitution services would redress the community harm caused by crime and enforce a sense of individual accountability in the criminal. This proposal would provide competitive grants to states to develop and improve the ordering, collection, and enforcement of restitution. States would collect data on restitution,

create computerized systems to track payments, centralize billing and accounting, and enhance enforcement procedures such as wage garnishment.

- **Individual Development Accounts (IDAs) (Empower America/Project for American Renewal).** Currently, low-income individuals and families have little incentive to develop savings and assets. This proposal would create a four-year, \$100 million demonstration program to establish 50,000 Individual Development Accounts: accounts with tax benefits similar to IRAs that would help low-income people build assets. IDA investments would be limited to the purchase of a home, the funding of post-secondary education, and the creation of small businesses. Funds from local organizations and the federal government would “match” individual donations. Sponsoring organizations would have to co-sign any withdrawal of funds, ensuring that the money is used for investment purposes.
- **Mentoring (Empower America/Project for American Renewal).** Studies of the Big Brothers/Big Sisters program has found that it significantly cuts first-time drug use, school absenteeism, and violent behavior among participants. This proposal would create three-year demonstration grants for school districts who agree to work with community groups to develop mentoring programs for at-risk children. It would also provide \$5 million in research grants for the study, development, and implementation of mentoring programs.
- **Kinship Care (Empower America/Project for American Renewal).** The number of children requiring foster placement is rising, while the number of families willing to place foster children is declining. In addition, children in “kinship” placement situations are less likely to experience multiple placements than their counterparts in family foster care. This program would create a \$30 million demonstration program for states using adult relatives as the preferred placement option for children separated from their parents and require that these “kinship” providers meet all relevant child protection standards.
- **Allow Internet Encryption (Progress and Freedom Foundation).** Warning that any standard for encryption would soon be rendered obsolete by advances in microprocessor speed and that restrictions on encryption technology would retard the domestic development of encryption procedures, the Progress and Freedom Foundation advocates the removal of government restrictions on encryption. The Foundation suggests that potential national security threats can be dealt with by the NSA’s cryptography team on a case-by-case basis.

2. RELIGIOUS RIGHT

The leadership of the **Christian Coalition** has recently made a deliberate decision to concentrate

less on abortion and homosexuality and more on issues such as taxes and crime.³ Their “Contract with the American Family” reflected this new emphasis, with items advocating family tax relief and prison reform alongside initiatives to limit abortion rights. For instance, they were strongly in favor of the \$500 per child tax credit. But it seems that the issues that galvanize the grassroots members of the Christian Coalition and other religious right groups are still primarily social and cultural. The **Family Research Council** exists to promote “the traditional family unit and the Judeo-Christian value system upon which it is built.” Crucial issues for the Family Research Council are gambling, sex education, and the worldwide persecution of Christians. **Concerned Women for America**, possibly the largest women’s organization in the country (claiming twice the membership of NOW), also exists to promote the heterosexual nuclear family. They oppose Goals 2000, sex education, and the NEA. Of course, all “religious right” groups are particularly incensed by issues surrounding abortion and homosexuality.

Some “religious right” policy initiatives:

- **Expand the Home Office Tax Deduction (Family Research Council).** Currently, parents who do paid work from home so that they can care for their children or for an elderly relative are not allowed to deduct their home-office expenses under the “exclusive use” rule of Section 280 of the Internal Revenue Code if the home office serves another purpose (such as that of a family room or a guest bedroom). In addition, Section 67 of the 1986 code disallows home-office expenses to the extent that such expenses and other miscellaneous itemized deductions do not exceed 2% of gross income. The FRC proposes amending the IRS Code so that it is easier for work-at-home parents to deduct home-office expenditures.

3. Religious Left

The “religious left” is a small circle of religious activists who are often sharply critical of religious right groups. **Michael Lerner** of *Tikkun* magazine suggests that the nation is suffering from a crisis of meaning, as Americans grow uncomfortable with capitalist values of selfishness and materialism. **Jim Wallis**, of the *Sojourners* community in Washington, D.C., argues that the current prevalence of racism, violence, and injustice in American society results from the interplay of structural injustice and self-destructive impulses. He calls for a vision of moral transformation for American society. The **Center for Public Justice**, a centrist policy research organization, advocates public policies based on the view that “political life is a human community ordained by God for public justice so that each person and every social institution and association may receive just treatment under law.” In general, religious left thinkers are more concerned with general outlines for the future of American society than with specific policy initiatives.

³Ralph Reed, *Active Faith: How Christians Are Changing the Soul of American Politics* (New York: Free Press, 1996).

Some religious left policy initiatives:

- **Charitable Choice (Center for Public Justice).** Following Section 104 of the Personal Responsibility Act of 1996, which allows states to include community and faith-based groups in anti-poverty programs, the Center for Public Justice is encouraging states to include religious groups in anti-poverty efforts and clarifying the legislation for the benefit of religious groups.

4. Reform Party

The **Reform Party**, founded by Ross Perot, pursues an anti-government and anti-free trade agenda. Their 1996 presidential campaign focused on such issues as the balanced budget, campaign finance reform, and the limitation or repeal of NAFTA. They favor reforming Medicare, welfare, and Social Security through the support and evaluation of state-level pilot programs.

Some Reform Party policy initiatives:

- **Lobbyist Reform.** The Reform Party has suggested a variety of measures to reform the lobbying system. One idea that was proposed by Ross Perot in his 1992 book and again in his 1996 Presidential campaign was to prohibit federal employees (including Congressional representatives) from serving as lobbyists for a five-year period after leaving federal office.
- **Department of Education Budget Reform.** The Reform Party has proposed that the Department of Education adjust its budget to spend less money on research and development and more money on promoting the replication of successful programs.

5. New Democrat

The **Progressive Policy Institute (PPI)** believes that the United States is undergoing a shift from the Industrial Age to the Information Age and that its policies and institutions will have to adjust accordingly. The large, centralized institutions of the Industrial Age (corporations, unions, the federal government) will be less important in the future than the small, decentralized institutions of the Information age. As E.J. Dionne puts it, "The Progressive's goal is not to strengthen the government for government's sake, but to use government where possible to strengthen the institutions of civil society."⁴ Accordingly, the PPI promotes policies based on the principles of "opportunity for all, privilege for none," mutual responsibility, and citizen and community empowerment.

⁴E.J. Dionne, *They Only Look Dead: Why Progressives Will Dominate the Next Political Era* (New York: Simon & Shuster, 1996), p. 297.

Some New Democrat policy initiatives:

- **“Second-Generation” Environmental Laws.** The PPI argues that current environmental laws are made within a centralized framework with no overall environmental goals. Such laws address problems only after they occur, and only focus on single issues. By contrast, the PPI advocates a market-based approach to environmental regulations, characterized by pollution charges or “green” taxes, and relatively less reliance on regulations that set uniform technology or emissions requirements. This approach should be guided by clear goals, decentralized decisionmaking, and a focus on measuring the effectiveness of environmental programs. Such a shift in focus would spur technological innovation, reduce costs, and open up the environmental protection process to local communities.
- **Performance-Based Organizations (PBOs).** As a next step in the Vice President’s “reinventing government” campaign, the PPI suggests that government agencies be transformed into PBOs with the flexibility they need to improve their performance and with procedures to hold them accountable for their results. Departments would be separated into various service and delivery agencies, who would be given control over their budgets and other management decisions, and in return would be held accountable to performance targets that they would negotiate with their departments. This reform approach has been taken by the British government, which has shrunk the size of the civil service and cut costs while improving performance.

6. Populist Democrat

The more liberal wing of the Democratic party holds that the President’s re-election was more due to his support of traditional Democratic positions on Medicare, education, and the environment than to any centrist policies. Populist Democrats focus on the positive role of government in providing assistance to working Americans in a time of social change, and advocate the continuation and expansion of social insurance programs such as Social Security and Medicare. Groups such as the **Campaign for America’s Future** and the **Economic Policy Institute** advocate labor-friendly policies to protect American workers and are strongly against free trade policies. Pollster **Stan Greenberg** argues that the Democrats should support social and family support programs for working families. Sociologist and historian **Theda Skocpol** suggests that the Democratic party synthesize the labor-populist ideas of the Economic Policy Institute with the New Democrat focus on values while maintaining a strong commitment to social insurance programs.

Some populist Democrat policy initiatives:

- **GI Bill for American Workers.** Theda Skocpol has suggested that the government build on the legacy of the GI Bill by once more joining social entitlements with responsibilities for Americans. In the January-February 1995 *New Democrat*, Peter Plastrik proposed that the government should combine “job

opportunity vouchers” for the unemployed with an extension of the income-contingent loans program into a “skills line of credit” to finance training or retraining for better jobs. Barry Bluestone advocated a similar system in the *American Prospect*, arguing that such a program could be financed by a partial investment of the Social Security Trust Fund into long-term loans for working-age adults. This type of program would create a coalition between groups of working Americans (labor unions) and groups that benefit from Social Security and Medicare (the AARP), while providing support for young workers.

Theodore C Sorensen *Why I Am a Democrat* (New York: Henry Holt & Co., 1996)

Securing Economic Justice

American Dream in trouble -- avg. 50-yr-old worker no real raise in 20 yrs, 1/3 men 25-34 can't earn enough to keep family of four out of poverty.

Democratic core constit since FDR was mc/poor under banner of upward econ mobility (42) but now huge r/p gap.

To solve: expanded education and job training to help workers climb the ladder of opportunity. *Head Start and *federal aid to education (stds, aid to poor school districts, etc.) *student loan program helps kids get to college, which is only realistic way of getting a job, shd have a *vocational apprenticeship program (we're only indust. nation that doesn't), *AmeriCorps gives work experience, need more *job training and retraining.

Note that Republicans also vs. minimum wage, EITC, medical insurance, child care, unions, housing for *working* poor.

Utilizing our Government

Democrat's don't think that the government is the solution to any and every problem (cf. Kaus on how this change came about). But does lots of stuff well: trade, transportation, law & order, etc. Vs. Dick Armey "The market is rational and the government is dumb." (60)

Shd instead blend both government and market. Federal bureaucracy often good, effective.

Dividing the Pie

Why Republicans are hypocrites: preach hatred of deficits but promise huge tax cuts, continued corporate welfare, increased defense spending, weird pork barrel projects in the budget, almost forced increase in debt limit which would have boosted interest rates and hence our debt payments. (77-79)

Democrats shdn't try to out-cut the Republicans, but shd "emphasize fairness, shared sacrifice, progressivity, and economic growth and should encourage greater savings and investment instead of consumption." (88-89)

Listening to our Conscience

Democrats appeal to the American tradition of caring and community interest -- not just volunteering, but being willing to use tax dollars to help the less-fortunate.

= we help the poor and people getting defrauded by corporations.

Uniting our People

Democrat's don't believe that aff action shd help every black over every white, etc. But look: white people hold most of the top jobs in America.

Republicans exploit race as a wedge issue.

= we need aff action.

+ obviously every inst judges people on at least one non-merit characteristic (113)

Also, Republicans vs. immigrants. Ack!

Combining Our Efforts

Obviously, the federal gov't shdn't do everything. Lots of successful and innovative programs are state and local. BUT still need a federal role in: natural disasters, crime, pollution, infection, recession. Stuff like safety standards and so on.

Furthermore, giving stuff to the states just means you give them to worse, more wasteful bureaucracies. (129)

What the Republicans are trying to do under "devolution" rhetoric is abandon federal responsibilities (132)

Democrats, instead of block grants, should: *consolidate separate and confusing federal grants and remove stupid regulations, expand waivers, rely more on "challenge" grants that reward performace, send more decision-making auth. to ultimate recipient (= voucher), more contractual approaches (Oregon!!) With fed state and locl gov agreeing on benchmarks that fed funds as state and locals fulfill.

We need to all work together here . . .

Upholding the Law

Democrats address crime and symptoms but also causes and conditions (poverty, bad schools, stuff that doesn't help people go to college) Shd do Labor slogan: "Tough on crime, tough on the causes of crime."

Also, we support gun control. Duh.

Plus, they screw around with the Constitution. A couple of dumb ideas: term limits amendment, balanced budget amendment, flag desecration amendment, religious equality amendment.

Plus, they are just complete bastards: having the losers in trials pay the other side's expenses, get

rid of LSC, etc.

Preserving the Family

Democrats think that the federal government is crap as a moral legislator, and that moral leg. is best left to families, communities, and local government. Instead, we think that the federal government should be dealing with the economic problems that give rise to social pathology: joblessness, no daycare, crappy schools. "In short, the best way to strengthen America's family values is to restore the American dream as the realistic goal of every American family." (157)

We do not, like Republicans, dig all the stuff about abortion, etc. (But note that we can, and perhaps should, talk about sex and violence in the media.) (165)

And look, no one is really "hostile" to religion. Kids can pray in school.

Maintaining the Peace

Patriotist, multilateralism.

Preparing for Victory

Man, some sort of campaign finance reform would be nice.

WHAT THE PARTY SHOULD DO:

1. Conduct clean and constructive campaigns.
2. Reunite behind a new coalition of concerned citizens, not a collection of interest groups.
3. Sharply define our differences with the Republicans. (A list of such is on pp. 224-226)
4. Become party of New Ideas and party of conscience.

Ralph Reed, *Active Faith: How Christians are Changing the Soul of American Politics* (New York: Free Press, 1996)

Reed in *Policy Review* Summer 1993: "The pro-family movement has limited its effectiveness by concentrating disproportionately on issues such as abortion and homosexuality. These are vital issues, and must remain an important part of the message. To win at the ballot box and in the court of public opinion, however, the pro-family movement must speak to the concerns of average voters in the areas of taxes, crime, government waste, health care, and financial security." (169)

"Lest there be any confusion, we are as committed as ever to the sanctity of life, the importance of the marriage-based two-parent family, reversing moral decay, stopping the cultural pollution of sexually explicit films and television programs directed at children, and religious freedom for all Americans, including the right to voluntary prayer." (194)

The post-1994 "Contract with the American Family":

- religious freedom amendment
- ending taxpayer funding of abortion
- ✓ family tax relief
- ending the tax funding of pornography through the NEA
- returning control of education to the local level
- ✓ restricting pornography on the Internet
- school choice bill targeting vouchers to inner-city youth
- ✓ Mothers' and Homemakers' Rights Act allowing stay-at-home moms to invest in a retirement plan tax-free.
- ✓ requirement that prison inmates work and attend literacy programs
- ban on partial-birth abortion

The idea is that it's not a Republican or Democrat agenda but a pro-family agenda.

Obviously, there's stuff that's not on the Contract which they feel v. strongly about, e.g. abortion and gay rights. (On former pp. 269-273; on latter cf. pp. 264-265)

- ✓ ooooo -- joined with black community in 1995 to defeat a Virginia bill to allow riverboat gambling. In general, they're real opposed to state-sponsored gambling -- hurts the poor, leads to crims, etc.

(Remember that they got some sort of victory vs. Cyberporn)

"What America needs is not political revolution but spiritual renewal." (267)

What else to do:

A. On anti-poverty policy: Christian command to care for the poor.

✓ “Our efforts will not commence with massive government programs with grand promises of sure-fire solutions hatched in Washington, D.C.” But instead private, church, local solutions -- Sen. Dan Coats Project for American Renewal -- taxpayers can earmark up to \$500 of income taxes currently funding gov. public-assistance programs toward a charity working among the poor.

Michigan: Gov. Engler grants to Salv Army to help house homeless

Mississippi: literacy program sponsored by Christian Broadcasting Network in connection with governor, state agencies v. successful.

B. Racial reconciliation

Promisekeepers have made racial rec. a priority; Christian Coalition good on vs. church-bombings.

“The pro-family movement must not become the Republican Party at prayer.”

Theda Skocpol / The New Majority: Toward universal Provision (1985)
(Vol: YUP, 1987)
Stanley B
Greenberg

1/1

"A Partnership w/ American Families" - T Skocpol

Intergenerational Linkages
ed Benjamin / Hertzman '94

Lots cool social provision b families.

CRITERIA:
a. → social benefits to large categories of citizens in return for past/future service to country

- CWP
- GI Bill
- SS / Medicare

* lots re elderly -

b- build bridges w/ REP, Rep / Rep - w/ the government / various citizens

c- ~~partnership~~ partnership b/t gov. / vol. assoc.
soc sec CWP GI Bill

"more generous and complete system of social insurance and family support" (116)

- 1 - Family-friendly era
- 2 - 2-parent contributions to children
- 3 - care centers

FMLA p low - w (128)

overgelling
v. partial measures.

"The New Social Policy: Affirmative opp" w/ Julius Wilson

- 1 - shd focus on programs that enable blacks to take adv of opp (early ed, job, v. prog)
- 2 - flexible criteria
- 3 - prog for poor

UWSA

Reform Party

1/1

shd fix problems yourself.

Campaign Finance

vs. Debt

vs. NAFTA

www.reform.org

• HK - Petition, no pools, ban denial for p-e

• ~~crime~~ crime -

↑ gang prosec

3 strikes out

prisoners not have legal recourse

fed facilities avail. to states

to → youth rehab

public IP! divert gangs from criminal to legal.

General =

high ethical standards -

with/without

balanced budget

Campaign Ban

Term Limits

✓ Lobbying

• lobbying - ban fed employees from →
devoted lobbyist for 5 yrs
after leaving gov. service.

~~Reform~~

"rational" fears of Moore, Sec sees
ex. so do pilot prog : test
it.



Affirmative Action

For the past thirty years, affirmative-action policies have contributed to the balkanization of America by race, sex and ethnicity. The original intent of these policies -- to redress past discrimination -- was a noble one, but the means of redress have been fundamentally flawed and the real-life consequences disastrous. It is time to stop counting by race and to re-dedicate this nation to the proposition that we are a color-blind society.

To be sure, racism and discrimination are still ugly stains on the American landscape, and where they occur, we should use existing laws to stamp them out. But affirmative action as a remedy has outrun its course. If we continue to count by race, hire by race, and admit by race, we will divide by race. We must renew our commitment to the American ideal that we are one people: *e pluribus unum*. The best way to achieve a color-blind society is actually to be a color-blind society, in law and in spirit.

Recent Developments

Despite President Clinton's morally bankrupt defense of all federal affirmative-action programs, public opposition to quotas and the institutionalized discrimination of affirmative action programs continues to mount. Moreover, several recent developments have dealt powerful blows to federal policies and programs that count by race.

In June, the Supreme Court ruled in *Adarand Constructors v. Peña* that federal affirmative action programs must meet a standard of "strict scrutiny." Under the strict-scrutiny standard, the federal government must demonstrate that an affirmative-action program is narrowly tailored to redress identifiable past discrimination. Few of the existing affirmative-action programs meet that test. In July, Congress introduced "The Equality of Opportunity Act of 1995," which prohibits the federal government from taking race, gender, or ethnicity into account in its employment or contracting practices, or in the implementation of any federally conducted program or activity. The "Equality of Opportunity Act" is an important piece of legislation that, if passed, will guarantee all Americans justice and equal treatment under the law.

Empower America is also a strong supporter of the California Civil Rights Initiative, which should appear on the statewide ballot as a referendum in November of 1996. The Civil Rights Initiative prohibits the state of California from using race, sex, color, ethnicity, or national origin as criteria for discriminating against, or giving preferential treatment to, any individual.

★ In dismantling the racially divisive programs of affirmative action, it is important for conservatives to be principled, not opportunistic: We still need to reach out to disadvantaged Americans, especially those living in our inner-cities. To this end, Empower America supports measures that will expand opportunities to the inner-city poor, including tenant-management housing, empowerment zones, and school choice. We also support redesigning

the tax code to make possible broader ownership of capital, savings, and credit in the minority community. Expansion of opportunity is necessary to ensure equality of opportunity.

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CIVIL RIGHTS IS THE GOP'S MISSION

Op-Ed by William J. Bennett

as printed in the Los Angeles Times, August 12, 1996

When Gen. Colin L. Powell steps before the microphone tonight in San Diego and addresses the Republican convention, the nation will be reminded why he is one of America's most impressive public figures and one of the GOP's brightest political stars.

Many of us hope that he will use this opportunity to reaffirm his previously stated commitment to equal treatment under the law and his opposition to race-based preferences. This would have a tonic effect on the frayed, deteriorating race relations in America.

What has gone wrong? A major part of the answer is that we turned away from the simple, compelling principle that racial discrimination is wrong. Thirty years ago, the animating spirit of the civil rights movement was noble: America as a colorblind society, *de jure* and *de facto*, true to the principle of equal justice. The most eloquent embodiment of that movement was Dr. Martin Luther King Jr., whose dream was an America that judged individuals by the "content of their character" and not "the color of their skin."

During the past 30 years, that dream has been deferred -- primarily by the civil rights leaders who now claim to be King's heirs. The grand vision of a colorblind society has been replaced by something ugly, narrow and pernicious: a color-conscious society in which race-based discrimination has become the centerpiece of the liberal civil rights agenda.

For a government to discriminate by race is inherently wrong and inevitably divisive. It is a clear violation of both the 14th Amendment's promise of equal protection and the Civil Rights Act of 1964, which states that "no person . . . shall, on the ground of race, color, or national origin, be excluded from participation, or be denied the benefits of, or be subject to discrimination under any program or activity receiving federal financial assistance."

What have been the real-world effects of race-based preferences? Among other things, they have helped Balkanize America, put group rights ahead of individual rights, disfigured the concept of equal justice, increased the alienation of many black Americans toward the rest of society, fanned the flames of racial resentment, diminished the moral authority of the civil rights movement, diverted attention away from the most pressing problems plaguing black America -- bad schools, violent crime, an out-of-wedlock birth rate above 70% -- and placed what author Shelby Steele calls "the stigma of questionable competence" on many blacks.

It is also worth noting the extent to which political discourse in America has been debased by people like Jesse Jackson, who wields a racial branding iron against those who oppose his radical and polarizing political agenda. His goal is to sideline an important national debate.

But one of the unintended consequences of this strategy is that people who throw around accusations of racism recklessly and indiscriminately are emptying the charge of any real meaning. When people like Jackson make virtually no distinction between the Ku Klux Klan and those who support reforms in welfare of the criminal justice system, they should not be taken seriously, because they are not serious. Consider this irony: We now have those within the so-called civil rights movement declaring that people who oppose government sponsored race discrimination are racists.

So, it is now left to courageous people like Ward Connerly, chairman of the California Civil Rights Initiative (Proposition 209), and the citizens of California to continue the great civil rights tradition set forth by Dr. King. The CCRI is among the most important political issues of this decade; its passage would over the long term dramatically alter -- and improve -- race relations. It would repair some of the damage done by race-based preference policies. It would codify the belief that racial discrimination is wrong. And it recognizes that the way to achieve a colorblind society is to actually be a colorblind society, in law and in spirit.

The Democratic Party (with a few honorable exceptions) has given up on Dr. King's dream. Which means that the GOP is the only major political party that is willing to put America back on track toward a colorblind society.

One of the GOP's most articulate figures recently wrote that "[racial] discrimination 'for' one group means, inevitably, discrimination 'against' another, and all discrimination is offensive." He went on to say, "Our Constitution and our national conscience demand that every American be accorded dignity and respect, receive the same treatment under law, and enjoy equal opportunity." Noble sentiments, these words. Sentiments worthy of one of America's most respected figures. Let us hope that tonight Gen. Powell gives public voice to these words he wrote just a year ago, as a continuation of his American Journey.

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AFFIRMATIVE ACTION: THE 'RADICAL REPUBLICAN' EXAMPLE

Op-Ed by Jack Kemp

as printed in the Washington Post, August 6, 1995

The scene is Washington: a Republican president, new to the White House, defiantly throwing down the gauntlet to a Republican Congress, saying he will veto any bill that proposes to do more for "black Americans" than for "whites." This is not some fast-forward

vision of 1997 and the first days of a new Republican White House. It's a flashback to 1866.

The agency to be vetoed was the Freedman's Bureau, established in President Lincoln's administration to "affirmatively" assist the recently emancipated African American. The president – Andrew Johnson, Lincoln's successor – worried that any "affirmative action" would hurt the white population by specifically helping "Negroes."

I offer this page from history not to prove once again that, politically, there is not much new under the sun, but to illustrate that the issues of race and equality are woven into the essence of our American experience. While our present-day passions on the subject of affirmative action open old wounds, they also summon us to moral leadership of Lincolnesque proportions.

Thus far the summons goes unanswered by both liberals and conservative alike. The unreconstructed liberal notion of endless racial reparations and race-based preferences is doubly guilty: wrong in principle and ruinous in practice. President Clinton's much-vaunted

focus-group-fashioned "mend it, not end it" slogan makes a far better rhyme than reason.

The same, however, is true of the new affirmative action "abolitionist" position, which heralds equality but seldom addresses the way to truly give all people an equal footing. Critics are right in asserting that "affirmative action" quotas have contributed to the poisoning of race relations in this country. But critics must offer much more than just opposition and reproach. We know what they are against, but what are they for?

"A colorblind society," comes their response. Of course, the goal of equal opportunity is paramount and a worthy destiny to seek. But to say that we have arrived at that goal is simply not true. My friends on the right call for a colorblind society and then quote Martin Luther King's inspiration "I have a dream" speech, in which he imagined a nation in which every American would be judged not on the color of his or her skin but on the "content of his character." All too often, though, they neglect to quote the end of his speech, where he describes the painful plight of minority America. "The Negro," King said, "lives on a lonely island of poverty in the midst of a vast ocean of material prosperity."

Much has changed in the 30 years since King stood on the steps of the Lincoln Memorial.

Minority enterprises have begun to gain a foothold, although there are far too few of them. But can anyone venture to the crumbling brick and mortar of Cabrini Green Public Housing, or the fear-ridden projects of Bed-Stuy or the streets lined with the unemployed in south Central LA or East St. Louis and believe that what he sees there today would pass as progress since Dr. King's day?

This is not to negate the gains made by so many in the black and minority communities. But for large numbers the situation has not only not improved in 30 years, it has grown dramatically worse – with a welfare system that entraps rather than empowers, punishes work and marriage and prevents access to capital, credit and property.

Reality requires that we admit two things – difficult admissions for both liberals and conservatives. First, that a race-conscious policy of quotas and rigid preferences has helped make matters worse. Second, and more important, the Good shepherd reminds all of us that our work is not done, and as we think about moving into the 21st century, we must not leave anyone behind.

Sound policy begins with strong principles. Affirmative action based on quotas is wrong – wrong because it is antithetical to the genius of the American idea: individual liberty. Counting by race in order to remedy past wrongs or rewarding special groups by taking from others perpetuates and even deepens the divisions between us. But race-based politics is even more wrong and must be repudiated by men and women of civility and compassion.

Instead, like the "radial republicans" of Lincoln's day, who overrode President Johnson's veto on the Freedman's Bureau, we would honor the past by creating a future more in keeping with our revolutionary founding ideals of equality. In this way, the eventual ending of affirmative action is only a beginning – the political predicate of a new promise of outreach in the name of greater opportunity for access to capital, credit, prosperity, jobs and educational choice for all.

The time has definitely come for a new approach, an "affirmative action" based not just on gender or race or ethnicity but ultimately based on need. "Affirmative" because government authority must be employed to remove the obstacles to upward mobility and human advancement. "Action" because democratic societies must act positively and create real equality of opportunity – without promising equality of reward.

Affirming opportunity in America begins with education. America's schools, particularly our urban public schools, are depriving minority and low-income children of the education that may be their passport out of poverty. Even the poorest parent must have the option more affluent families enjoy: the right to send their children to the school of their choice. Affirmative effort means ending the educational monopoly that makes poor public school students into pawns of the educational bureaucracy. And we should be paving the way to a voucher and magnet school system of public and private school choice.

Opportunity means an entryway into the job market. That means removing barriers for job creation and entrepreneurship and expanding access to capital and credit. According to the *Wall Street Journal*, from 1982 to 1987, the number of black-owned firms increased by nearly 38 percent, about triple the overall business growth rate during that period. Hispanic-owned businesses soared by 81 percent. Firms owned by women expanded by 57 percent, and their sales nearly tripled.

Even so, of the 14 million small businesses in existence across the United States today, fewer than 2 percent are black-owned. And of \$27 to \$28 trillion of capital in this country, less than once percent is in black ownership. Affirmative effort would take aim at expanding capital and credit as the lifeblood of business formation and job creation – including an aggressive effort to end the red-lining of our inner cities and a radical redesign of our tax code to remove barriers to broader ownership of capital, savings and credit.

Opportunity means the ability to accumulate property. Affirmative effort would mean an end to every federal program that penalizes the poor for managing to save and accumulate their own assets. An AFDC mother's thrift and foresight in putting money away for a child's future should not be penalized by the government welfare system as fraud as is currently the case.

Finally, real opportunity for racial and ethnic reconciliation requires an expanding economy – one that invites the effort and enterprise of all Americans, including minorities and women. A real pro-growth policy must include policies ranging from enterprise zones in our cities to a commitment to lowering barriers to global trade. It should also offer relief from red tape and regulation and freedom from punitive tax policies. Each is part of an affirmative action that can "move America forward without leaving anyone behind."

Now that we have opened a somewhat hysterical dialogue on affirmative action, we can never go back – only forward. Our challenge is to put aside the past – abandon the endless round of recrimination and a politics that feeds on division, exclusion, anger and envy. We must reaffirm, as Lincoln did at his moment of maximum crisis, a vision of the "better angels of our nature," a big-hearted view of the nation we were always meant to become and must become if we are to enter the 21st century as the model of liberal democracy and market-oriented capitalism the world needs to see.

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THE EQUAL OPPORTUNITY ACT OF 1995

Written Statement of William J. Bennett

July 27, 1995

I congratulate Senator Dole and Congressman Canady for their introduction of "The Equal Opportunity Act of 1995."

This legislation is both significant and morally serious. It re-dedicates this country to the noble proposition that America ought to be color-blind society. Racism and discrimination are still ugly stains on the American landscape, and where they occur, we need to use existing laws to stamp them out. Republicans need to be principled, not politically opportunistic, when addressing the issue of race. And race should never be used as a "wedge issue" in any campaign.

That said, Republicans should be confident and unambiguous in articulating the case for a color-blind society and against race-based preferences. Counting by race is noxious. It has divided and balkanized this country. If we continue to count by race, we will divide by race. Since the implementation of preference programs, we have moved away from Martin Luther King, Jr.'s vision of a society where we are judged by the "content of our character" and not by the "color of our skin." It is time to return to the American ideal that we are one people. The best way to achieve a color-blind society is actually to be a color-blind society, in law and spirit.

The Dole-Canady legislation puts the federal government on the moral high ground on civil rights. If this legislation passes, the federal government can no longer engage in preferential-treatment practices that result in reverse discrimination. The federal government can no longer take race, gender, or ethnicity into account in its employment or contracting practices, or in the implementation of any federally-conducted program or activity. Instead, all people, regardless of race or gender, will be guaranteed justice and equal protection when dealing with the federal government.

There is still more work to be done. But the Dole-Canady bill is a very good start. It is consistent with American principles. This is important legislation; it deserves to be passed.

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Issues '96: The Candidate's Briefing Book

The Heritage Foundation

Chapter 13

FEDERAL RACE AND SEX-BASED PREFERENCES

By Michael G. Franc¹

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THE ISSUES

Race and all of the complex and emotional issues that flow from it have been America's unique dilemma since before the founding of the Republic. After centuries of overt discrimination against black Americans, the Supreme Court, in a series of seminal decisions beginning with *Brown v. Board of Education* in 1954, initiated the long process of dismantling the institutional sources of racial discrimination in American society in areas such as education, housing, and voting. Congress, too, attempted to remove these barriers in historic legislation such as the Civil Rights Act of 1964 and the Voting Rights Act of 1965.

The Rise of Affirmative Action. Over the last three decades, however, federal judges and agency bureaucrats have embarked upon a sustained crusade to twist and distort the original intent of these laws so that race, ethnicity, and sex became the proxy for special, rather than equal, treatment under the law. Race consciousness quickly overtook color blindness as the guiding principle for the application of civil rights laws that Congress explicitly intended to be neutral on these grounds. Today, liberals justify race and sex preferences which have proliferated under the guise of affirmative action as an appropriate and long-overdue response to centuries of discrimination against racial minorities and women.

As a result, federal agencies now administer literally hundreds of programs that favor individuals, businesses, and other institutions on the basis of the race, ethnicity, or sex of those who benefit from these programs. These preferences can be found in federal statutes, regulations, and executive orders. Some are specific to a particular law or agency; others are government-wide in their application. A thorough review of these preferences, moreover, reveals that they come in all shapes and sizes 5 percent, 6.9 percent, 8 percent, 10 percent, even as high as 25 percent.

In addition to these federally sponsored preferences, judicial and agency interpretations of federal civil rights laws have required state and local governments, colleges and universities, and private-sector employers to adopt race and sex-based preferences in areas such as hiring, promotions, college admissions, and the distribution of other privileges and benefits in our society.

Conservative candidates for federal office who believe in the principle of equal treatment under the law should emphasize the following:

The federal government should never favor one group of Americans over another on the basis of race, ethnicity, or sex. Race or sex-conscious remedies should be confined to individuals who have demonstrated that they have suffered discrimination.

Congress should clarify what constitutes discrimination. A pattern of historical discrimination against a particular group does not necessarily mean an individual is subject to discrimination. Discrimination, moreover, simply cannot be inferred from statistical disparities between whites and minorities (or between men and women) in employment, housing, or student bodies.

Congress needs to recapture the philosophical spirit of the original civil rights movement.

THE FACTS

Many liberal economists and policymakers argue that virtually all income differences between racial groups, and between men and women, are attributable to discrimination. What exactly do we know about income differences between whites and blacks? What are these differences? More important, do these differences serve as irrefutable proof of discrimination?

Representative Sheila Jackson Lee (D-TX) offers a statistical perspective common among liberals when she relies upon statistical differences to argue that "minorities and women do not have equal opportunity." According to Lee, "As long as women make up only 8 percent of engineers, 31 percent of scientists, and 16 percent of physicists, we have much work ahead of us."²

Boston University economics professor Glenn C. Loury, however, disagrees. Testifying before the same House subcommittee, Professor Loury observed that:

[T]here is no scientific basis for concluding that existing economic differences between groups are caused by, or reflect the extent of, discrimination. Groups differ in ways which affect their aggregate income, but which are often not taken into account when the groups are compared. On my review of the evidence, discrimination is not a major factor in explaining racial economic differences, and federal affirmative action policies over the past two decades have contributed only marginally to the diminution of these differences.³

The best way to ascertain whether any real differences exist between groups is to compare apples to apples by controlling for such important factors as age, education, and family structure. When such comparisons are made, most, if not all, aggregate income differences between whites and blacks disappear. In fact, an honest application of the liberal assumption that discrimination lurks behind statistical differences leads to the conclusion that not only is statistical proof of discrimination extremely hard to find, but some categories of minorities such as black, college-educated females are doing so well that they qualify as the "innocent persons" who must bear the burden of race or sex-conscious remedies.

Some examples:

Black men and white men are not far apart when properly compared. June O'Neill, currently director of the Congressional Budget Office, wrote in 1990 that, while there may be pronounced income differences between white and black males overall, this difference disappears when we compare blacks to similarly situated whites:

Overall, black men earned 82.9 percent of the white wage. Adjusting for black-white differences in geographic region, schooling and age raises the ratio to 87.7 percent; adding differences in [standardized] test scores to this list of characteristics raises the ratio to 95.5 percent, and adding differences in years of work experience raises the ratio to 99.1 percent.4

Neither are black and white women. Among women with comparable educational credentials, there is little or no difference between whites and blacks. The U.S. Commission on Civil Rights found that, among women with college degrees, black women actually earn more than their white counterparts.5

Citing a recent Census Bureau study, Boston University's Glenn Loury noted that: "In 1993 there were about 400,000 college educated black men and women working full time as executives, administrators or managers.... [T]he women enjoyed median earnings 10 percent *higher* than comparable white women."6 Loury emphasizes that sizable aggregate income differences do exist between black and white women and attributes this to the fact that black women are far more likely to head single-parent households than are whites; in 1994, roughly one-half of black families were headed by women compared to 13 percent of white families.7

Family Structure Explains Many Differences

Thomas Sowell, Senior Fellow at Stanford University's Hoover Institution, has found that, when education and family structure are held constant, income differences between whites and blacks have been negligible for almost three decades:

As far back as 1969, black males who came from homes where there were newspapers, magazines and library cards had the same incomes as whites from similar homes and with the same number of years of schooling. In the 1970s, black husband-and-wife families outside the South earned as much as white husband-and-wife families outside the South. By 1981, for the country as a whole, black husband-and-wife families where both were college educated and both working earned slightly more than white families of the same description.8

To Sowell and many other experts, white-black income differences can be traced to differences in family structure that became apparent in 1960 and have been accelerating ever since:

In every decennial census from 1920 through 1960, inclusive, at least 60 percent of all black males from age 15 on up were currently married. Moreover, the difference between black and white males in this respect was never as great as 5 percentage points during this entire era. Yet, by 1980, less than half of all black males in these age brackets were currently married and the gap between black and white males was 17 percentage points. By 1992, that gap had widened to 21 percentage points.9

What Is Affirmative Action?

Original Intent of the 1964 Civil Rights Act. Senator Hubert H. Humphrey (D-MN), floor manager for the 1964 Act, when addressing one skeptical colleague made what is perhaps the most famous offer ever made on the Senate floor: "If the Senator can find in title VII... any language which provides that an employer will have to hire on the basis of percentage or quota related to color... I will start eating the pages one after another, because it is not in there."10

Humphrey also assured the Senate that "nothing in the bill would permit any official or court to require any employer or labor union to give preferential treatment to any minority group." 11

Senator Harrison Williams (D-NJ) also understood the 1964 Civil Rights Act to be color-blind in its application. During floor debate, he said:

[T]o hire a Negro solely because he is a Negro is racial discrimination, just as much as a 'white only' employment policy. Both forms of discrimination are prohibited by Title VII of this bill. The language of that title simply states that race is not a qualification for employment....Some people charge that [the Civil Rights Act of 1964] favors the Negro, at the expense of the white majority. But how can the language of equality favor one race over another? Equality can have only one meaning....Those who say that equality means favoritism do violence to common sense. 12

Representative John Lindsay (R-NY), a member of the House Judiciary Committee, similarly assured members that the legislation did not favor one group over another: "[The bill] does not...force acceptance of people in schools, jobs, housing, or public accommodations because they are Negro. It does not impose quotas or any special privileges of seniority or acceptance. There is nothing whatever in this bill about racial balance." 13

The Civil Rights Act of 1964 covers over 94 million employees in both the public and private sectors. As controversial as the Dole-Canady legislation may be to liberals, it would reach only federal workers, who comprise but 3.1 percent of the nation's work force. Those who work for state and local governments, private-sector firms that receive federal contracts, and other private sector firms would continue to be subject to federal civil rights laws that require employers to favor some individuals over others on racial, ethnic, or gender grounds.

Casting a Wider Net? One common perception about affirmative action is that it began as a benign effort to combat discrimination by requiring employers to cast a wider net so that members of historically neglected groups could compete on an equal footing for jobs and promotions. Only later, this theory holds, did it evolve into the current system of quotas and preferences.

While this may be true in some instances, President Lyndon Johnson laid the foundations for today's complex web of race-conscious programs and set-asides as early as June 1965. "[I]t is not enough," Johnson said, "to open the gates of opportunity." Rather, "All our citizens must have the ability to walk through those gates." Johnson continued: "This is the next and the more profound stage of the battle for civil rights. We seek not just freedom but opportunity. We seek not just legal equity but human ability, not just equality as a right and a theory but equality as a fact and equality as a result." 14

Similarly, while most commentators recall the famous declaration by Martin Luther King, Jr., that he dreamed of the day when a citizen's race would not matter and persons would be judged "not by the color of their skin but by the content of their character," they forget his comment two years later when he defended "preferential treatment" for minority groups in a magazine interview:

Playboy: Do you feel it's fair to request a multibillion-dollar program of preferential treatment for the Negro, or for any other minority group?

Dr. King: I do indeed. 15

Today, it is common for proponents to justify affirmative action as a group remedy that rewards even

individuals who have not suffered from discrimination. One of many examples of this approach comes from Walter Dellinger, currently Assistant Attorney General in the U.S. Department of Justice, who defines affirmative action as "a group-based remedy: where a group has been subject to discrimination, individual members of the group can benefit from the remedy, even if they have not proved that they have been discriminated against personally."16

Proponents of affirmative action typically deny that these policies amount to quotas or that they constitute any form of reverse discrimination. Numerical goals and timetables, they argue, are not quotas. President Clinton's Assistant Attorney General for Civil Rights, Deval L. Patrick, believes that affirmative action policies come in three flavors:17

Casting a wider net: At one end of the spectrum are efforts to reach out to "traditionally excluded individuals" and to "recruit talent broadly in all American communities."

Quotas: At the other end of the spectrum are quotas, which Patrick defines as "hard and fast numbers of places in school or the workplace specifically reserved for members of certain groups, regardless of qualifications." No one supports quotas, argues Patrick, who adds that federal law makes these measures patently illegal.

Affirmative consideration: Here lies the middle ground of affirmative action, where race, ethnicity, or sex is but one of many factors considered in evaluating qualified candidates. "This form of consideration," Patrick explains, "does not guarantee success based on race, ethnicity or gender. Rather it emphasizes a full range of qualifications and is characterized by flexibility."

Is discrimination an inevitable part of affirmative action programs? Since the inception of affirmative action, the Supreme Court has concluded on several occasions that these programs actually require discrimination against innocent parties. For example, former Justice Harry Blackmun admitted in *Bakke v. State of California* that "I suspect that it would be impossible to arrange an affirmative action program in a racially neutral way and have it be successful.... In order to get beyond racism, we must first take account of race. There is no other way. And in order to treat some persons equally, we must treat them differently."18

Eight years later, the Court acknowledged that "as part of this Nation's dedication to eradicating racial discrimination, innocent persons may be called upon to bear some of the burden of the remedy."19 Finally, in his autobiography, Justice William O. Douglas quoted his colleague, Justice Thurgood Marshall, as specifically acknowledging the discriminatory nature of race-conscious affirmative action policies: "You guys have been practicing discrimination for years. Now it's our turn."20

The Supreme Court's Tighter Standard for Federal Affirmative Action Programs

On June 12, 1995, the Supreme Court imposed a crucial and, many would argue, debilitating requirement on government programs that bestow preferences on the basis of race. The case was *Adarand Constructors, Inc. v. Peña*.21

The U.S. Department of Transportation awarded the prime contract for a highway construction project in Colorado to Mountain Gravel & Construction Company. Under the terms of the contract, Mountain Gravel would receive a bonus, up to 2 percent of the total contract, if it hired subcontractors certified as small businesses controlled by "socially and economically disadvantaged individuals."22 Although Adarand submitted the low bid for the guardrail portion of the contract, Mountain Gravel accepted a

higher bid from the Gonzales Construction Company. Why? Under federal law, Gonzales' designation as a "socially and economically disadvantaged" business entitled Mountain Gravel to a \$30,000 bonus from the Department of Transportation.²³ The Court held that "[A]ll racial classifications, imposed by whatever federal, state, or local governmental actor, must be analyzed by a reviewing court under strict scrutiny. In other words, such classifications are constitutional only if they are narrowly tailored measures that further compelling governmental interests."

The *Adarand* decision has prompted the Clinton Administration to mount an aggressive defense of existing affirmative action programs that favor one race or ethnic group over others.²⁴ Because *Adarand* will cast a long shadow over congressional and executive branch activity on civil rights issues in 1996 and beyond, it is important to examine it in some detail.

Writing for the majority, Justice Sandra Day O'Connor observed that race-based distinctions in federal law are always highly suspect, both when they seek to harm groups that historically have been discriminated against and when they seek to bestow advantages on them. O'Connor concluded that "any person, of whatever race, has the right to demand that any governmental actor subject to the Constitution justify any racial classification subjecting that person to unequal treatment under the strictest judicial scrutiny."²⁵

Is there a "debtor" or "creditor" race? Justices Antonin Scalia and Clarence Thomas wrote concurring opinions in which they took strong exception to any statutory or regulatory classification based, in whole or in part, on race. Justice Scalia wrote:

In my view, government can never have a "compelling interest" in discriminating on the basis of race in order to "make up" for past racial discrimination in the opposite direction. Individuals who have been wronged by unlawful racial discrimination should be made whole; but under our Constitution there can be no such thing as either a creditor or debtor race.... To pursue the concept of racial entitlement even for the most admirable and benign of purposes is to reinforce and preserve for future mischief the way of thinking that produced race slavery, race privilege and race hatred. In the eyes of the government, we are just one race here. It is American.²⁶

Leaving the door open to future mischief. While the strict scrutiny standard undoubtedly will force federal, state, and local policymakers to eliminate racial preferences from government programs, Justices Scalia and Thomas raise a legitimate point. The very notion of strict scrutiny contemplates that in some situations, laws that favor one race over another will pass constitutional muster. In fact, Justice O'Connor left the door open for legislatures to enact laws containing more subtle forms of racial preferences by observing that "The unhappy persistence of both the practice and the lingering effects of racial discrimination against minority groups in this country is an unfortunate reality, and government is not disqualified from acting in response to it."²⁷

Looking for ways to preserve the literally hundreds of federal laws and regulations that contain racial preferences, President Clinton and his appointees have seized upon O'Connor's comment to argue that strict scrutiny is not really all that strict.²⁸

Will Strict Scrutiny Spell the End of Race and Sex-Based Preferences?

Former Justice Thurgood Marshall once described the strict scrutiny standard in constitutional cases as "strict in theory, but fatal in fact."²⁹ More recently, Justice Clarence Thomas concluded that, aside from two anomalous cases during World War II, application of this standard to racial classifications "has

proven automatically fatal."³⁰ While legal scholars may dispute the effect of strict scrutiny on federal affirmative action programs, no one doubts that *Adarand* makes it extraordinarily difficult for these programs to survive in the future.

To Justice O'Connor, the purpose of strict scrutiny is to "smoke out" illegitimate uses of race by assuring that the legislative body is pursuing a goal important enough to warrant use of a highly suspect tool. The test also ensures that the means chosen "fit" this compelling goal so closely that there is little or no possibility that the motive for the classification was illegitimate racial prejudice or stereotype."³¹

What, then, does strict scrutiny mean for racial preferences in federal law?³² Yale Law School professor Paul Gewirtz believes that most, if not all, racial preferences will fall afoul of this standard. He argues that:

Race-based affirmative action is constitutional only where it addresses the effects of discrimination in the most circumscribed sense. Despite the best efforts of President Clinton and his appointees to rally around the mantra of diversity, a majority of justices now reject both diversity and inclusion as independent goals for affirmative action.³³ In doing so, the Court has put the Congress on notice that literally hundreds of federal programs and regulations are unconstitutional. Justice O'Connor has said that diversity "is clearly not a compelling interest," rests on "illegitimate stereotypes," and is "too amorphous, too insubstantial, and too unrelated to any legitimate basis for employing racial classifications."³⁴

Affirmative action may be used only where Congress can show that actual discrimination has occurred. This requires hard evidence that discrimination exists in the local market and sector where affirmative action is used. Courts are increasingly reluctant to accept inferences that statistical disparities among racial groups are caused by local discrimination rather than by other factors. Thus, an affirmative action program that gives preferences to minority-owned engineering firms in awarding contracts would be more likely to pass constitutional muster if officials could demonstrate that the basis of the alleged statistical underrepresentation is the relevant pool of qualified applicants the number of minority-owned engineering firms financially capable of bidding for these contracts in the geographic area in question rather than the overall percentage of minorities in the area.

Racial preferences must be narrowly tailored to remedy identifiable discrimination. Race-based methods may be used only (a) after race-neutral means are considered; (b) to the extent shown necessary to remedy the scope of the identified discrimination; (c) where the individual seeking a racial preference has suffered from the effects of the past discrimination; and (d) if undue burdens on nonbeneficiaries such as layoffs are avoided. As University of Michigan professor Carl Cohen explains, "[I]t is the injury for which remedy is given, not the skin color or sex."³⁵

Lower courts have interpreted the strict scrutiny standard narrowly. As Gewirtz notes, "most of the [state and local] programs litigated to judgment have been held unconstitutional." Those that have survived, moreover, either have not been challenged or were settled out of court.³⁶

The Clinton Administration's Strategy to Preserve Preferences

On June 28, 1995, Walter Dellinger, Assistant Attorney General in the Office of Legal Counsel in the Justice Department, sent "a general overview" to all general counsel in federal agencies on *Adarand* and

"the new standard for assessing the constitutionality of federal affirmative action programs." Dellinger advised that *Adarand* allows some race-conscious affirmative action programs to survive in certain circumstances. But what are those circumstances? Dellinger's legal strategy to undermine *Adarand* includes the following key points:

Constitutional considerations may compel the courts to defer to Congress more generally on affirmative action issues. Dellinger drives an enormous loophole through *Adarand* when he argues that Congress may be able to justify remedial racial and ethnic classifications simply by including "national findings of discrimination" in the prologue to legislation. Congress, he argues, enjoys express constitutional power to remedy discrimination against minorities and therefore has more latitude to engage in race-based affirmative action than do state and local governments. But he cautions that Congress may not use evidence of "generalized, historical societal discrimination" to justify racial preferences. Rather, it "must have some particularized evidence about the existence and effects of discrimination in the sectors and industries for which it prescribes racial or ethnic classifications."³⁷

Governments can enact affirmative action programs even with no evidence of actual discrimination, provided that this information eventually becomes available. Dellinger argues that lower courts have concluded that governments may use "post-enactment" evidence to justify affirmative action programs. To create a record of discrimination prior to legislative action, he recommends the use of controversial and discredited "disparity studies:" "Where the record is sparse, Congress or the relevant agency may have to develop it. That endeavor may involve the commissioning of disparity studies of the type that state and local governments around the country undertook... to demonstrate that remedial racial and ethnic classifications in public contracting are warranted."³⁸

Affirmative action programs that advance objectives such as "promoting diversity and inclusion" may be constitutional. Contrary to Justice O'Connor's statement in *Croson* that affirmative action programs must be "strictly reserved for the remedial setting" to remedy instances of past discrimination,³⁹ Dellinger insists that diversity remains an acceptable goal of affirmative action⁴⁰ and offers several examples of situations in which diversity-inspired racial preferences would satisfy the compelling interest test, including college admissions, the hiring of university faculty, the ownership of broadcast licenses, law enforcement, and the health professions.

Federal Programs That Contain Race or Sex-Based Preferences

In February 1995, the Congressional Research Service (CRS) responded to a request from Senate Majority Leader Robert Dole (R-KS) for a comprehensive list of "every federal statute, regulation, program, and executive order that grants a preference to individuals on the basis of race, sex, national origin, or ethnic background." Preferences, Senator Dole instructed, "include, but are not limited to, timetables, goals, set-asides, and quotas."

The CRS study⁴¹ lists over 160 federal laws, regulations, and executive orders that contain these preferences, identifying race and sex-based preferences that range from 5 to 25 percent. These preferences come in all shapes and sizes, with specific programs mandating preferences at such seemingly arbitrary levels as 5 percent, 6.9 percent, 8 percent, 10 percent, 12 percent, 15 percent, and 25 percent.

The following examples illustrate just how pervasive race and sex-based preferences have become in

federal laws and regulations:

The Business Opportunity Development Reform Act of 1988. This law requires the President to establish an annual government-wide procurement goal of at least 5 percent for disadvantaged businesses, as defined by the Small Business Administration (SBA). Businesses owned and operated by African Americans, Hispanics, Native Americans, and Asian Pacific Americans are presumed to be socially disadvantaged.42

The Minority Small Business Subcontracting Program. Section 8(d) of the Small Business Act requires prime contractors on major federal contracts to enter into a subcontracting plan that includes percentage goals for socially and economically disadvantaged firms. As with the 8(a) program, the law presumes that firms owned by certain minorities are disadvantaged.43

The Federal Acquisition Streamlining Act of 1994. This Act expanded the 5 percent minority procurement goal to include women.44 With the inclusion of women, this now constitutes "the largest federal racial and gender preference program."45

Executive Order 11246. Under this order, issued by President Lyndon Johnson in 1965, all contractors and subcontractors with 50 or more employees and government contracts of \$50,000 or more must develop written affirmative action plans for each facility. The Office of Federal Contract Compliance Programs (OFCCP) enforces the terms of this executive order. OFCCP requires federal contractors to conduct numerical reviews of all major job classifications and compare the percentage of minorities and women in each to the availability of qualified minority group members in the relevant labor area. Using the results of this analysis, the contractor establishes appropriate goals and timetables for the hiring of women and minorities.46

National Hiring Goals for Women and Minorities in Construction. OFCCP has established hiring goals for women and minorities in construction. For women, the goal is 6.9 percent nationwide; for minorities, the goal varies by region.47

The Energy Policy Act of 1992. Section 3021 requires the department of Energy to award "not less than 10 percent" of the value of all contracts dispensed under this Act to socially and economically disadvantaged small businesses, historically black colleges and universities, and colleges with at least 20 percent minority enrollment.48 Representative John Conyers, Michigan Democrat and author of the provision, estimated that it would "mean \$1 billion in contracts funneled to minorities and women if all the measures authorized in the energy bill are fully funded."49 One commentator, however, described it more accurately as "discrimination for its own sake" due to the complete absence of legislative history on the set-aside and Congress's silence on whether it is necessary to compensate minority-owned firms for prior discrimination.50

The Clean Air Act Amendments of 1990. "Not less than 10 percent" of funds spent on research pursuant to this Act must be made available to disadvantaged business concerns, defined as any firms in which 51 percent of the stock is owned by black Americans, Hispanic Americans, Native Americans, Asian Americans, women, or disabled Americans.51

Section 8 Housing Assistance. Applicants for Section 8 funds must include a "description of minority and women representation in the ownership of the project" and a "minority and

women-owned business development plan." This plan must contain "specific and measurable goals" for such representation. If these are insufficient, the Department of Housing and Urban Development (HUD) extends "more favorable consideration" to projects with a "higher percentage of minority or women representation in the ownership of the project."52

The Violent Crime Control Act of 1994. "Not less than 10 percent" of contracts and subcontracts awarded under this law must go to socially and economically disadvantaged firms, women-owned businesses, historically black colleges and universities, and institutions of higher education with at least 40 percent Hispanic enrollment.53 In addition, Department of Justice regulations require grantees to submit a racial and gender breakdown of their work forces. If the percentage of minority and female employees compares unfavorably to the proportion of minorities and women in the local labor market, the grantee must "set forth the specific steps the recipient will take for achievement of full and equal employment opportunity goals."54

The Intermodal Surface Transportation Act of 1991. "Not less than 10 percent" of funds appropriated must go to socially and disadvantaged business concerns.55 This law authorizes a total of \$151 billion to fund a variety of transportation programs.

The Surface Transportation Assistance Act of 1982. Recipients must ensure that "at least 10 percent" of any funds expended on federally assisted projects goes to socially and economically disadvantaged businesses. Recipients that fail to meet this goal have an opportunity to explain to the relevant agency bureaucrat "why the goal could not be achieved and why meeting the goal was beyond the recipient's control."56 Failure to meet the goal subjects the recipient to "appropriate remedial sanctions."57

In testimony before the House Judiciary Committee, Assistant Attorney General Deval Patrick stated flatly that "Nearly everyone opposes quotas, including the President and me. Federal courts have rejected such measures and Federal law both in Executive Order 11246 and by statute make quotas unlawful.... Indeed, no federal law of any kind mandates that anyone make decisions on the sole basis of race or gender."58

In truth, however, a review of the *1994 Catalog of Federal Domestic Assistance* demonstrates that the federal government administers many programs that are race or sex-exclusive. Their continued existence runs directly counter to what Mr. Patrick and the Clinton Administration claim to support. Indeed, 20 race or sex-exclusive federal programs received appropriations in FY 1995, with an estimated total value of over \$200 million (see summary at the end of this chapter).

Ignoring the Law in Pursuit of Racial and Sex-Based Preferences - The Equal Employment Opportunity Commission

Created by Title VII of the 1964 Civil Rights Act, the Equal Employment Opportunity Commission (EEOC) enforces the federal prohibition against employment discrimination, as well as prohibitions against discrimination contained in the Americans with Disabilities Act, Age Discrimination Act, Equal Pay Act, and other civil rights laws. The commission investigates allegations of discrimination by individuals, unions, associations, and others and, if the claims are not settled out of court, brings civil suit seeking damages against responsible parties. Unfortunately, the EEOC has abused this authority by assuming that any statistical disparity between the races in employment results from discrimination.

Does Federal Law Require the EEOC to Use Quotas? The answer clearly is "No." During floor debate on

the Civil Rights Act of 1964, some Members of the House questioned whether the bill's employment provisions would force private-sector employers to adopt quotas. Judiciary Committee Chairman Emmanuel Celler (D-NY) assured them that "The charge... that the Equal Employment Opportunity Commission to be established by Title VII of the bill would have the power to... order the hiring and promotion only of employees of certain races or religious groups... is patently false." Celler also denied emphatically that the EEOC would have the authority to remedy racial or religious imbalances by requiring "the hiring of certain people without regard to their qualifications simply because they are of a given race or religion." 59

In the Senate, the late Hubert Humphrey offered equally ironclad assurances:

[T]here is nothing in [Title VII] that will give any power to the Commission or to any court to require hiring, firing, or promotion of employees in order to meet a racial "quota" or to achieve a certain racial balance.... In fact, the very opposite is true. Title VII prohibits discrimination. In effect, it says that race, religion, and national origin are not to be used as the basis for hiring and firing. Title VII is designed to encourage hiring on the basis of ability and qualifications, not race or religion.60

Federally Mandated Quotas on Private Employers. The EEOC's *Uniform Guidelines on Employee Selection Procedures*, published in 1989, ignore these clear congressional warnings against racial and religious quotas. Instead, the *Guidelines* presume that discrimination exists whenever the percentage of minorities in a company's work force is less than 80 percent of their share of the surrounding population: "A selection rate for any race, sex or ethnic group which is less than four-fifths or 80 percent of the rate for the group with the highest rate will generally be regarded by the federal government enforcement agencies as evidence of adverse impact."

Describing the results of one economic analysis of this practice, author Dinesh D'Souza explains that the EEOC's system subjects "entirely innocent" companies to a "one-in-two chance of being wrongly accused by the government [of discrimination] and forced to pay enormous fines and... engage in preferential hiring."61

The following are just a few examples of the numbers-driven search for discrimination at the EEOC:

***EEOC v. Daniel Lamp Company.*62**

Although all of the company's 26 employees were either black or Hispanic, the EEOC found discrimination by comparing the firm's workforce to others within a three-mile radius. This analysis led the commission to conclude that the company violated federal law because it did not hire exactly 8.45 black employees. EEOC attorneys demanded that the firm advertise to find blacks who might have applied for work there but never did so, and then pay these individuals a total of \$123,000 in "back pay." After considerable adverse media scrutiny, the EEOC negotiated a pared-back settlement in which Daniel Lamp paid \$8,000 a year for three years into a settlement fund.

***EEOC v. Consolidated Services Systems.*63**

EEOC attorneys inferred discrimination from Consolidated's heavily Korean janitorial workforce and demanded that the firm pay \$475,000 in "back pay" to non-Koreans rejected for positions. On appeal, Judge Richard Posner rejected the EEOC's demands, pointing out that the firm's reliance on "word of mouth" recruiting to attract new employees was "the cheapest method of recruitment" and that, in any event, the EEOC "was unable...to find a single person out of the 99 rejected non-Koreans who could

show that he or she was interested in a job that Mr. Hwang ever hired for." This was "an ominous case" because:

The United States has many recent immigrants....Often they form small businesses composed largely of relatives, friends, and other members of their community, and they obtain new employees by word of mouth. These small businesses...have been for many immigrant groups...the first rung on the ladder of American success. Derided as clannish, resented for their ambition and hard work...recent immigrants are frequent targets of discrimination. It would be a bitter irony if the federal agency dedicated to enforcing the anti-discrimination laws succeeded in using those laws to kick [immigrants] off the ladder by compelling them to institute costly systems of hiring.

***EEOC v. Chicago Miniature Lamp Works.*64**

The EEOC applied a "disparate impact" theory to infer discrimination from the company's practice of using "word of mouth" to recruit new employees. This resulted in a "low" number of black employees (6 percent) compared to the percentage of blacks in the local labor market (36 percent), even though the firm hired a higher percentage of black (16.4 percent) than white (6.1 percent) applicants. A federal appeals court rejected the EEOC's claims, concluding that potential black employees faced high commuting costs due to the firm's location in a Hispanic and Asian part of Chicago and that the company's lack of an English fluency requirement meant it naturally would receive a disproportionate number of applications from non-English-speaking applicants. These factors, the court reasoned, were too important to be ignored.

***Continental Air Transport.*65**

The EEOC also finds discrimination in other ways. In February 1994, a federal court ruled that Continental Air Transport's policy of firing employees with arrest records amounted to racial discrimination because "blacks and Hispanics are far more likely than whites to have arrest records." The court ordered Continental not only to abandon its policy, but also to reinstate the three employees and award them nearly \$50,000 in damages.

Racial and Sex-Based Preferences in Higher Education

A new study by the U.S. Department of Education shows that the proportion of African Americans who earn bachelor's degrees while in college has dropped from 34 to 25 percent since 1972. Says a department official: "It is clear that too many of our colleges are more interested in improving their diversity scores than in seeing that more of the black students that they do enroll receive the extra help they may require to graduate." 66

Many commentators, such as Thomas Sowell, attribute this downward trend to the mismatch that occurs when relaxed admissions standards place minority students who would excel at most state schools in prestigious and demanding Ivy League schools or other elite institutions.

Minority-Targeted Scholarships. In January 1994, the General Accounting Office published the results of an exhaustive survey of the undergraduate, graduate, and professional school programs at hundreds of colleges and universities designed to ascertain the extent to which these institutions set aside scholarship funds on a race-exclusive basis.67

See U.S. General Accounting Office, Information on Minority-Targeted Scholarships, January 1994.

GAO investigators surveyed a random sample of 300 schools offering both undergraduate and graduate degrees and all 240 institutions with professional (law, dental, and medical) schools. Over three-quarters responded in each category.

The GAO found that:

- * Almost two-thirds of 4-year undergraduate schools awarded at least one minority-targeted scholarship.
- * At the post-graduate level, about one-third of graduate schools and nearly three-fourths of professional schools awarded at least one minority-targeted scholarship.
- * The median number of minority-targeted scholarships was 24 per school, with one institution reporting that it awarded over 2,000.
- * Over half of the schools reported awarding federally funded minority-designated scholarships, with one school reporting that it awarded 840.
- * Eighty percent of public undergraduate schools awarded these scholarships, as did 57 percent of private institutions. Similarly, 80 percent of public medical schools award minority-only scholarships, while 61 percent of private institutions do so.

The practices described in the study highlight the perverse competition now under way among colleges and universities to attract minority students. The GAO study indicates that scholarships awarded to some minority students are intended to benefit the university more than the student, who often enjoys other academic options:

Without the minority-targeted scholarship program, officials said, many of the minority students who enrolled at School B over the past decade would have enrolled elsewhere, especially at less expensive public schools or private schools that offer more attractive financial aid packages....

Officials gave the example of a minority student who had decided to leave the school after 1 year because he could not justify paying the high tuition rate in light of his ability to transfer to a much lower-cost public law school. However, officials were able to assist the student with a minority-targeted scholarship that enabled him to stay.⁶⁸

In another instance, a school administrator justified his school's minority-targeted scholarships on the grounds that "without the financial assistance provided by these scholarships....many recipients might have had to take a job to support themselves."⁶⁹

Zero-Sum Game. Given the limited resources available at some schools, the decision to award these scholarships may harm other qualified students. Officials at one private undergraduate school found a shortage in its minority scholarship fund and decided to "decrease the number of academic scholarships awarded to top students in order to meet the needs of the students eligible for a minority-targeted scholarship."⁷⁰

Is there a societal interest in awarding these scholarships to students with other academic options, or to students who could afford the tuition as long as they worked in a part-time job, as many students do? What about the next generation of top scholars who do not receive academic scholarships as a result of

an institution's desire to achieve some vaguely defined diversity goal?

How Colleges and Universities Employ Racial Preferences

The University of Maryland administered a scholarship program reserved exclusively for black students that, according to the Fourth Circuit Court of Appeals, did not meet the Supreme Court's strict scrutiny standard for racial classifications. The Clinton Administration filed a brief on behalf of the preference program. Court documents indicate that between 1990 and 1992, the university awarded scholarships to 76 minority students, 42 of whom had the financial resources to pay their own way through college. In fact, the scholarships exceeded the actual financial need of all but eight students.⁷¹

In spite of this decision, Judith A. Winston, general counsel at the Department of Education, warned all colleges and universities in September 1995 not to revise "race-targeted aid programs."⁷² She advised that the Clinton Administration believes that "race-based student aid is legal... as a remedy for past discrimination or as a tool to achieve a diverse student body." It is not surprising, therefore, to see that race-exclusive policies continue unchecked at our major universities.

Harvard University's Department of Government, for example, divides its applications for its graduate program into two categories, one for "underrepresented minorities" and the other for everyone else. It awards full financial aid packages to all minorities regardless of their financial position. Non-minorities, on the other hand, must make a specific showing of need. "If you're a black, Puerto Rican, Mexican-American, or Native American applicant to Harvard's graduate program in government," Elena Neuman notes, "your application can be reviewed in a separate and unequal process of evaluation, one that excludes all whites. And if you're accepted, you get a totally free ride."⁷³

Harvard also maintains a separate fund within its Graduate School of Arts and Sciences to support minority scholars. Minority students, even affluent ones, automatically receive full tuition and a stipend to cover three years of expenses; low-income white students, on the other hand, receive a maximum stipend of two years. As summed up by Harvard professor Harvey Mansfield, "Blacks are compared with other blacks and not really with whites; and there are separate funds as well, the purpose of which is to keep the professors on the admissions committee from actually feeling that they're rejecting someone better qualified when they choose on the basis of affirmative action. But, of course, they are."

The University of Texas Law School segregated black and Mexican-American applications from the rest of the application pool, used a separate admissions committee, and accepted minority applicants with lower minimum Texas Index scores than non-minority applicants. Although a U.S. District Court found these procedures unlawful, it awarded the four white students who brought the lawsuit only \$1 in damages and denied them admission to the school.⁷⁴

Rutgers University, after a semester of protests over a statement made by its president about the intellectual potential of black students, approved a plan under which it will devote an additional \$1 million to scholarships for minority students and set aside an unspecified amount of money for the hiring of minority professors.⁷⁵

San Bernadino Valley College operates one program exclusively for blacks (the Bridge Program) and another exclusively for Mexican-American and Latino students (the Puente Program). The programs are designed to prepare community college students for more demanding four-year schools. Class participants receive exclusive access to academic counselors and professional mentors of their own race or ethnicity. No comparable program exists for whites such as Janice Camarena, a widow with three children who was denied access to the Bridge Program on account of her race. With the help of the

Pacific Legal Foundation, she has sued the California community college system, asking that it stop its practice of reserving certain classes and offering extra programs to students on the basis of race.⁷⁶

How the Private Sector Uses Race and Sex-Based Preferences

Many corporations, hoping to immunize themselves from expensive discrimination lawsuits, impose diversity goals on their managers. Evaluations, bonuses, and promotions are determined by how many women and preferred minorities they hire or promote. Other employers use race to promote diversity in the workforce. Still others resort to racial or sex-based quotas only as a last resort after litigation. The following cases illustrate the problem:

Hughes Aircraft docked the bonuses of executives in two divisions by ten percent in 1993 after they received bad grades on their "diversity report cards."⁷⁷

Xerox Corporation has adopted a policy under which annual bonuses are based in part on a manager's success in promoting protected minorities and women.⁷⁸

Taxman v. Piscataway involves the dismissal (because of budget cuts) in 1989 of one of two teachers hired on the same day to teach the same subjects in a New Jersey public high school. One teacher is white, the other black. Instead of resolving the situation by drawing lots as it had in the past, the school board summarily terminated the white teacher, relying on its affirmative action plan. The Justice Department challenged the dismissal, and the federal district court ruled that the plan "trammelled the interests" of the white teacher and therefore was unconstitutional. Clinton Administration officials, however, reversed the government's position on appeal, arguing that "faculty diversity" is a compelling governmental interest that justifies a termination based on race. The Third U.S. Circuit Court of Appeals decision is expected soon.⁷⁹

Felix Granados, president of a prosperous financial firm set up by the Fanjul family, owners of a \$500 million Florida sugarcane empire, took advantage of a Florida law that funnels 20 percent of state and local bond offerings to minority underwriters. He defended the family's claim to the set-aside by pointing out that the relevant category "isn't 'economically disadvantaged.' It's 'minority.' And with a last name like Fanjul, that's just what they are."⁸⁰

Rocky Mountain News editor Mike Finney sent a memo to the paper's supervisors that established such a strict hiring goal for women and minorities that it virtually precluded the hiring of any white males. "The job reviews of supervisors and others involved in hiring should address race and sex," wrote Finney. "Each review should have a hiring goal of at least half of our hires being women and at least half non-white. For example, if we have ten hires, this goal can be met by hiring five Hispanic women. It could also be met by hiring five white women and five black, Hispanic, or American Indian men."

While the memo speaks of hiring goals and not quotas, the paper's affirmative action plan includes a coercive element as well. To guarantee that these goals become reality, the paper offers managers a strong financial incentive to choose the minority candidate for openings: "Twenty-five percent of the bonus of each vice president and department head involved in employment decisions shall be dependent on their adherence to the procedures of this program and the company's overall progress toward achieving the program's objectives."⁸¹

Kentucky Fried Chicken asks executive search firms to produce race and gender-specific

lists of candidates for its most senior positions.82

Northwest Airlines agreed in 1995 to end a discrimination suit based on statistical imbalances in the firm's workforce by consenting to \$4 million in accelerated hiring and promotion of black workers, special scholarships for black mechanics and pilot trainees, back pay, and promotions for minority employees.83

Los Angeles Times Washington Bureau Chief Jack Nelson told staffers in 1993 that no white males will be hired "until we [do] more for minorities and women." One staffer challenged him, asking, "Do you mean it's a rule that no more white males will be in the bureau?" Nelson answered, "That's right," and the staffer then asked, "Isn't that discrimination?" "No," Nelson replied. "It's affirmative action."84

Affirmative Action Success Story The U.S. Military

Two experts who have reviewed the U.S. military's experience with affirmative action believe that it could serve as a model for such programs in the private sector and other government agencies. According to former White House Counsel C. Boyden Gray:

One of the keys to the military's recent success...in...dealing with race relations...has been its insistence on each recruit's meeting the same employment standards. Virtually every recruit is required to have a high school diploma. This policy is the result of decades of data demonstrating that high school achievement as represented by a diploma is more predictive than aptitude tests of adaptability to military life and likelihood of serving out an entire tour of duty.

With the same employment standards required of each recruit, it should come as no surprise that the military can make integration work...Indeed, notwithstanding the relatively high minority drop-out rate, the percentage of blacks in the military, virtually all of whom have diplomas, is nearly twice the national percentage. 85

Equality of Opportunity, Not of Results. Professor Charles Moskos of Northeastern University explains that the secret of the Army's successful brand of affirmative action is that it eschews promotion quotas and timetables. As Moskos explains it, the system works as follows:

The goal for the number of minorities promoted to the next highest rank is based not on the overall number of minorities in the Army, but on the number of minorities in the pool of those qualified for promotion. The military has no hint of two promotion lists, whites being compared only with whites, blacks only with blacks. From enlistment on up, all candidates are held to the same standard.

The number of blacks who are promoted from captain to major, a virtual prerequisite for an officer seeking an Army career, is usually below the goal....The most plausible explanation is that a disproportionate number of black officers lack the writing and communication skills for promotion to staff jobs. In all other ranks, including colonel through general officers, promotions show little racial differences.

Strict maintenance of common standards for promotion... means that those who attain senior positions are fully qualified. Also important, those blacks who are promoted have a self-confidence that makes them the strongest defenders of standards for their own black

subordinates.⁸⁶

The U.S. Military Preparatory School prepares many minority candidates to meet West Point's demanding entrance standards. Professor Moskos reports that "Over the course of a 10-month program, average SAT scores of African-American students improve an astounding 140 points, bringing them into the same range as typical white students." Unlike California's Bridge Program, these programs are not targeted exclusively at minority soldiers. Their beneficiaries, however, are disproportionately African-American. The bottom line? According to Moskos, "no identifiable groups of underqualified minority members occupy positions of authority in the Army."⁸⁷

Effective Affirmative Action for the Private Sector? Unfortunately, the Supreme Court's decision in *Griggs v. Duke Power Company*⁸⁸ precludes private-sector employers from adopting the military's version of affirmative action. In *Griggs*, the Court determined that diplomas could not be a condition of employment because blacks had lower graduation rates and therefore would suffer disproportionate harm from such a requirement. Former White House Counsel C. Boyden Gray explains the ramifications of *Griggs* as follows:

Since few employers can meet the EEOC *Uniform Guidelines* statistical and litigation burden for defending the obvious point that educational achievement makes a better worker, diploma requirements have disappeared. In the name of civil rights, public policy has ended up punishing employers for rewarding academic achievement. More important, the incentive for a student to take education seriously has been lost because workplace rewards for academic achievement have been abandoned.⁸⁹

Although the Civil Rights Act of 1991 eliminated race-norming and permitted the use of educational achievement in hiring, the EEOC has not revised the Uniform Guidelines to reflect these statutory changes.

Repeal the Uniform Guidelines? To Gray, the first step in allowing private-sector employers to emulate the Pentagon's version of affirmative action is for Congress to repeal *Griggs* and the Uniform Guidelines, "at least insofar as they can be interpreted to put any inhibition on any employer's rewarding academic achievement."⁹⁰ This could be accomplished easily by amending the rules to provide that "No funds shall be made available to the EEOC to implement the Uniform Guidelines on Employee Selection insofar as such implementation inhibits any employer from rewarding academic achievement or prohibits an employer from establishing employment selection criteria that include, as a prerequisite of employment, a high school diploma."

The Stigma That Comes from Affirmative Action

Affirmative action detracts from the achievements of minorities and women who do not need preferential treatment to advance. "If some demon had sought to concoct a scheme aimed at undermining the credentials of minority businessmen, minority professionals and students, to stigmatize them permanently and to humiliate them publicly," Professor Carl Cohen explains, "there could have been no more cruel or ingenious plan devised than the preferential affirmative action that is now rampant in our country."⁹¹

One unfortunate side effect of these policies is that they encourage co-workers to question the qualifications of minorities.⁹²



* A recent *USA Today*/CNN/Gallup Poll found that 19 percent of black women and 28 percent of black men believe their colleagues "privately questioned your abilities or

qualifications because of affirmative action." The same survey found that 32 percent of whites thought "a racial minority where you worked got an undeserved job or promotion as a result of affirmative action programs."93

* Two years after Chicago Mayor Richard Daley invested \$5 million to revise a "racially biased" police lieutenant's exam, he learned that only three minority officers (and 51 whites) would be promoted on the basis of the exam. He jettisoned the test results and promoted an additional eight minority sergeants on the basis of "merit evaluations" and "in the interest of diversity." One female officer who said she was passed over for promotion despite high test scores observed candidly that "Everybody knows who the 13 are, so it's going to be hard for them." 94

Leading black intellectuals such as the Hoover Institution's Thomas Sowell and Boston University's Glenn Loury cite the stigma that accompanies preferential policies. Professor Loury, a professional economist, argues against affirmative action policies because they cause non-beneficiaries to doubt the qualifications of those who receive the preference and even the beneficiaries question their own abilities:

[A]ffirmative action for middle class blacks sometimes engenders doubt about the qualifications of the persons who benefit from it. If it is common knowledge that a lower standard is used to select black workers, then customers, co-workers, and others will rationally anticipate a lower performance from those they know to have been preferred in the process of selection. Moreover, affirmative action sometimes leaves its beneficiaries uncertain about the basis of their own accomplishments. Blacks promoted to positions of unusual responsibility in institutions which employ racial preferences often ask themselves whether they would have been offered the position if they were not black.95

The Supreme Court also admits that race-conscious laws presume inferiority on the part of favored groups:

Justice John Paul Stevens: [A] statute of this kind inevitably is perceived by many as resting on an assumption that those who are granted this special preference are less qualified in some respect that is identified purely by their race. Because that perception especially when fostered by the Congress of the United States can only exacerbate rather than reduce racial prejudice, it will delay the time when race will become a truly irrelevant, or at least insignificant, factor.96

Justice Clarence Thomas: [T]here can be no doubt that racial paternalism and its unintended consequences can be as poisonous and pernicious as any other form of discrimination. So-called benign discrimination teaches many that because of chronic and apparently immutable handicaps, minorities cannot compete with them without their patronizing indulgence. Inevitably, such programs engender attitudes of superiority or, alternatively, provoke resentment among those who believe that they have been wronged by the government's use of race. These programs stamp minorities with a badge of inferiority and may cause them to develop dependencies or to adopt an attitude that they are entitled to preferences.97

THE RECORD

THE CLINTON ADMINISTRATION

Not only does the Clinton Administration defend programs that set aside benefits exclusively for minorities and minority institutions, but some Clinton appointees have advanced race and sex-based preferences aggressively in their agencies. Here are several examples:

*** Department of Defense Hiring Quotas.** On August 10, 1994, Undersecretary of Defense Edwin Dorn issued a memorandum implementing Secretary William J. Perry's call for "vigorous action" to increase the number of women, minorities, and persons with disabilities. Dorn's memo directed his section chiefs as follows:

Dr. Perry is holding me responsible for improving representation within [the Office of the Undersecretary of Defense]. For this reason, I need to be consulted whenever you are confronting the possibility that any excepted position, or any career position at GS-15 level and higher, is likely to be filled by a candidate who will not enhance diversity.

We know that this is a problem; it may be apparent even at our own staff meetings.... I believe that the informal process outlined above will produce results. If not, we will need to employ a more formal approach involving goals, timetables and controls on hiring decisions.98

*** Department of Defense Quotas for Contractors.** On October 23, 1995, after a thorough review, the Department of Defense decided to maintain the "price evaluation preference," a particularly egregious set-aside for small disadvantaged businesses (SBDs) that bid for prime contracts. Under this preference, SBDs seeking Department of Defense contracts prevail even if they submit bids that are as much as 10 percent higher than the lowest bid submitted by other firms.99

*** Federal Bureau of Investigation.** The FBI recently agreed to establish race-based guidelines for hiring, merit awards, discipline, and special assignments. It now adds bonus points to the test scores of minority applicants, prompting one minority recruiter to say that FBI officials "Would decide that they want so many blacks or so many Hispanics. Then they would go down the list until they got that number."100

*** The State Department.** Upon discovering that few African Americans speak foreign languages, the State Department adopted a policy that allows it to discard foreign language skills in assessing minority applicants. Since 1979, the department has used a "near pass" category to enable blacks who failed the entrance exam to compete for jobs. Faced with a mini-rebellion from several white employees, Conrad Harper, an African American who serves as the Department's legal adviser, defended race-conscious hiring on the grounds that "it just doesn't do to walk into a bureau and see no one who looks like me."101

*** Chevy Chase Savings and Loan.** Clinton Administration officials accused Chevy Chase Savings and Loan of "shunning a community" by not opening branch offices in certain minority neighborhoods. Faced with a possible federal lawsuit, Chevy Chase agreed to a consent decree under which the bank not only must open those branch offices, but also must adopt hiring quotas, approve loans for black applicants at below-market rates, provide grants to minority homebuyers to cover their down payments, and advertise in minority-owned outlets, including at least 960 column inches of advertisements in black-targeted newspapers.102

*** Federal Communications Commission.** In January 1994, the FCC voted to set aside half

of its two thousand licenses for wireless personal communications services (personal phones and pagers) for firms owned by minorities and women and to provide licenses for such

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worth \$500 million.¹⁰³

*** Historically Black Colleges and Universities (HCBUs).** Executive Order 12876, issued November 1, 1993, requires the head of each agency subject to the order to establish an "annual goal" for funds awarded in grants, contracts, or cooperative agreements to HCBUs. The goal actually is a hard quota, with each agency required to award HCBUs "an amount above the actual amount of such awards from the previous fiscal year."¹⁰⁴ In FY 1992, 99 HCBUs received a total of \$850.2 million from 10 cabinet departments and independent agencies.¹⁰⁵

In response to President Clinton's executive order, federal agencies have increased the level of support to HCBUs:

- **The U.S. Department of Agriculture** has done its fair share to comply with this order. The share of USDA contracts awarded to HCBUs rose from \$76.8 million in FY 1992 to \$92.9 million in FY 1994,¹⁰⁶ an increase of approximately 20 percent.

- **The Department of Energy** increased its awards to HCBUs from \$4.5 million in FY 1993 to \$6.3 million in FY 1994. In addition, DOE signed a five-year, \$35 million "Academic Partnership Agreement" with the Historically Black Colleges and Universities and Minority Institutions Environmental Technology Consortium "to strengthen the academic infrastructure for training minority scientists and engineers for the environmental professions."¹⁰⁷

- **Department of Justice Quota Requirements on Local Police Departments.** On January 20, 1995, Oklahoma City decided to withdraw from the U.S. Department of Justice's Police Hiring Supplement Grant program, under which it had been authorized to hire 25 officers. Police Chief Sam Gonzales objected to a Justice Department letter which demanded an "underutilization analysis" for women and minorities and an affirmative action plan that includes specific steps to achieve goals for correcting the underutilization that the department assumed must exist. Justice Department officials also demanded that the city develop a specific plan for the "equal employment of women and minorities within the Police Department's sworn personnel." Chief Gonzales commented: "I believe this particular language to be very significant in that it states 'equal employment' of women and minorities rather than 'equal employment opportunity'."¹⁰⁸

*** Federal Aviation Administration Quotas for Air Traffic Controllers.** In November 1994, William Jeffers, the FAA's director for air traffic control, said his agency was committed to filling "one out of every two vacancies with a diversity selection." In the summer of 1995, the FAA issued a "diversity handbook" to its managers and supervisors which argued that "the merit promotion process is but one means of filling vacancies, which need not be utilized if it will not promote your diversity goals."

In 1995, the *Washington Times* discovered that the FAA had created a new way of screening job applicants. Called "qualification analysis," it disqualifies applicants who meet official job requirements. According to an FAA job announcement, "Applicants who meet the qualification requirements... cannot be considered for this position.... Only those applicants who do not meet the Office of Personnel Management requirements... will be eligible to compete."¹⁰⁹

* **U.S. Forest Service Diversity Quotas.** To increase the diversity of its workforce by hiring more women firefighters, the U.S. Forest Service's Pacific Southwest Region created "upward mobility positions" limited to "applicants who do not meet [Office of Personnel Management] qualifications requirements." This meant that jobs went to women, who filled 179 out of 184 available openings.¹¹⁰ A Forest Service spokesman defended the search for unqualified workers: "On its face, this seems bizarre. However, the intent if not the choice of language was appropriate to the circumstances."¹¹¹ Representative Wally Herger (R-CA) has introduced legislation directing the Secretary of Agriculture to take steps to end this discriminatory employment practice.¹¹²

THE 104TH CONGRESS

At the beginning of 1995, the issue of racial preferences attracted considerable attention on Capitol Hill. Since that time, however, Congress has not taken legislative action. As Congress turns to issues outside the Contract With America, legislation addressing quotas will likely be deliberated.

Although racial preferences reach into virtually every aspect of American society, legislation currently being considered in Congress leaves most federal preference discrimination untouched. Though the debate no doubt will be extremely controversial, success even in this limited area would be unusually significant because it was the federal government, through the judicial activism of liberal Supreme Courts, which established the current regime of legal race privileges. It is proper, therefore, for Congress to reassert its constitutional role and restore the timeless principle of equal treatment under the law for all Americans by ridding the public sector of such veiled restitution and social experimentation.

The Dole-Canady Legislation

In 1996, Congress will consider the Equal Opportunity Act of 1995, introduced by Senator Robert Dole (R-KS) and Representative Charles Canady (R-FL). This legislation would implement the *Adarand* decision by eliminating race and sex consciousness from all federal programs and activities. Professor Carl Cohen of the University of Michigan has summed up the philosophical premise of this legislation:

[M]oral entitlements are not held by groups. Whites as a group do not have rights; blacks as a group do not have rights; rights are possessed by persons, individual human persons. And when persons are entitled to be made whole for some injury earlier done to them, the duty is owed not to members of their race or sex or nationality, not to their group, but to them as individuals. The effort to defend preference as group compensation fails because it fundamentally misconceives the relation between wrongs and remedies.¹¹³

President Clinton contends that, even after more than three decades, "the evidence suggests, indeed, screams" that the day to end these programs has not arrived. Why, then, put an end to race and sex-based preferences now? Representative Canady responds that "if we do not end these programs now, there is a very real risk that they will never end."¹¹⁴ That fact is that

Even the most committed supporters of racial and gender preference programs concede that these programs are inconsistent with fundamental American ideals.... But if these programs should not go on forever, if there is something wrong with them such that they should end at some unspecified future date, then they should end now. We cannot, as a nation, trifle with our principles.¹¹⁵

What would the Dole-Canady legislation do? The Dole-Canady Equal Opportunity Act of 1995 ¹¹⁶

seeks to accomplish two broad goals:

*** Equal Treatment:** "The purpose of this Act is to ensure that all Americans are treated equally by the Federal government in Federal employment, Federal contracting and subcontracting, and Federally-conducted programs."¹¹⁷

*** Equal Opportunity:** "The Act endorses those Federal 'affirmative action' programs that are designed to recruit broadly and widen the opportunities for competition without guaranteeing the results of the competition." At the same time, the bill would eliminate those federal activities that create quotas, set-asides, timetables, goals, and other preferences on the basis of race, color, national origin, or sex.

The legislation reflects the view that the federal government must put its own house in order with respect to racial and gender preferences. Specifically, the bill:

*** Bans race or sex-based preferences in federal programs.** The federal government, its officers, and its employees would have to end all intentional discrimination based "in whole or in part on race, color, national origin, or sex" with respect to contracts, subcontracts, and employment. In addition, no federal entity would be allowed to "grant a preference" to any individual or group on the basis of race, sex, or ethnicity. As defined broadly in the Act, granting a preference includes "any preferential treatment and includes but is not limited to any use of a quota, set-aside, goal, timetable, or other numerical objective."

*** Prohibits the federal government from encouraging federal contractors and subcontractors to adopt race or sex-based preferences.** The Office of Federal Contract Compliance Programs (OFCCP) would no longer be allowed to pressure firms that receive federal contracts or subcontracts to adopt racial or gender quotas. Located in the Department of Labor, OFCCP receives an annual appropriation of \$60 million to monitor the hiring practices of federal contractors with respect to race, ethnicity, and sex. Its jurisdiction extends to more than \$161 billion in annual federal contracting activity.

*** Protects outreach, recruiting, and marketing efforts designed to bring more qualified minorities and women to the attention of employers, colleges, and universities.** Federal programs that are targeted on minorities but do not "guarantee the results of the competition" would continue in place. One example is a small program in the U.S. Department of Agriculture¹¹⁸ which provides support for campus recruitment and retention programs and agricultural career awareness initiatives in order to increase the participation of minorities in agriculture without subjecting participating schools to any numerical goals or timetables.

*** Exempts Historically Black Colleges and Universities (HCBUs) and Indian tribes.** The federal government sets aside literally hundreds of millions of dollars annually for HCBUs and Indian tribes. While conservatives ought to question the rationale for these programs,¹¹⁹ this legislation would leave them alone.

In short, the Equal Opportunity Act of 1995 would put an immediate end to an enormously complex web of race and sex-based preferences in federal law, including:

- As many as 100 programs in dozens of federal agencies and departments that grant preferences to individuals, nonprofit organizations, and colleges and universities on the basis

of race, ethnicity, or sex. Together, these programs receive over \$10 billion annually.

- Dozens of agency-specific regulations that reach every program in an agency's jurisdiction, even where the authorizing law makes no mention of race or sex preferences. In addition, Dole-Canady would put an end to the common practice of conditioning federal employee evaluations and bonuses on whether employers have met their affirmative action goals.

- Several government-wide preferences that affect over \$161 billion in federal contracting activity annually, and others that condition the awarding of federal licenses and charters for example, to banks and broadcasting facilities on the recipient's agreeing to bestow preferences on favored groups.

WHAT TO DO IN 1997

Candidates who want to advance a policy of equal treatment under the law for all employees, students, and recipients of federal grants and contracts would do well to embrace the following policy changes:

*** Enact the Dole-Canady Equal Opportunity Act of 1995 (H.R. 2128/S. 1085).**

Enactment of this legislation represents the first step toward a true policy of equal treatment under the law. It would end the federal government's practice of favoring women and minorities in the allocation of over \$160 billion of federal contracts; establish race-neutral and sex-neutral principles in the hiring, promotion, and evaluation of all federal employees; end the imposition of federal racial quotas on private-sector firms that do business with the government; and end discriminatory practices in the operation of hundreds of federal programs that award over \$10 billion annually.

*** Restore the original intent of the Civil Rights Act of 1964.** The guiding principle behind the Dole-Canady bill equal treatment under the law must be extended to employees of state and local governments, colleges and universities, and all private-sector employers. To accomplish this, Congress must restore the original intent of the Civil Rights Act of 1964 by adding language that echoes former Justice Thurgood Marshall's statement that the 1964 Act "prohibits all racial discrimination in employment, without exception for any group of particular employees." Congress must explicitly forbid courts and administrative agencies from construing Title VII of the 1964 Act as authorizing, permitting, or encouraging the use of quotas or preferences involving race, color, religion, sex, or national origin.

*** Eliminate race-conscious admissions policies at colleges and universities.** There is no justification for the proliferation of race-exclusive scholarships, special financial assistance programs, and relaxed admissions standards for minority students now found routinely in our colleges and universities. Congress should abolish these practices outright.

*** Repeal the EEOC's *Uniform Guidelines on Employee Selection Procedures*.** Congress should use its power of the purse to end the Equal Employment Opportunity Commission's practice of using the *Uniform Guidelines* to prohibit employers from requiring employees to meet minimal educational requirements, such as possession of a high school diploma.

Q & A

Q. Would enactment of the Dole-Canady legislation result in race and gender neutrality for all Americans?

A. No. Because the Dole-Canady bill only reaches federal employees and federal programs, it would not affect affirmative action practices that, thanks to overzealous judges and agency bureaucrats who have misconstrued the original intent of the 1964 Civil Rights Act, have become the norm in the private sector, in state and local government, and at colleges and universities.

Q. Why do you want to eliminate protections for people who are discriminated against?

A. In fact, the original Civil Rights legislation in 1964, which is still on the books, protects everyone of all races and creeds from discrimination. The Civil Rights Act of 1964 still provides this protection on an individual basis. It is the courts, through undue judicial activism, which have misconstrued the legal application of these laws to allow racial preferences for certain favored races at the expense of others.

As Justice Scalia stated in his *Adarand* opinion, there can be no "debtor race." In order for civil rights to be something other than a tool for veiled restitution and retribution, the legal protection from discrimination must only attach to individuals on a case by case basis. Any other application must result in an unfair system of racial preferences and government-sponsored discrimination.

Q. How can conservatives call for a color blind society when discrimination exists?

A. It is first important to realize that the federal government is limited in its ability to address such social maladies as racial discrimination. The best it can do is to end those government programs that promote discrimination. Affirmative action programs not only promote discrimination; discrimination is the fundamental principle behind of these programs.

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Policy Report
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From Preferences to Empowerment:
A New Bargain on Affirmative Action

Will Marshall

Affirmative action faces triple jeopardy: a skeptical Supreme Court, a hostile Republican Congress, and the possibility of a first-ever popular vote next year in California, where opinion is running heavily against preferences based on race and gender. With many whites losing patience with preferences and many blacks afraid of losing hard-won ground, there's a growing risk of a convulsive "either or" debate that rends society along racial lines. What's needed is a third way that honors our moral commitment to equal opportunity without further depleting our civic reserves of interracial trust and goodwill.

Although affirmative action also affects women and other ethnic groups, it divides Americans most dramatically along racial lines. In *The Scar of Race*, Paul Sniderman and Thomas Piazza write that: "The new race-conscious agenda has provoked broad outrage and resentment. Affirmative action is so intensely disliked that it has led some whites to dislike blacks an ironic example of a policy meant to put the divide of race behind us in fact further widening it."¹

The Supreme Court touched these raw racial nerves in a series of decisions in June that tightened rules for federal set-asides, school desegregation, and racial gerrymandering. As conservatives gleefully forecast the beginning of the end for the "racial spoils system," defenders of affirmative action were apoplectic. Jesse Jackson even likened the high court to the Ku Klux Klan: "While we react to those wearing white sheets, those wearing black robes are killing our dreams and our justice."²

Left-right hyperbole aside, for many black Americans affirmative action remains a potent symbol of the nation's enduring commitment to racial equality. Opposition to race-conscious policies, many suspect, is really a form of racial denial of wishing away a deep and persistent racism woven into the fabric of American life. Having been shortchanged for centuries, many black Americans are reluctant to give up set-asides or hiring preferences without getting something tangible in return. And they are understandably outraged by conservative attempts to make "reverse discrimination" the overriding civil rights issue of the day.

Unfortunately, the symbolism is equally powerful in a negative way for most white Americans, women as well as men. Wary of race-conscious policies from the start, their skepticism has hardened as remedies originally justified as limited and temporary have congealed into a permanent, creeping regime of group classifications and favoritism. Cast as the villains in the affirmative action morality play, white working men

naturally enough resent the prospect of being denied a job, a promotion, or a slot in college simply because they're white. (Many Asian-Americans likewise fear that affirmative action imposes an artificial ceiling on their ambitions.)

But their more fundamental objection has to do with the essential fairness of the American system of competitive enterprise. Put simply, they think that success or failure should reflect individual merit, not group membership or attempts by governing elites to dispense privileges on the basis of ethnic politics.

Are we, then, careening toward an irreconcilable conflict between racially distinct conceptions of justice? Not necessarily. Opinion surveys suggest that many Americans seem uncomfortable with the all-or-nothing choice being foisted upon them by liberals who believe that pulling on any loose thread will unravel the entire fabric of civil rights and by conservatives who imagine that their belated embrace of the principle of color-blindness can somehow wipe the historical slate clean of hundreds of years of racial oppression.

While racial and ethnic demagogues on all sides insist there is no middle ground on affirmative action, that's where most Americans instinctively repair. A July 1995 CNN/USA Today poll gave respondents three options: "basically fine the way it is"; "good in principle but needs to be reformed"; and "fundamentally flawed and needs to be eliminated." Sixty-one percent said they would reform affirmative action policies; 22 percent would scrap them; and only 8 percent favored leaving existing policies intact. 3

Key political leaders likewise are groping for a third way in the affirmative action debate. House Speaker Newt Gingrich, while adamantly opposed to race and gender preferences, has eschewed the purely negative stance adopted by many Republicans. "I'd rather talk about how do we replace group affirmative action with effective help for individuals, rather than just talk about wiping out affirmative action by itself," he said in April.4

In a major address on affirmative action in July, President Clinton largely reaffirmed the status quo, although he did concede that some changes are necessary, if only to bring federal policies into line with new Supreme Court guidelines.5 The speech won unanimous praise from liberal elites but failed to address the public's doubts about the basic fairness of race-conscious policies. By failing to draw a distinction between the morally unimpeachable end of racial equality and the morally dubious means of race preferences, the President also missed an opportunity to challenge conservatives to join in the search for alternative ways to promote equal opportunity.

Conventional wisdom has it that the Republicans have everything to gain and nothing to lose by using affirmative action as a wedge to split Democrats'

biracial coalition. Yet not all Republicans are ready to replace their portraits of Abraham Lincoln with pictures of Jesse Helms: Jack Kemp and Bill Bennett, for example, have warned GOP presidential hopefuls that they could gravely harm the party by whipping up racial passions to win elections. Many Republicans swear they support equal opportunity as fervently as they oppose quotas; now is the time to find out what they're willing to do to make that commitment tangible. By refusing to countenance necessary changes in affirmative action, however, liberals let conservatives off the hook and risk losing everything.

The affirmative action debate touches on two urgent public questions one about our country's past, the other about its future. The first concerns the perennial American dilemma of race, or how to pay an historical debt to black Americans without generating fresh racial grievances in the process. The second question looks ahead to America's future as a multiethnic democracy, or how to accommodate the nation's growing diversity without validating an ethnocentric politics that threatens to fracture society.

As these questions suggest, what's missing from the debate is a civic perspective that rises above race or other group identity to consider the interests of society as a whole. Such a view grants neither side a moral monopoly; rather, it acknowledges the tensions inherent in affirmative action and rejects the all-or-nothing choice posed by absolutists in either camp. The search for a third way, however, doesn't entail split-the-difference compromises. It starts by reaffirming the basic tenets of U.S. liberalism: that civil rights inhere in individuals, not in classes or groups; that all citizens are entitled to no more or less than the equal protection of the laws; and that government has a responsibility to promote equality as Americans have traditionally understood it as equality of opportunity rather than equality of result.⁶

Seen through the lens of shared principles rather than group rivalry, affirmative action appears to go too far in some directions and not far enough in others. The emphasis on numerically driven preferences, for example, ineluctably contradicts the principle of equal protection. On the other hand, few dispute that affirmative action as we know it fails to lift the minority poor, whose moral claim on society is strongest.

These twin defects suggest an opportunity to strike a new bargain on racial equality and opportunity. It requires that each side make a key stipulation: Critics of affirmative action should acknowledge that the legacy and lingering presence of racial bias remain significant obstacles to black progress, especially the poorest African-Americans stranded in inner cities. Defenders of affirmative action should concede that preferences cannot be the answer because their reach is too limited and because they make it more rather than less difficult to

\ transcend racial difference.

Reducing the significance of race, looking beyond the color of our skin to our common humanity this, after all, was the essence of Dr. Martin Luther King's celebrated dream. He invoked the liberal spirit of the Declaration of Independence and demanded that Americans live up to their beliefs in individual liberty and equality before the law. Dr. King's moral vision, not the current push for race-conscious preferences and group entitlements, remains the surest lodestar for a society still struggling to overcome the traumatic legacy of racial subjugation.

In that spirit, this essay proposes a new bargain on equal opportunity that trades group preferences for individual empowerment. Such a bargain entails three steps:

- * First, phase out mandatory preferences in government and reinforce voluntary affirmative action by private employers.

1.

However benign the intention behind them, today's race-conscious preferences or "positive discrimination" contradict the principle of equal protection and therefore can be justified only as temporary, narrowly tailored remedies to past discrimination. Moreover, they put government in the business of institutionalizing racial distinctions, hardly a good idea for a democracy held together only by common civic ideals that transcend group identity. Congress and the President should restore affirmative action's transitional and remedial character by setting termination dates for all federal contract set-asides and other numerically driven goals in procurement and government employment. It's also time to repeal Lyndon Johnson's 1965 executive order requiring federal contractors to adopt minority hiring "goals and timetables." In practice, guidelines encourage employers to hire women and minorities on a rigidly proportional basis.

Alternatively, we should bolster voluntary affirmative action in the private sector, where most jobs and opportunities lie and where the battle for equal opportunity must ultimately be won. A new bargain must include the resources necessary to ferret out discrimination in employment and housing and enforce anti-bias laws. Fortunately, most major U.S. employers actively recruit minorities and women because they see diversity as a competitive advantage in an increasingly multiethnic society. "Diversity management" is well-entrenched in corporate culture. Such voluntary action, backed by strong anti-discrimination laws, avoids the inflexibility of bureaucratic mandates that lead to de facto quotas.

- * Second, replace government preferences with new policies intended to empower poor individuals and communities.

2.

The legacy of racial discrimination today is most

starkly reflected in the fact that black Americans are disproportionately poor, more likely to be jobless, dependent on welfare, trapped in decaying and dangerous public housing, and condemned to lousy public schools. Unequal resources and opportunities for the minority poor rather than preferences that mainly benefit middle-class minorities and women should top the civil rights agenda in the 1990s. Indeed, affirmative action is a relatively cheap and ineffective substitute for a broad-scale agenda of economic empowerment aimed especially at the urban poor. Such an agenda should begin by radically lifting the quality of inner-city schools and creating a more effective occupational learning system that links schools to private employers.

New public investments are also required to help low-income families save and build personal assets, start businesses, and become homeowners. At a time of fiscal retrenchment, will the public be willing to redirect resources for these purposes? No one knows, but a majority of people polled consistently say government has an obligation to help compensate the minority poor. This much is certain: The debate over affirmative action stands in the way of building a new public consensus behind a course of economic empowerment.

* Third, ~~base~~ affirmative action in college admissions on need as well as race, and lift students rather than lower standards.

Notwithstanding the University of California's recent decision to end all ethnic and gender preferences, the case for continuing affirmative action is strongest in college admissions. One reason is that too many minority kids come from broken families and are handicapped by the abysmal quality of inner-city schools. Another is continuing racial and ethnic disparities in standardized test scores and grades, which only partially predict performance but wield decisive influence in determining who gets to go where. But the most important reason is education's democratizing mission. It is the incubator of civic equality, exposing people from different backgrounds to one another and giving them a chance to compete on a roughly equal footing. This is especially true now, as a college degree has become a minimal credential for competing in a new, knowledge-intensive economy.

Graduating from Yale probably opens more doors than graduating from State U. In general, however, colleges prepare people to compete; they don't predetermine the outcome of market competition. Nor has entrance traditionally been based on ruthlessly meritocratic standards; on the contrary, colleges have traditionally given preferences to the children of alumni or faculty, to applicants from other parts of the country or world, to athletes, musicians, and others. Under such circumstances, it's difficult to argue with the Supreme Court's Bakke ruling in 1978 that race can be a factor but not the main factor in deciding who is admitted to college.

Still, two reforms are necessary here as well. First, affirmative action in admissions should be based on need as well as race; that is, targeted to people from low-income families or to students who are the first in their family to attend college. There's no reason for blacks or women from middle-class families to get a preference over a poor white or Asian student. Second, instead of simply lowering standards to meet diversity goals, colleges should take extra steps to lift affirmative action students to the standards they must meet to succeed. Otherwise, affirmative action merely sets up minority students for failure and may also compromise academic standards.

THE CHANGING POLITICS OF RACE

Nowhere is affirmative action more embattled than in California, where the University of California's Board of Regents voted in July to end all ethnic and gender preferences in admissions. The proposed California Civil Rights Initiative (CCRI), whose backers are trying to place it on a statewide ballot in November, would go farther, banning preferences in state contracts and hiring as well as college admissions. Polls show solid majorities (including among women) in favor of CCRI.⁷ Such findings are consistent with national surveys, which since the late 1970s have consistently reflected public ambivalence on affirmative action: majority support for efforts to compensate individuals for the effects of discrimination, but deep misgivings about group preferences, and outright hostility to quotas.

Differing perceptions about how much racial progress we have made in the last three decades also exert a powerful influence on attitudes toward affirmative action. Here, whites tend to be optimistic and blacks pessimistic. In a sense, they are both right: While overt, legally sanctioned racism has virtually disappeared, covert or unconscious discrimination continues in many settings, like a surreptitious thumb tipping the scales of opportunity against blacks.

Experiments by the Urban Institute using equally qualified pairs of black and white applicants for jobs and housing demonstrate that the former still face unequal treatment. In one such employment "audit" in 1990, for example, the Urban Institute found that white seekers of entry-level jobs advanced farther in the hiring process 20 percent of the time, while black applicants went farther only seven percent of the time. Researchers concluded that old-fashioned bias against blacks was three times more likely than "reverse discrimination" against whites.⁸

Such evidence suggests we are still far from the color-blind society frequently invoked by critics of affirmative action. On the other hand, some defenders of race-conscious policies undermine their own credibility by refusing to acknowledge that a sea-change has occurred over the past 30 years in America's

racial mores. The politics of race, note authors Sniderman and Piazza, has changed dramatically since the 1940s and 1950s. Then, the overriding issue was race itself: whether blacks should enjoy the same rights as white citizens. That issue was settled in the 1960s, and there are now a number of distinct racial issues on which the public lines up in different ways. "Prejudice has not disappeared, and in particular circumstances and segments of the society it still has a major impact," they write. "But race prejudice no longer organizes and dominates the reactions of whites; it no longer leads large numbers of them to oppose public policies to assist blacks across-the-board. It is . . . simply wrong to suppose that the primary factor driving the contemporary arguments over the politics of race is white racism."⁹

It's also difficult to square images of racial oppression with the tremendous economic and social strides black Americans have made since the mid-1960s. Regrettably, such progress has often been obscured by unbalanced media portrayals that dwell on the pathologies of the urban underclass rather than the achievements of an expanding black professional and middle class. The economic gap between whites and blacks is closing: In 1992, the median income of black married couples with children was one percent below the average for all American families. Family structure, rather than race, is the key determinant of family income.¹⁰

Such gains, of course, inevitably chip away at the historical rationale for affirmative action: It's hard to see an entire class of people as victims when many of them are better off financially than you are. It's also true that affirmative action increasingly resembles traditional special-interest politics, replete with organized constituencies (such as minority contractor associations) that work closely with congressional allies to ward off threats to programs that directly benefit them. And while the evidence suggests that these programs have made at best a modest contribution to blacks' progress, their political and moral costs are indisputably high.

The quest for racial preferences has dissipated the moral authority of the civil rights movement. For much of the public, the once-broad crusade for racial justice seems to have degenerated into narrow demands for racial entitlement. Civil rights groups which in the 1960s had a biracial, ecumenical cast now act more like ethnic lobbies. The conflating of civil rights and race preferences, meanwhile, has allowed conservatives to posture as the champions of color-blind justice.

Finally, there is growing unease about affirmative action's steady drift towards proportionalism, the notion that the number of women and minorities in virtually every setting must reflect their percentage of the nearby population. In addition to erasing any real distinction between quotas and affirmative action, this trend reinforces what has been variously described as the "new racialism" or "identity politics" that

views public questions mainly through the prism of race, gender, and ethnicity.

SECOND THOUGHTS ON DIVERSITY

From a civic perspective, the push to extend group preferences in the name of diversity is troubling.

As a social aspiration as an expression of American tolerance and openness diversity is unquestionably a worthy goal. The jostling and mixing of peoples from different places and cultures gives our society a unique vibrancy. U.S. businesses, competing in an increasingly multiethnic environment, have learned that a diversified workforce is a competitive asset if not a necessity.

As a government mandate, however, diversity assumes a less benign character. It weakens the civic ethic of self-reliance by encouraging citizens to recast themselves as victims to secure government favors. In the hands of bureaucrats, the quest for diversity quickly turns into a numbers game. Since no one knows how much diversity is the right amount, the safest course is to strive for the proportional representation of each protected group. The bean-counting logic of bureaucracy and the ideology of group rights thus combine to push us toward quotas.

Defenders of preferences frequently note that white males still predominate in the upper reaches of society. This is true, but it more accurately reflects discrimination 20 to 30 years ago, when today's top executives began their climb up the corporate ladder, than present conditions. In any event, the affirmative action debate can't be reduced to a pure struggle for power among different races, sexes, or ethnic groups. For most Americans, vital principles also are at stake. As sociologist Seymour Martin Lipset has pointed out, group preferences and entitlements run against the grain of an "American creed" that emphasizes individual rights and achievement, meritocratic values, and equality defined as a chance to compete on fair terms, not a guarantee of equality of result.

The civil rights movement triumphed not by challenging but invoking these underlying beliefs by forcing white Americans to confront the contradiction between their ideals and the ugly realities of segregation. Race-conscious policies now have a tenuous hold precisely because they seem to contradict the ideal of equal, color-blind citizenship. Americans, ever pragmatic, may tolerate temporary deviations from their liberal, individualistic creed to pay an historical debt. But they are unlikely to accept its overthrow by a new ideology of group rights, that, in its most extreme form, indicts the creed itself as the cause of racism rather than its cure.

From the treatment of Native Americans to slavery, from Jim Crow to the internment of Japanese-Americans during World War II, U.S. history abounds with cautionary tales of people lumped into groups and

deprived of their civil rights. Having at last recognized and tried to rectify these injustices, it seems odd and dangerous to put government back into the business of classifying citizens according to race, gender, and ethnicity. This was originally justified as a temporary measure to remedy the effects of discrimination. Now, however, the goal of some affirmative action supporters seems to be the non-remedial purpose of promoting diversity for its own sake.

The new assumption is that government should not merely set fair rules of competition but apportion equal outcomes by group in the struggles of life. Even if this were within government's grasp, government could do so only by restricting some citizens' freedom and opportunity. Why should a poor white kid in Kentucky struggle to get ahead if his government decrees that whites as a group already hold too many of the best jobs? Government cannot ordain perfect justice

but it can, through an unthinking embrace of group-think, give official sanction to a crude determinism that sees character and values as shaped chiefly by skin color or gender.

The Clinton Administration unfortunately has endorsed diversity as a pretext for racial preferences. In a case before the U.S. Court of Appeals, the Justice Department reversed a previous decision to back a white school teacher laid off by the Piscataway, NJ, school board to promote faculty diversity. In arguing that the board acted legally, the Clinton Justice Department has crossed a line carefully drawn by the Supreme Court to prevent layoffs or firings purely on the basis of race.

The facts of the Piscataway case are these: The school board hired one black and one white business education teacher on the same day in 1980. Eight years later, budgetary pressures forced the board to lay off one of the equally qualified teachers. Instead of flipping a coin the method previously used for resolving similar dilemmas the board chose to keep the black teacher on grounds that she was the only black in the 10-member business department. District-wide, however, blacks made up 10 percent of teachers, compared to six percent in the county's available labor pool.

The Supreme Court has previously rejected (in *Wygant v. Jackson Board of Education*) a similar plan to protect minorities against layoffs either to remedy "societal discrimination" or to provide minority "role models." If the Courts uphold the Piscataway layoff policy, however, the effect will be to dramatically lower the bar for justifying discrimination against white workers. Such a ruling would sever the increasingly tenuous link between race-conscious remedies and specific acts of discrimination and wipe out the distinction between preferences and quotas.

BEYOND BLACK AND WHITE

The rise of ethnic pluralism in America is another reason for reassessing group preferences.

In the 1960s, civil rights was largely a matter of black and white. Since then, Asian-Americans have grown from roughly one million to 8.5 million; Latinos from 3.5 million to 23 million.¹¹ Groups classified as minorities now make up one-third of the population; add women and about two-thirds of the U.S. population is eligible for preferences.

There is something inherently absurd in classifying a majority of the country as victims and lumping them in such hopelessly broad categories as "Hispanic" or "Asian." A majority of Hispanics describe themselves as white, while immigrants from Korea or Japan have little in common with those from the Philippines or the Indian Subcontinent. Yet more groups are rushing to get into the victimization act: Some Arab-Americans want the government to designate a new minority people of Middle Eastern background.

The more claimants for protected status, the more the zero-sum logic of preferential treatment multiplies opportunities for group conflict. In Los Angeles, for example, Latino advocacy groups have challenged what they regard as the overrepresentation of blacks in local government. Asians have long complained of de facto quotas that limit their numbers in California's most prestigious universities, despite their high grades and test scores. In fact, polls show majorities of Latinos and Asians, as well as women, favoring CCRI. The successful legal challenge to the University of Maryland's minority scholarship program came not from an "angry white male" but from an Hispanic student excluded from the blacks-only program.

As America becomes more diverse, it's more important than ever that government be as neutral as possible with respect to race, gender, and ethnicity. The alternative is stepped-up competition among ethnic groups for political power and government favors a formula for an American version of the communal strife that has wracked India and other countries that recognize group rights. Already, identity politics is roiling U.S. campuses, where oppression studies have mushroomed, where minority students resegregate themselves in ethnic dorms, and where an excruciating sensitivity to race and gender protocol has sparked a backlash against "political correctness."

Like any other set of public policies, affirmative action must be adjusted periodically to evolving realities. The starting point is to reject the stark up-or-down choice posed by left and right either reflexive defense of the status quo or a rush to dismantle all group-conscious policies. Next, we should take three steps toward a new bargain on equal justice and opportunity.

STEP 1: PHASE OUT MANDATORY PREFERENCES

The President and Congress should start refocusing

affirmative action by phasing out mandatory preferences in contract set-asides, public jobs, and hiring by private firms that do business with the government.

According to the Congressional Research Service, the federal government operates 160 race and gender preference programs.¹² The largest category is set-asides, in which agencies typically allot 10 percent or more of federal contracts to businesses owned by minorities or women. The Supreme Court's recent Adarand decision dramatically raised the hurdle for justifying all racial and ethnic classifications and policies. Henceforth, set-asides and other numerically targeted preferences must be narrow in scope, limited in duration, pegged to specific findings of past discrimination, and diffuse in the burden they place on non-protected groups. It is doubtful that many federal preferences can survive the Court's new standard of "strict scrutiny." President Clinton also has called for tightening up on abuses in set-asides, such as white contractors who suddenly discover they have Native American ancestors or give their wives title to the business in order to qualify as a minority-owned enterprise.

Like welfare or other government transfer programs, set-asides are essentially redistributive. They steer public resources to minority businesses but do little to develop the skills that would allow those concerns to prosper independent of government. A study by the General Accounting Office shows that the longer companies stay in Small Business Administration's Section 8 (a) set-aside program, which is the model for most federal set-asides, the less likely they are to develop outside business that would sustain them when they no longer get non-competitive government contracts.¹³

Instead of rigging the competition for public contracts, affirmative action should help minority businesses compete on even terms. In the wake of the Supreme Court's 1989 decision striking down a Richmond, VA set-aside program, Birmingham, AL has jettisoned its contract set-asides and is working instead with the business community to nurture minority-owned enterprises. This voluntary model builds the capacities that allow minority businesses to stand on their own in market competition rather than using public resources to shield them from that competition.¹⁴

It's also time for Congress to end the bidding discounts, tax credits, and set-asides the Federal Communications Commission uses to encourage minority- and female-owned businesses in telecommunications. There's little evidence that such preferences have achieved their stated purpose of promoting "minority views" in broadcasting; the content of broadcasting is determined by what people want to see or hear, not by the complexion or sex of company owners. And as Jeff Rosen points out in The New Republic, even large and successful minority businesses are eligible for set-asides for cellular licenses.¹⁵ Why do they need a boost from government?

Census figures show that minority- and female-owned enterprises are growing rapidly.¹⁶ In keeping with the principle that group preferences should be limited and transitional, we should begin phasing out set-asides over, say, a five- to 10-year period. During that period, we should begin phasing in new empowerment initiatives of the kind discussed below.

In addition, President Clinton should repeal Lyndon Johnson's 1965 Executive Order 11,246, which requires federal contractors to file written plans with the government specifying hiring goals and timetables. This is the federal government's largest affirmative action program. Studies by Jonathan Leonard of the University of California and others show that the executive order has only modestly increased black employment and income, while having little effect on women. Even where gains are posted, they often stem from a shift in employment from firms with no government business to federal contractors. Although the law bans formal quotas, government guidelines push employers to hire by the numbers to avoid the inference of discrimination.

Steady progress by minorities and women in public employment also suggest that we can safely dispense with hiring preferences in government. Blacks are actually overrepresented in federal government (17

percent of the workforce compared to 10 percent of the private workforce) and many big-city governments as well; women are at 40 percent of the federal workforce and growing.¹⁷

At a time when governments everywhere are in the throes of reinvention and downsizing, it makes little sense to steer women and minorities toward public employment or contracting. Writing in *The New Democrat*, Joel Kotkin notes that in California, affirmative action tends to channel minorities and women to relatively stagnant sectors of the economy to government and large corporate bureaucracies instead of to dynamic small- and mid-sized firms that are generating most innovation and job growth in the state.

VOLUNTARY AFFIRMATIVE ACTION

Since most jobs and lucrative opportunities are found in the private economy, voluntary affirmative action by employers clearly will do more to equalize opportunities for minorities and women than government set-asides and preferences. Most large companies actively seek to diversify their workforce and small employers are under social and legal pressure to do the same. In addition to barring outright discrimination, the Civil Rights Act of 1964 (in Title VII) permits companies to be sued when they unintentionally discriminate when their hiring and layoff policies result in a "disparate impact" on women and minorities. (The Civil Rights Act of 1991 restored the burden of proof on employers to justify such practices on the

basis of business necessity.) This "rebuttable presumption" acts as a safeguard against unconscious discrimination but, unlike government's numerical goals and timetables, does not induce employers to hire or fire by the numbers.

As part of any effort to reform affirmative action, President Clinton should challenge Congress to give the Equal Employment Opportunity Commission (EEOC) the resources it needs to sift frivolous from serious bias claims and to detect patterns of job discrimination. At the same time, however, Congress should direct the EEOC to avoid actions such as using computer models to fix the supposedly "exact" percentages of qualified women and minorities available to employers in a given location that compel companies to adopt race or gender proportionalism to avoid official harassment.¹⁸

Since anti-discrimination litigation is time-consuming and costly, it makes sense to explore alternatives for reinforcing voluntary affirmative action. A useful tool is the "employment and housing audit" pioneered by the Urban Institute, as described earlier. Increasing their frequency say, by giving government grants to community groups would aid in detecting discrimination, but the increased prospect of being audited would also act as a deterrent to employers and landlords. Consumer boycotts and other forms of public suasion have also proved effective at encouraging laggard firms to hire minorities.

Step one in reforming affirmative action, then, is to shift from mandatory preferences to voluntary action by employers, with anti-discrimination laws and public scrutiny as an insurance policy against backsliding. By itself, this step won't quell the controversy over race and gender preferences; it won't console whites who believe they've lost a job or promotion or a slot in medical school because of affirmative action. But it will get the government out of the business of group classification and preferences, halting a trend that promises heightened ethnic conflict.

Dubbing this approach "the separation of race and state," the weekly Economist recently pinned the key point:

"It is true, of course, that race distinctions will not disappear from society simply because governments decline to recognize them. But it is equally true, and even more important, that race distinctions cannot disappear so long as governments not merely recognize but enforce them."¹⁹

STEP 2: REPLACE PREFERENCES WITH EMPOWERMENT

If race and gender preferences commit government to a divisive and ultimately futile quest for equal results, the answer is not simply to jettison them but to get serious about making equal opportunity a reality for America's minority poor. Step two in the new bargain is

therefore to replace government preferences for groups with new public policies that empower individuals to get ahead regardless of race, gender, or ethnicity.

Most studies confirm that the impact of preferences on minority or female employment and income is exceedingly modest. For example, a report on black economic gains prepared for the U.S. Labor Department reached this conclusion:

"The general pattern is that the racial wage gap narrowed as rapidly in the 20 years prior to 1960 (and before affirmative action) as during the 20 years afterward. This suggests that the slowly evolving historical forces we have emphasized in this report education and migration were the primary determinants of the long-term black economic improvement. At best, affirmative action has marginally altered black wage gains about this long-term trend."²⁰

Moreover, as sociologist William J. Wilson has pointed out, affirmative action policies exhibit a class bias that favors middle-class professionals and entrepreneurs while offering little to people stuck in poverty.

In a seminal article titled "The Competitive Advantage of the Inner City," Michael Porter of the Harvard Business School argues for shifting public resources from transfer payments, subsidies, and race and ethnic preferences to efforts to create businesses in the inner city. Preferences, he notes, rarely benefit companies located in low-income neighborhoods:

"In addition to directing resources away from the inner city, such race-based or gender-based distinctions reinforce inappropriate stereotypes and attitudes, breed resentment, and increase the risk that programs will be manipulated to serve unintended populations."²¹

What's tragic about the current impasse on affirmative action is that it blocks attempts to build a new biracial consensus behind a comprehensive attack on inner-city poverty. For blacks trapped at the bottom of the economic pyramid, the main obstacle is not vestigial discrimination but the breakdown of critical social and public institutions, chiefly the family and schools. Can anyone doubt that dramatically lifting their academic and occupational skills would have a greater impact on their life prospects than maintaining preferences that mostly benefit middle-class blacks, Hispanics, and women?

Empowerment is a broad agenda that encompasses everything from welfare reform to national service, youth apprenticeship, and other ideas for expanding access to education and job training. But it would be especially fitting to focus immediately on the economic legacy of discrimination on the profound and lasting

impact on minority citizens of their systematic exclusion from full participation in the free enterprise system. This legacy includes lower rates of business formation, of asset accumulation and inheritance, and especially of home ownership.

- * Asset-building strategies. According to the Census Bureau, the distribution of personal assets (property, savings, and investments) by race is even more skewed than the distribution of income: Whites possess 92 percent of Americans' total net worth while blacks have only 3.1 percent. a.)

When it comes to building personal assets, middle-class Americans already benefit from "affirmative action" in the form of the mortgage interest deduction and tax breaks for private pensions and savings accounts. Yet our social policies, especially welfare, promote consumption rather than asset accumulation. An empowerment strategy should offer poor families similar incentives to save and build personal assets. Michael Sherraden of St. Louis University has proposed an asset accumulation system open to all Americans, but with special incentives for the poor. It would create Individual Development Accounts (IDAs), tax-free savings vehicles for low-income families whose deposits could be matched by government, businesses, churches, and charities. The Corporation for Enterprise Development has designed a National IDA Demonstration that would create 100,000 IDAs for low-income families at a cost to the federal government of \$100 million.

- * Home ownership. Our homes are the most important asset most of us will ever own. Stable communities, moreover, are rooted in high rates of home ownership. While 67 percent of whites own their own homes, only 45 percent of blacks do.²² Instead of dismantling the U.S. Department of Housing and Urban Development (HUD), as some Republicans propose, why not reorganize it around the goal of lifting home-ownership rates among the poor generally a shift that would disproportionately benefit the minority poor? HUD can promote home ownership by shifting dollars now spent on rental subsidies (the total exceeds \$10 billion) toward grants to local governments to clear sites for construction of low-cost housing and cut mortgage interest rates for owner-occupant buyers in poor neighborhoods.²³ Localities should also revise building and housing codes to make it easier to build low-cost housing. b.)
- * Public education. Finally, no public task is more urgent than dramatically lifting the quality of inner-city c.)

schools. More money may be necessary but it will be insufficient: Big city school districts typically spend well above the national average. More important is to change the bureaucratic organization and culture of our standardized public school system.

The first step is for the states: They should withdraw the local school districts' ~~monopoly on owning and operating public schools, freeing teachers and other civic entrepreneurs to create innovative public schools. Now operating in 12 states, such "charter" schools~~ expand choices for parents and children while exerting real competitive pressure on traditional schools, who risk losing students (and public funding for them) if they fail to improve. Unlike conservative proposals to privatize public schools through vouchers, charter schools operate under license to public authorities without the stifling rules and procedures of central school districts and unions. The federal government can help boost these efforts by letting the states use federal education dollars to experiment with models and help capitalize new schools.

These initiatives are modest in cost if not in scope. But they are only the beginning. Ultimately, the only way out of the quagmire of group-conscious policies is to redouble the nation's commitment to equal opportunity for all. This requires not only vigilance in combatting residual discrimination, but also positive steps to lift the prospects of poor people packed into decaying urban neighborhoods. Conservative critics of preferences have ignored both these moral imperatives and the public costs they imply. No wonder their calls for a color-blind Constitution and society ring hollow to Americans for whom discrimination is not an abstraction but a painful reality.

In pursuing a third way on affirmative action, we must be clear on this point: redeeming America's historical obligation to the victims of slavery and segregation is not a cost-free proposition. A serious agenda for equal opportunity and individual empowerment will require financial sacrifice from society as a whole.

STEP 3: REFORM AFFIRMATIVE ACTION IN COLLEGE ADMISSIONS

The third step involves college admissions, where the abysmal quality of many inner-city schools, continuing racial and ethnic disparities in standardized test scores, and the special role Americans have traditionally assigned to education in equalizing opportunities combine to justify some form of affirmative action. Nonetheless, two reforms are essential: 1) we must lift students rather than lowering standards; and, 2) we must target students by need as well as race.

U.S. colleges compete for promising minority

students almost as furiously as for star athletes. The dearth of candidates with high test scores creates pressure to lower official standards to meet affirmative action goals. On scholastic aptitude tests (SATs), for example, blacks score on average (combined math and verbal) nearly 200 points below whites. This has prompted protests and lawsuits from white and Asian students denied entry despite higher grade point averages and SAT scores.

Such measures, while useful, are not comprehensive or infallible predictors of future performance. Moreover, few colleges base admissions solely on meritocratic standards. Many take non-academic activities into account: participation in sports, clubs, student government, or civic work. Others give preferences to the children of alumni or faculty, limit local enrollment to leave space for students from other parts of the country, and offer special scholarships for students from low-income families. Under such circumstances, it is difficult to argue that colleges may consider any factor except race, ethnicity, and gender. The right standard is still set by the Supreme Court in its 1978 Bakke decision: Race should be a factor but not the decisive factor in college admissions.

Too often, however, accepting ill-prepared students under affirmative action plans sets them up for failure and reinforces stereotypes of intellectual deficiency not only held by whites but also internalized by minorities. Studies show that only one-third of black students who enter college graduate within six years, compared with 57 percent for whites.²⁴ It's not just students who suffer: Institutions that allow the quest for diversity to compromise academic excellence risk repeating the descent of New York City's College, once the "Harvard of the proletariat" and now a venue for ethnic politics.

Given the disparity in test scores, how can colleges lift students rather than lower standards? One way is to adopt the military model of affirmative action that sociologist Charles Moskos says has made the army the most successfully integrated institution in America. This model combines goals (but not timetables) for minority promotion with rigorous training to ensure a sufficient pool of qualified candidates for promotion. Some colleges already are trying similar approaches: Boston College enrolls affirmative action students in a six-week summer training course and requires that they sign a contract pledging to make every effort to graduate. The results are impressive: 95 percent of these students graduate in four years, compared to 88 percent for the entire student body.²⁵ An alternative is to guarantee all high school students a slot in community colleges to prepare them for entry into more demanding four-year schools.

Colleges should also work more closely with high schools to create preparatory programs for minority

students. In California, for example, officials estimate that only five percent of black and four percent of Latino public high school students complete the course and grade requirements necessary for admission to the University of California. But eligibility for both groups swells to over 40 percent when students are enrolled in preparatory courses.²⁶

University officials worry, however, that the proposed CCRI would prohibit such programs because they do not meet its standard of pure color-blind neutrality. Nor, of course, would race-conscious recruiting of promising minority students and indeed the architects of the initiative admit that it would lead to a dramatic drop in minority enrollment in top-ranked schools.

The second problem posed by affirmative action in college admissions is that it ignores wide income variations among members of a group. It's hard to defend giving an advantage to Bill Cosby's kids, to an engineer who recently emigrated from Peru or India, or to an affluent white woman over the son of a proverbial white coal-miner or a recent Russian immigrant. Some argue that the purpose of affirmative action is not just to widen opportunities but to indemnify people for historic wrongs. Since college slots are not unlimited, however, it makes sense to target preferences to people who really need them to kids who are the first in their family to go on to higher education, for example, or to those from poor or working poor families.

Simply substituting class for race as the basis for affirmative action runs afoul of the test-score gap; the likely result would be to make poor whites and Asians the main beneficiaries. The better solution is to combine the two as a means of targeting affirmative action to truly needy members of minority groups. Since colleges already collect lots of financial information from students seeking loans, grants, or scholarships, tempering affirmative action with a means test shouldn't be hard.

★ ★
both class / race

All this raises an obvious question: If preferences are wrong in public contracting, why are they permissible in college admissions? One answer is that colleges have a broader public mission than career preparation and meritocratic sorting. Americans have always believed that education is the key not only to opportunity but to an enlightened citizenry capable of self-government. Since World War II, we've invested heavily in college opportunity because we see it as integral to both economic growth and equality. This is even more true today, as the global information economy puts a premium on knowledge and mental agility.

Affirmative action in college is not a guaranteed outcome but an opportunity to develop civic capacities and compete successfully in the economic arena. Like other race-conscious preferences, it should be viewed as a temporary expedient until representation of minorities in colleges is roughly equivalent to that of whites. In the meantime, it should be done in ways that

don't compromise academic standards or confer benefits on people who are not needy.

CONCLUSION

At the heart of the affirmative action debate are conflicting interests and visions of justice that divide largely on racial lines. There is, however, a third option a civic perspective that works to synthesize these visions into a new bargain on racial justice and equal opportunity. The moral underpinning of such a bargain is Dr. King's vision of a society that judges individuals by "the content of their character" rather than the color of their skin.

A recent series of articles in The New Democrat provides thematic building blocks for the third way: Start phasing out mandatory group preferences; wherever practical, target affirmative action by need, not by race alone; shift efforts to combat inequality from the courts and federal bureaucracies to the economic arena; don't lower standards but lift people up to common standards instead; don't bestow group entitlements, but instead use public resources to build individual capacity.

Finally, as author Jim Sleeper argues, our political leaders should have more faith in civil society.²⁷ Rather than base affirmative action on the insulting premise that government must perpetually compel citizens to do the right thing, it's time to acknowledge incomplete yet incontrovertible progress and move on to the next phase of the struggle for racial justice. And instead of waving the bloody shirt of racism to suppress dissent, it's time now to air public doubts and trust in the power of democratic deliberation to move us closer to common ground.

Will Marshall is president of the Progressive Policy Institute.

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<TITLE>Policy Briefing: Text-Only: From Preferences to Empowerment
(57K)</TITLE>

Ross Perot *United We Stand: How we can Take Back Our Country* (New York: Hyperion, 1992)

Election reforms:

1. Restrict all campaign contributions to \$1,000 (no more soft money stuff)
2. Curb PACs (1974 \$13m to Congressional candidates, 1990 \$150m)
3. Give FEC better enforcement
4. Shorten campaign season, elections on Sat and Sun, release no info 'til polls are closed, equal free time for candidates for fed office
5. Eliminate electoral college (24–25)

Close the "revolving door":

1. Criminal offense for any foreign gov, ind, company to try to influence US policy by campaign contributions
2. Rewrite foreign agent registration and lobbying laws to close loopholes
3. Forbid exec. branch staff/Hse and Senate from ever accepting money from foreign gov'ts.
4. Forbid anyone who's been in fg to be a paid lobbyist for any domestic interest 5yrs after leaving gov't.
5. Tough ethics code for private citizens who consult/advise fg
6. Forbid anybody on payroll of foreign gov/interest from serving in any campaign.

Clean up the executive branch:

1. Sell off the 111 aircraft maintained for discretionary use by fg execs
2. Eliminate 89th wing air force (for transporting top execs around country)
3. Have cabinet members spend most of their time outside Washington
4. Make federal employees smile more
5. Reduce civil service regs and allow more discretion so fed employees can be more responsive
6. Cut White Hse/Cong staffs by 30%

Restore confidence in Congress:

1. Cut budget to gyms, etc. Cut staffs 30–40%.
2. Rfm retirement system, where up to 93 eligible for lifetime pensions
3. Reorganize legislative system -- streamline committees and subcommittees
4. Turn in excess campaign funds to Treasury

Ways to cut federal spending:

1. All fed depts shd cut budgets by 15%. First, eliminate stupid programs (=5% cut).

Second, across-the-board 10% cut.

2. Line item veto
3. Deficit reduction law
4. Get rid of stupid special favors (people who cut timber on public lands, etc.) Get rid of subsidies for alcohol-fuel and iron-ore shipping. No more sugar tariffs. Ban farm subsidies for big ag corporations. Cut deductions for business meals and entertainment to 50% of the cost, from 80%.
5. Cut defense budget to meet its mission.
6. Stop subsidizing rich – limit deductions on interest to mortgages of \$250,000, eliminate special deduction for vacation homes, get rid of exemption on taxes for employer-paid health insurance.
7. Raise highest income taxes from 31 to 33 or 35%.

Medicare:

1. Lift cap on rich Americans who don't pay medicare taxes on income over \$130,000.
2. All shd share in costs

Social Security:

1. Retirees who can afford shd pay taxes on it.
2. Decrease COLA's.

More tobacco and gas taxes: tobacco taxes (lots) and 10 cent increase in gas tax for each of next five years.

Increase IRS software, etc. Also, shd do burdensharing with allies.

New job creation and so on :

1. Free up credit (so small businesses can get loans)
2. Stimulate investment
3. No capital gains tax for small business investment
4. Establish mentor programs

Need to have incentives to increase savings.

Also, shd encourage investment -- tax credits for investment, for research and development, tax breaks for long-term capital gains.

Lots of environmental stuff.

Energy policy -- cut down on imports, conserve fuel thru education, research, regulation, mkt incentives., develop clean coal tech, encourage alt energy

oooo –American Dream stuff on pp. 74–75.

Education:

1. Establish comprehensive preschool programs
2. Spend federal money to spread programs that work (less DOE money on research, more on replication)
3. Empower parents (choice)
4. Restore local autonomy with accountability (less bureaucracy, regs)
5. Establish national stds and measure results.
6. Learning shd be first priority
7. Trust tchrs as respected professionals.
8. Make better use of school buildings

INNER CITIES

Entertripse Zones, income incentives, sense of community.

Crime and drugs --

more money for treatment, mandatory drug testing for prisoners, automatic penalties for those who stay off drugs. Also, better gang prosecution, 3 strikes you're out, require literacy and marketable skill as cond for release for prisoners convicted of violent crime, fed facilities available to states to est rehab fac, joint public/private to divert gang members to legal stuff.

Health care -- esp. prevention.

Tougher child support enforcement.

BROOKINGS

1/3

"Racial and Ethnic Preference in College Admissions" Policy Brief no. 9
Thomas S. Kane / William T. Dickens

Nov '96

Most racial/ethnic preferences in elite schools, ϕ most (= X has no F/X)

BUT pref_s do $\cup$ (earnings prospects, college
(b/c elite schools $\cup$) (caption))

Shd have attrn b/c a - ind. acts discomm hard to i.d.
b - ind. acts " reflected in group's mkt w

"An Analysis of Out-of-Wedlock Births in the United States" George A. Akerlof, Janet L. Yeller

Aug '96

Out-of-wedlock births b/c technology shock (caption, ϕ shotgun marriage $\rightarrow$ $\uparrow$ out-of-w rates)

- (5) better family planning
- 2 - better birth ctrl advice
- 3 - eff. child grt

"The Devolution Revolution: why Congress is shifting a lot of Power to the wrong levels" Anthony Downs July '96

key is metropolitan / regional problems —
no regional governing auth.,
which wd be best to address
many problems

"The Housing Disaster That's Not Being Fixed" no. 1
James R. Barron / Blot E. Litan July '96

Over next 7yrs, section 8 hsg subsidies will
expire in + 700K apts - mortgages
insured FHA → default = poverty

(#188 outstanding mortgages)

(5): (admin. proposals) → give HUD

a.) authority to restructure
mortgages on all S&B contracts

b.) give residents freedom to move
wherever they want

PFF

1/1

dissolve FDA into ind. entities, & FCC

"tax hike" \$13B,

"key encryption" →

a machine and pervasive intrusion into the lives of American citizens"

privacy & intellectual property issues

+ any std wd be rendered obsolete by
↑ microprocessor speed.

+ wd retard domestic development
of encryption tech.

NSA can @. anyway, w/o key encryption.

MISSION STATE

Progress— esp. progress in freedom

"American Idea"

"To restore, to renew and to recreate America's sense of
its future, a future woven inextricably of the
ideas of progress and freedom"

"A New Strategy for Helping Cities Pay for the
 Poor" Pol. Sci. no. 18 Joseph Gyourko;

Anita A. Summers

Cities pay more in direct (transit)
 and indirect (police) costs for
 poor than suburbs.

1-
 (3) fed block grants to cities

2- regional (4) (transport, service delivery)

3- documented poor (Δ state/local zoning,
 ↑ use portable
 housing vouchers)

HMO

X

In first 6 mos. 1996, 33 states passed HMO legislation.

- 1- access to emergency care
denial cov. ER, prior auth. delays ER / followup
- 2- " specialists
esp. OB/GYN
- 3- travel / waiting time delays
- 4- referral / UR delays
- 5- continuity of care following contract termination
- 6- Req Internal QA plan
- 7- States to Approve / Deny
- 8- prohib gag rules (= φ discuss altz)
- 9- $\uparrow$ state monitoring
- 10- $\uparrow$ data on quality-of-care
- 11- grievance / complaint procedures for enrollees
- 12- provide DP altz
- 13- HMO not an
care, etc.
- 14- conf. of
medical
(MH) records

More Freedom, VP
Public / P! VerLuse

Am Project N-D '96

(Don Net)

1/4

Service Corps for older Americans -

Brookings economist laurel McFarland "Pepper Corps" to help cc

pilot program - Hilton Head SC

free with clinic fees

by retired physicians/nurses

- ~~VA/AF/USMC Corps~~

Natl Senior Service Corps - CNS

\$140M

Retired / or Vol Mgr

or Corporal Mgr

Foster Grandparent Prog

2pm
Thanks
Tom

waiting list

of ~ 6,000

or pool of 25,000

w/ advertising

= \$ red to pay 'em lots.,

In '82 Nancy Reagan wrote book, called it "my baby"

Foster Grandparent Prog

Robinson X NS but

↑ \$

Foster Grandparent

Sr. Corps

restricted to low-income volunteers

are - or - are

paid/unpaid

'95 with caption

Agree awarded \$ by 2000

Expense Corps - elders → elementary schools (to ↑ grt for pub school fm)

• bib

• 1st

• HI

alcohol - burners

old song

red by inner

family

• reg defam

Budget
w/ave - to - work

P Starr and Sandra Starr "Remotely Vital Stats"

info tech → can do hi-speed remote transmission...
shd have Electronic Birth Certificate
" DM

quicker, ↑ efficiency, ↓ error

"Remotely govt"

↑ data stats,
co-ordinate
electronic
info ~~data~~ bit
agencies.

End '94 58% births in EBC

Done now in most states, yet shd
integrate better into all systems.

CC Funding

S.1360 - med needs funding
104th

Rep Pallack - "For My USA"

shd ↑ home coverage for a) prescription drugs
b) long-term care

Gr Daltrey "Families USA"

FG shd → minimum protections for people in Medicaid managed care

2/4

Ch Media Ed

Alcohol / tobacco mktg on www w/ fun, interactive sites

Budweiser, Moken, Cuervo have games

Citizens Budget Com School Budget for Next Year

NY state govt - extend school yr - rd
- ↑ hrs

(= do education in 2 shifts in 1 day)

Ch Media Ed

hardware, LAN/Internet Cons, trained techs, coverage, maintenance

Am Project 5-4g '96 Social Awareness

Big brothers / big sisters - a) p and adults
b) interactive resources (cd roms)

75 Am Project 5-0 '96 GI Bill

'95 3-F
DLC
neg
"GI Bill Working America"
• job opp'ty vouchers (w/emp)
• exch skills w/ credit
- one-stop shopping c/s

Internet redlining - Reg phone companies &
are allowed
telcom
nets to
mining areas.

4/4

FAMILY DEBATE - AM PROSPECT

May-June '97 ~~George~~ Arlene Schoch

Recent books argue live in "post-marital," "post-nuclear" society
b/c culture of liberation / fulfillment 1960s → ↓ 2-parent HH

(5): 2-parent family is ideal, shd ; (no-fault divorce, in remarriage)

BUT

a- divorce p (h) that kid

b- marriage / 2-parent still the norm

c- marital conflict / econ stress
on (h) kids, too.

Women are shift to inf age, ♀ → work force

31-Aug '97 M Gallagher : David Blankenhorn

a- Divorce, does (h) kids.
unwed childbearing

b- Even w/ conflict - marring break up.
v. few "good divorces"

c- econ Δs p 1/x

Response - A Schoch

family conflict (depression) -

"... whether a family consists of two parents is less important for a child than how well the family (in whatever form) functions," (p. 16)

5-Oct '97 B Deke Whitehead

big problem is Δ cultural attitude re divorce

shd ; stakeholder attitude - all are binding relationships.

Response - A Schoch

Al Gore *The Best Kept Secrets in Government* (National Performance Review, Sept. 1996)

In general: federal government changing in four ways:

1. Common sense. I.e. no more expensive hammers, less red tape, etc.
2. Better service. Emphasis on customer service.
3. Partnerships with business. Work with businesses against common enemies.
4. Partnerships with communities. Community policing, etc.

General idea is to cut out waste and bureaucracy, make the government more responsive to needs of citizens, show that government is on the side of people and businesses and not against them.

DLC - PPI

"A NEW PROGRESSIVE DECLARATION..."

- "technocracy" - idolatry of tech as → solution. somehow, decent tech @ all, X tough choices!
- unbelievable common ground w/ PPI-heritage. X high coalition.
- mkt's, 2-parent family, ind. empowerment, civil society

- "Civil ~~heritage~~ society" all problems magically sol'd by civil society

industrial age → Information Age,
= need new pol. inst to match

No more big inst (corporations, unions, gov't) to take care of us.
+ collapse of social/civil norms.

Shouldn't say "gov't" or "mkt", but that gov should revitalize civic institutions → citizen empowerment.

1- OPPORTY FOR ALL, PRIVILEGE FOR NONE
= φ subsidies yet φ byzantine gov't programs

2- MUTUAL RESPONSIBILITY
= φ victims of moral decay. and obey law, inst shd → active citizens (ex: GI Bill, Peace Corps)

3. EMPOWERING CITIZENS & COMMUNITIES
decentralization of economic power, information, political power.
competition > bureaucracy

~~How~~ To implement this, shd...

- From inst dependency to ind empowerment
 - φ resist \$ but → create new \$
(φ gov loans, etc. ↑ tech)
 - ↓ dep. on inst for job security
portable pensions, etc.
 - allow workers to learn
(↑ public schools)
 - bus. shd allow workers to ↑ human k
 - unions shd → self-help inst.

e.) Combat global confusion
New strategy.

b.) Reconstruct social order as a fam of strong families
↓ taxes working parents, assist unemp ↓ teen preg,
∴ children in diverse cases

c.) Return power to self-gov. citizens and counties
↓ central bureaucracies, mut poll'n checks instead of reg

d.) Redefine common ground
vs. racial animosity - X altaxn → classaxn,
ind judgment

massive social transition
(urbanization,
imm.,
public inst...)

→ ideas of Progressive
= big
(gov't, etc.)

Th3 = new ideas.

Based on revitalization of civil society = devolution.

Chicago → a - (b) self-gov
b - turned people into wards
of "nanny state"

key is crime chl.

A. FUTURE COMPASSION

1- CHARITABLE TAX CREDIT ACT

(\$1,000 married couples)
\$500 poverty tax credit for indiv → charitable orgs
(to X pr.)

→ 100% first \$100, 90% rest \$400

2- COMPASSION CREDIT ACT

\$500 credit for ind. who provide home care for needy individuals
(homeless, battered, PwAs, etc.)
referred by 501c3

3- MEDICAL VOLUNTEER ACT

extend federal w/t claim coverage to any H/C prct who provides free
medical services to medically underserved people (as we do now in Indian H/C,
migrant - H/C - public housing)

(AMA c)

B.

COMMUNITY EMPOWERMENT

1- EDUCATIONAL CHOICE & EQUITY ACT

school choice.

2- RESTITUTION & RESPONSIBILITY ACT — to help rebuild community harmed by rest.

a - grants to help states develop / r collect / est foundation

b - → create systems to track restitution \$

c - federal billing / accuracy to problem

d - ↑ eff. (↑ success, grant use)

e - new thing

3- ASSETS FOR INDEPENDENCE ACT

* 4-yr \$100m demonstration prog → state Individual Dev Accts (IDA's) — matched w/
public / pl \$ to build assets (build home, post-secondary ed, create small business)

4- URBAN HOMESTEAD ACT (single-family)

transfer HUD-owned → local, local sell to CDC's

Smart Wallis, The Soul of Politics: Beyond "R! Pt" and "Secular Left"
(NY: Harvart Univ, 1995)

1/1

④, ϕ civility, rep, justice, integrity $\rightarrow$
interplay structural X / self-X.

vision of moral transformation.

norm/exem / over-consumption

⑤ - ϕ spec. sols - rather, general principles...

603 279
4129

Michael Lerner The Politics of May

1/2

"may" = ϕ selfishness / materialism $\rightarrow$
/ recognize fundamental worth of
human beings

is idea that others $\odot$ out for
personal gain.

Re our public life / civil society

"spiritual crisis" produced by
materialism / breakdown of spirit society —

key is ϕ $\odot$ political

→ POLICIES: * much work will be done by $\downarrow$ gov. & $\uparrow$ civil society
whole idea is to Δ society fundamentally, so
many of these programs purpose / sound stupid in our society (211)

vs. global corps,
Economics: build strong neighborhoods / anchors to be loci of
econ. activity

✓ corporate power w/o social structures?

+ minimum intl env standards etc.

Worm? mandating four-day work schedule post-Labor Day,
→ mission statement, work goals, exercise goals

b) democratize - elect occupational safety and health committees (OSHA)
- occupational stress groups

c) substantial pay equity for all working people

"social audit" - gov / env $\odot$ report for every plan, piece of legislation, etc.
to det. $\odot$ in the "psychological, spiritual,
and ethical well-being"

EDUCATION - 1. and educate for values -

love, empathy,

caring, compassion, (256)

core then kindergarten/its focused on ^{etc.} being caring

2. take P1 - & teach P2!

3. teach (at each grade level) classes in family coping skills

4. " responsibility

5. county service

3mo. migrant labor 5th-6th graders

6. report ^{7th} for learning - ↓ class size, etc.

11/L - 1. isolate

2. ↑ learning

3. ↓ medical attention

Summit is moving / networks of moving - evoked images - ↑ microapps

~~GI Bill~~

GI Bill

1/1

T Shokoff

"Delivery for Young Families: The Relevance
of the GI Bill" Am Prospect 5-0 '96

J-F '95

DLC mag "New Democrat"

P Plushitz -

"job opp'ty vouchers" for unemployed

extend income - dependent loan prog
"skills line of credit" for
train / return

Reich → are - shopping - clearinghouses
"of long choices, std
data"

B Bluestone Sum '90 - use tax surpluses

in West End -

most in 1-+ loans to
young-age adults

T. Skocpol

"Democrats at the Crossroads" Mohr 3/24 / Feb '97

6/

Model comparison - p. 56

DLC : P! More ~~social~~
Sec Security — CAF "o"
ed

Synthesis — New Dem P! More, Sec Security :
Populist common econ (C) :

+ need (values discourse — remember, p vs. religion
outcomes in More, etc.

too focused on unions, p end on families

EX: DLC EITC

populist minimum wage

= DLC right on crime, econ reg's, parent empowerment / civ unity,
Populists, it's a soc sec / More, ↑ means, new ways
to use govt to → w disparities,
educate young
support working parents

Lost Congress b/c "outpost", up to 7-1 in tight races
b- Indonesian #

Voters vs. Republican dismantle gov't.

- a- Politics
- b- ↑ labor mvt
- c- campaign finance reform

3 Faux
"A Progressive Compact" Nation Apr 14 '97

Focus on political claims of economic class

→ New social contract

ret	obl
job pays	to work
livable w	

share in	invest
soc. costs	

run business	gov't entity in which operating
--------------	---------------------------------

bargain collectively	create ↑ productive workplaces
----------------------	--------------------------------

protect vs. other risks	pool risk gov't. ins.
-------------------------	--------------------------

6:25 pm, 8-6-97

Drew,

Good to talk with you, even briefly.

Enclosed with this 'cover sheet' is the following: first, three pages from "A New Vision for Welfare Reform," a short essay written by Stanley and Jim in May of 1994 (the first being its table of contents); second, the 'Introduction' to A Guide to Charitable Choice, which I highly recommend you get ahold of if your discussion extends beyond today/tomorrow; third, a two-page handout describing the content of CC in brief (normally used in Stanley's presentations); fourth, a short article from CLS describing [in some sense] their take on CC; fifth, a one-page article by Michelle Voll describing the Guide and finally, several "Capital Commentaries" written by Stanley as the welfare debate unfolded last year.

Hope this is helpful, and again feel free to contact Jim or Stanley in the morning (410.571.6300 [phone] or 410.571.6365 [fax].)

Sincerely yours,

TACH GOOD
4105716365
08/06/1997 17:41
PT 10400

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use to this draft are invited.

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e then try,

in the third place, to show why the poverty crisis cannot be assessed narrowly as an income crisis of poor people, and why citizens should not expect the solution to come solely from the assistance programs of federal and state governments. The arena of government and politics certainly cries out for reform, and we direct our attention to it in the final section. But the source of difficulty is not solely the design and size of government welfare programs. The problem lies deeper. It has to do with the way governments act in relation to citizens and society. It has to do with the way people use governments and expect them to act. Our political culture itself is part of the crisis.

FOUR PROPOSITIONS

Our argument is built on four theses.

Thesis 1. Fruitful welfare reform depends on an accurate understanding of human dignity and the nature of diverse human vocations and obligations. American politics is hampered by problematic assumptions and patterns that all too often push aside important aspects of the truth about human responsibility in a complex society in a rapidly shrinking world.

Thesis 2. A dependable vision of human life in society comes most clearly into focus from a biblical point of view. Human beings are created in God's image with many talents and vocations. Every task, including government's calling to do justice, has the character of a response to the Creator. God's love for this world, which is now radically marred by evil, is being revealed in ways that expose our sin and misery and offer healing for our brokenness.

A NEW VISION FOR WELFARE REFORM

Thesis 3. The distressing conditions associated with poverty, particularly in the most degraded urban areas, are the expression of a multifaceted responsibility crisis. These tragic conditions cannot be measured by poverty statistics alone, for they represent the moral failures of social institutions, governments, and individuals.

Thesis 4. Governments are called to establish and enforce public justice by (a) upholding a just social order, (b) assisting with relief in emergencies, and (c) acting to bring about fundamental reforms where patterns of injustice exist. Public policies should not serve to legitimize irresponsibility. Instead, government should call people and institutions to healthy patterns of life in society.

We wish to emphasize that this essay represents a brief and preliminary venture into highly complex matters of public policy, philosophy, ethics, and the religious foundations of human life. We do not presume that the argument is sufficient to deal adequately with all of these matters. Our aim is simply to try to expand and deepen the American debate about poverty and welfare.

WELFARE

American welfare
three signs point

A. Practical
government to fight
sion and were ex
gram to lift all ci
decades of effort
poverty persists ar
chronic poverty
government's dir
demic for some p
rural areas. These
various personal
people who exper

B. Crisis of Legitimacy
mixed, government
bors in need. But p
hold the confidence
depend on them.
lieve that welfare
alleviate poverty.

C. The Impasse

le choice pro-
etween states

ary guide for
ion. The ma-
n implement-
p faith-based
unity for ex-
rotections for
aw.

als and faith-
overall design
n. We should
and religious
n serving the
e nation will

Introduction

A major feature of the new federal welfare legislation signed by President Clinton on August 22, 1996, is its encouragement of state cooperation with community and faith-based charities in serving needy families. The Personal Responsibility and Work Opportunity Reconciliation Act of 1996 [PRWOR]¹ devolves welfare authority to the states within a framework comprised of several basic guidelines. A key guideline is the "charitable choice" provision of Section 104.

The Charitable Choice provision has three goals. First, it seeks to encourage states to expand the involvement of community and faith-based organizations in the public anti-poverty effort. Second, through a range of measures it protects the religious integrity and character of faith-based organizations that are willing to accept government funds to provide services to the needy. Third, it safeguards the religious freedom of beneficiaries, both those who are willing to receive services from religious organizations and those who object to receiving services from such organizations.

The Charitable Choice guidelines clarify and codify the constitutional requirements for governmental interaction with faith-based social-service providers. Too often constitutional law is misinterpreted as requiring that faith-based organizations be excluded from participation in governmental welfare programs or that their participation be conditioned on the removal of religious practices and symbols. Section 104 incorporates U. S. Supreme Court precedents for governmental neutrality between faith-based and secular providers of services, protection of the religious integrity of faith-based providers, and protection of the religious liberty of beneficiaries.

¹ The Personal Responsibility and Work Opportunity Reconciliation Act of 1996, H.R. 3734, 104th Congress, 2d Session, P.L. 104-193.

Educating the Public About Positive Changes in Welfare Reform

by
Michelle N. Voll

WASHINGTON, D.C.—The Center for Public Justice released *A Guide to Charitable Choice* in January to help state authorities understand and implement new federal welfare rules governing their relations with faith-based service providers. The *Guide* will also assist churches and other religious organizations decide whether to participate in providing welfare services funded by the new federal welfare block grants, which turn much of welfare responsibility over to the states.

This easily accessible, 30-page book is the Center's first publication of the year and was produced in cooperation with the Center for Law and Religious Freedom—the legal advocacy arm of the Christian Legal Society. Stanley Carlson-Thies, director of the Project on Government and the Religious Social Sector at the Center for Public Justice, wrote the *Guide* based on materials prepared by Carl H. Esbeck, professor of law at the University of Missouri. Esbeck assisted Senator John Ashcroft (R-Mo.) in drafting the Charitable Choice provision in the 1996 welfare law.

A Guide to Charitable Choice is introduced by Senator Ashcroft and includes a Question & Answer section, a succinct overview of Charitable Choice, and the actual text of the provision.

In his introduction to the *Guide*, Ashcroft asserts that "many successful faith-based organizations have not participated in government programs for fear of having to compromise their religious integrity or being hobbled by excessive government regulation and intrusion." Charitable Choice requires states to respect religious organizations as allies in the fight against poverty and social distress.

"The regulation does not violate the First Amendment's separation of church and state because the government funds are not spent to advance religion, but to fulfill the valid public purpose of helping the needy," as stated recently by the Center for Public Justice in a widely distributed press release from World Vision's office in the state of Washington.

Charitable Choice obliges all states, even states with constitutional restrictions on the use of public money by religious organizations, not to discriminate against faith-based organizations in contracting or using vouchers to provide services to the needy. The provision protects the religious character and autonomy of such organizations, including their control of employment policy. Furthermore, it honors the religious liberty of welfare beneficiaries by ensuring

that they may choose an alternative source of service if they object to a faith-based provider.

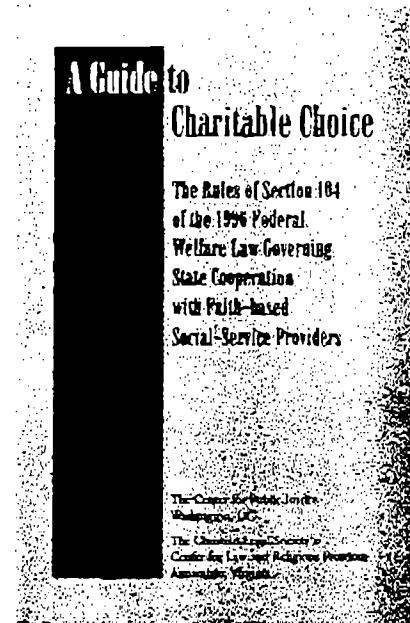
For educational purposes, the Center for Public Justice is distributing more than 3000 copies of the *Guide* to state and local officials, members of Congress, charities, grassroots community organizations, and the press.

The same week the Center released its announcement to the press about the new publication, representatives of the Center were invited by Senator Ashcroft to attend a Capitol Hill press conference, where the *Guide* was picked up by journalists and congressional staffers. The conference featured Ashcroft along with other members of Congress who

are forming a new bicameral group called the Renewal Alliance. The Alliance, which is not opposed to accepting Democrats, is led by Senator Dan Coats (R-Ind.) who will be the Center's Kuyper Lecturer this fall.

The Renewal Alliance wants to promote non-governmental solutions to human suffering by empowering the institutions of civil society to work for cultural and social renewal. In the future, the Alliance will consider drawing up a comprehensive piece of legislation that will combine the contributions of its individual members, including enterprise zones, tax credits for charitable giving, vouchers for public schools, and more flexible work schedules.

The Center for Public Justice encourages its own constituents to partake in the effort of educating churches and faith-based groups about the Charitable Choice provision in the welfare law. If you are interested in obtaining a copy of *A Guide to Charitable Choice*, you can order it from the Center for Public Justice for \$5.00, which includes shipping and handling. □



Charitable Choice requires states to respect religious organizations as allies in the fight against poverty and social distress.

Capital Commentary

April 29, 1996

from the Center for Public Justice • PO Box 48368 • Washington, DC 20002-0368
(410) 263-5909 • (410) 263-3857-fax • cpjustice@aol.com

Lamps Without Light

Like many states, Maryland isn't waiting for Congress and the president to get on the same page before designing its own top-to-bottom welfare reform. Maryland's legislature has overwhelmingly adopted a welfare bill that requires recipients to go to work and that converts welfare into services to help families gain independence. It's the same two-part strategy adopted by reform leaders like Michigan, Wisconsin, and Virginia. Surprisingly, the plan chosen by Maryland's solidly Democratic legislature also features an integral role for nonprofit groups, including religious organizations.

If the governor signs as expected and the feds say OK, welfare in Maryland will become a way for families to escape from poverty by becoming connected to the working world. Poor families can tap emergency help to avoid welfare entirely. Families needing more must promise to start work or to prepare for a job, cooperate to secure child support, and agree to tap family and community resources. Government will offer employment services and child-care benefits. Cash assistance will be the last resort.

And to help the poor more effectively, government in Maryland is reaching out to religious and secular institutions. If a family doesn't uphold its side of the welfare agreement, its cash benefits will be paid to a nonprofit organization that will provide intensive services to help the family get off welfare. The state also wants nongovernmental institutions to help design innovative programs like case management by nonprofit groups or residential welfare that includes child care, job help, and intensive mentoring. The new law says it right out: religious organizations can participate in this new welfare effort "on the same basis as any other nongovernmental entity."

Here's a praiseworthy makeover of welfare in Maryland. But the churches aren't seizing the opportunity. In the Senate hearings, the lobbyist for the Presbyterian church (PCUSA) imagined a deadly threat to the safety net and warned of

increased crime, drug abuse, and homelessness. The Maryland Catholic Conference condemned possible benefit cuts and the lack of guaranteed "living-wage jobs." No church welcomed the government's invitation to expand their social outreach in cooperation with public programs. Don't turn to us for anything new, exclaimed the Maryland Interfaith Legislative Committee—it's your job to take care of "the general welfare of the community." Presbyterian churches already help the needy, said their lobbyist; they cannot be "a substitute for our government-administered, tax-supported welfare to families." The Catholic Church simply ignored the invitation, and evangelical churches didn't show up even to testify.

Of course, the Christian community should not leap merely because the government asks it to. The new law waves a red flag when it admits turning to churches and charities in order to "leverage" reduced welfare funds. Although it invites religious organizations to participate, the law offers little protection against secularizing regulations and court decisions—a grave omission. Instead, it hammers against "sectarian religious instruction," as if a religious approach is toxic rather than a positive reason to get churches involved. Moreover, churches are not mere social service agencies, no matter what some welfare reformers imagine.

Still, loving our neighbors is a key responsibility of the body of Christ and it is one we have too often tried to fulfill by handing it off to others. Maryland's law needs improvement, but it goes far toward the needed new cooperative model for helping the poor. Christians should push for revisions instead of turning their backs on this call to renewed service. If we don't get busy we'll be just like those foolish virgins in the Gospel account who discovered when the bridegroom arrived that their lamps were empty and could shed no light.

—Stanley Carlson-Thies, Senior Fellow

Capital Commentary

September 2, 1996

from the Center for Public Justice • PO Box 48368 • Washington, DC 20002-0368
(410) 263-5909 • (410) 263-3857-fax • cpjustice@aol.com

Filling In the Blanks

Love it, hate it, or hope it turns out better than you fear it will, the truth is that the full significance of the welfare-reform bill President Clinton signed in mid-August cannot yet be known. To be sure, the new law reverses the New Deal/Great Society approach to fighting poverty, ending the federal guarantee of help and cutting back on federal social spending. But what it substitutes is not so much another program as a spare framework. It returns welfare design to the states and encourages them to collaborate with community and religious groups. But it leaves up to them how to move beneficiaries into work, discourage teen pregnancy, and foster personal responsibility. Whether the law will yield progress or regress depends mainly on what states, charities, and poor families make of its opportunities.

Nowhere is this more true than with the proposed new collaboration of government with religious groups. The new law encourages states to team-up with churches and faith-based agencies, and it promises to those organizations a range of protections to enable them to retain their religious character despite receiving public funds. But the law insists that no government money flowing directly to them may be used for "sectarian worship, instruction, or proselytization." As Stephen Burger, head of the International Union of Gospel Missions, has said, "This is where it gets muddy."

Will it be illegal to teach boys and men a biblical model of maleness and fatherhood? To counsel teen moms about a godly sense of self, sexuality, and marriage? To require drug addicts to turn not to some vague "higher power" but to Christ? To tell job-prep trainees to labor faithfully not only to avoid termination but to honor work, the employer, and customers? Government must not aim to fund worship or Bible classes. But if it requires the complete

secularization of assistance, why should Christian groups get involved?

Here's the interpretive key to the "charitable choice" provision: its whole purpose is to foster collaboration "without impairing the religious character" of faith-based social ministries. The idea is not to get religious charities to do government-style welfare, but to get government to support their *faith-directed* anti-poverty work. The law protects beneficiaries not by forcing religious groups to become secular but by ensuring that beneficiaries can choose either a nonreligious or a religious provider.

The precise specification of what is safeguarded and prohibited will be made in each state's regulations. Some issues may be decided in the courts. But religious groups should take confidence from the intent of charitable choice. Equally, they should take heart from the fact that government officials are turning to them exactly because of the exhaustion of the secularized anti-poverty model. This is no time for Christian ministries to hide their light under a bushel.

Ministries will have to be above reproach if they contemplate partnering with government. They will need to encourage the transformation of lives with no hint of coercion, and promote behavioral change, not only spiritual commitment. The liberty promised by the law must be used for the greater good of the poor, not for the aggrandizement of social ministries.

Christian ministries want to ensure that public service will not cripple their religious mission. If so, they should not just sit while others write the regulations and establish the policies. Now is the time to plunge in to make sure that the blanks get filled with the right content. And it is not too early to consider how the law's framework itself should be improved.

—Stanley Carlson-Thies, Senior Fellow

Capital Commentary

July 22, 1996

from the Center for Public Justice • PO Box 48368 • Washington, DC 20002-0368
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Ending Poverty As We Know It

Our national welfare system is on the verge of a complete overhaul. Maybe. Republicans in Congress have decided it's better for their electoral cause, if not for Bob Dole's, to send President Clinton a welfare bill he might actually sign, so they'll put on his desk this week a bill without the Medicaid provisions he promised to veto. Clinton, in turn, after passing up other chances, apparently has decided the time to act has come and that the Republican blueprint has been changed enough to be palatable. So the signals are green for national welfare reform—although positive signs didn't prevent derailment of the welfare reform train in the past.

Reformers intend to implement three key principles as they streamline or eliminate multiple programs and thousands of regulations. If they succeed, they will overturn a six-decade-old strategy for dealing with social distress that is now widely acknowledged to be insufficient and sometimes even counterproductive. Whether ending welfare as we know it will help end poverty as we know it is the big issue at stake in the experiment we are about to launch.

First, the entitlement to welfare will be replaced by conditional assistance so that government help will encourage good choices rather than undergird negative ones. Yet rules that are too tough for families deeply mired in poverty—the five year limit on benefits or moving half of recipients into work by 2002—may necessitate so many exceptions as to gut the principle.

Second, the authority to design welfare programs will devolve from the federal government to the states. The idea is that states are closer to the problems and can deal with them more flexibly. But state bureaucrats can be as rigid as the feds, and a state's inner cities are less like its rural areas than like the next state's urban centers. And shouldn't Americans share a common standard of duties as well as rights?

The most promising principle is the third one: welfare authorities will cooperate with community and religious groups serving the needy. This is the "charitable choice" idea already promoted by Sen. John Ashcroft (R-Mo.) in the last welfare bill Congress sent to the president. States will be encouraged to turn to nonprofit organizations, including religious charities, for the social services they want to fund. They will be required to honor the religious character of churches and social ministries that choose to team-up with the welfare system.

Christian and other faith-based social ministries are the new force that distressed families and communities need, and government should uphold them and turn to them in its antipoverty strategy. All levels of government already contract extensively with religious organizations, but often lean on them to downplay or eliminate their religious character. Charitable Choice will put strong and explicit protective language into the law. Sadly, strict separationists and squeamish Republicans have weakened the concept by letting stand the rule in some states that no public funds may go to any "sectarian" organization.

Charitable Choice will be just words until a new relationship between government and the religious social sector is actually forged. For the new principle to be fruitful, the Christian community will have to do two things. We must go beyond general sentiments about turning welfare over to the churches, and become involved in the details of state and local policy making. And we will have to manifest a readiness to love our needy neighbors in a way that goes far beyond current practices. Unless the new words of the welfare law are matched by new deeds by citizens and charitable organizations, there'll be no end to poverty as we know it.

—Stanley Carlson-Thies, Senior Fellow

Capital Commentary

from the Center for Public Justice • PO Box 48368 • Washington, DC 20002-0368
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January 22, 1996

Welfare Deform

President Clinton rode to victory four years ago on a promise to "end welfare as we know it." So what did he do when a welfare reform bill finally landed on his desk? He vetoed it. Senate Republican leader Bob Dole promptly charged Clinton with "total responsibility for the continuation of that failed welfare system."

Good sound bite, Senator Dole, but lousy analysis. There is no plain-as-day federal fix to convert welfare from failure to success. In fact, fierce internal fighting over what kind of change makes for improved welfare is why it took Republicans more than a year to get a bill to the President after they'd promised their own swift action.

Critics have trashed the Republican plan as a dark day for poor children. That kind of animus presumes that current policies are sufficiently pro-family—not a tenable stance. But the bill isn't so solidly crafted, either. Its tough time limit on benefits, for instance, doesn't obligate recipients to plot from the start how they'll get off welfare, and it forgets how far from self-sufficiency some recipients are.

Here's the sad truth: despite years of debates and proposals, the welfare reform efforts of both Republicans and Democrats remain shallow—preoccupied with economic incentives and resources and fixated on whether government programs rescue poor persons or entrap them. Such approaches downplay the social and moral breakdowns that combine with personal problems to yield entrenched and deepening poverty: the collapse of families and marriages, neighborhoods drained of hope and leadership, failing schools, fleeing churches, ineffective or absent public services, disconnections between workers and jobs.

As the Center's new book, *Welfare in America: Christian Perspectives on a Policy in Crisis*, points out, welfare at base isn't about the most efficient transfer of resources from government to the needy nor is it doomed to enslave those it tries to help. Welfare should aim to move people to

fulfill the diverse responsibilities of a healthy life. That requires more than improving the sticks and carrots of government programs. Social institutions need to be rebuilt and social networks re-woven. A dynamic of personal and social renewal needs to be nurtured.

Making real progress, and not just getting some welfare changes into the books, requires something other than splitting the difference between the President's goal of more assistance for the needy and the Republicans' determination to wean the poor from welfare dependency. What's needed is to go beyond just fine-tuning welfare incentives to find ways to strengthen civil society and tap its moral energy and spiritual direction. Government can play a positive role in this.

So here is the real tragedy of this abortive round of welfare reform. The Republican plan is wrong to dump welfare on unprepared states and to chop spending with the mere hope that new approaches and efficiencies will cover the gap. But the bill the president killed does contain a very promising federal welfare innovation: the charitable choice provision developed by Missouri Senator John Ashcroft.

Ashcroft's language challenges states to link up with private groups that are already assisting the needy. It requires states not to exclude faith-based programs from joining in. And it guarantees that participating religious groups may maintain their spiritual approach to helping the poor. That kind of innovation is vital if welfare reform is to mean progress and not merely change.

Real welfare reform will be at hand when public policy strengthens families, restructures schools to engage parents and reinforce moral order, and constructively supports faith-based assistance programs that guide as well as assist, and that build up neighborhoods as well as persons.

—Stanley Carlson-Thies, Senior Fellow

Ministries Can Receive Funds for Social Services

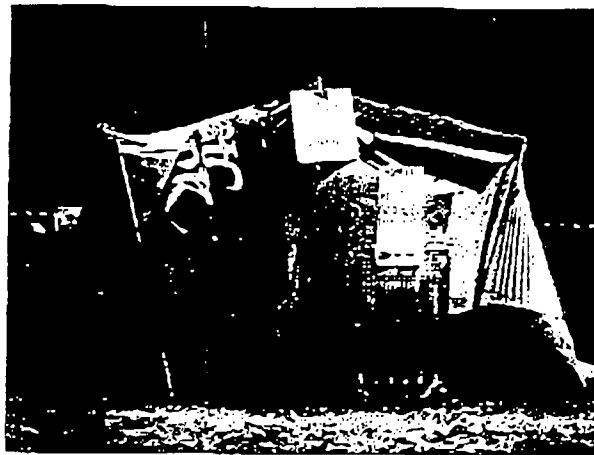
Welfare reform was one of the hottest debates in the last Congress. But while the media focused on various provisions of the bill, it ignored a section that could well be the key to success in the colossal shift of welfare services from Uncle Sam to the states.

The "Charitable Choice" section of the welfare reform bill encourages states to allow religious social service providers (soup kitchens, homeless shelters, drug rehabilitation homes) to receive public funds for those services. Many ministries fear that they will have to compromise their religious message and character if they accept government funds. And public officials have mistakenly thought that the Constitution requires providers to downplay their religious mission or be disqualified from participation.

But Charitable Choice guarantees that faith-based organizations may not be discriminated against. And it protects the religious liberty of both the providers and the needy whom they serve.

Specifically, the religious ministry will be eligible for funding, yet retain its rights to: require that its directors and employees be fellow believers; control the practice of its religious mission; maintain a religious environment by displaying religious symbols, scripture, and art; and be free of intrusive audits of any funds other than the grant money.

The new law also respects the religious liberty of the welfare recipients. They may not be required to participate in religious activities as a condition of receiving the services. And beneficiaries who object to



receiving services from a faith-based provider have the right to obtain services from a non-religious organization nearby.

The CLS Center and CLS member law professor Carl Esbeck of the University of Missouri (Columbia) spent many hours drafting and refining this section of the welfare reform bill with the office of Sen. John Ashcroft (R-MO), the primary sponsor of Charitable Choice.

The Center for Public Justice (CPJ) of Annapolis, Md. and the CLS Center have just published a guide that interprets the Charitable Choice section of the welfare reform law for religious social service providers and public officials. To order a copy, call CPJ at 410-263-5909.

Your financial gifts helped make possible this new legislative tool which will expand the work of the nation's most effective providers of social services — churches and parachurches. But expect secular civil liberties groups (and the teachers' unions, because this involves vouchers) to challenge this new law in courts and in the new Congress. Your prayers and support remain vital to the Center's work on your behalf.

PRaises

Supreme Court to Decide If Physician-Assisted Suicide Is Constitutional Right

Praise our Sovereign God that the Supreme Court is reviewing the lower court decisions in Washington and New York that "discovered" a constitutional right to physician-assisted suicide. Pray that the high court will overrule these dangerous rulings.

Funding Obtained for Next Phase of Western Center's National Legal Resource Center

Praise the Lord that the Alliance Defense Fund agreed to fund the second phase of the National Legal Resource Center, a computerized bank of legal information and a communication network to equip religious liberty advocates nationwide. Pray for CLS' affiliate, the Western Center For Law And Religious Freedom, and its head, Doug Vande Griend, as they continue their excellent development of this project.

PRAYER REQUESTS

McFarland to Address Annual NRB Convention on Jan. 27

Pray for CLS Center Director Steve McFarland as he discusses religious liberty and debates how best to defend it at the annual convention of the National Religious Broadcasters on Jan. 27 in Anaheim, Calif.

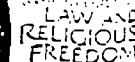
CLS and Western Center Continue to Defend Bible Club

Pray that CLS and Western Center attorneys succeed in the Culbertson case in central Oregon, so that Jacinda Tommila and the thousands of public elementary school children like her will be able to hear the Gospel of Jesus Christ in after-school "Good News" Clubs.



CHRISTIAN LEGAL SOCIETY

4208 Evergreen Lane, Suite 222, Annandale, VA 22003-3624



517 Court Street NE, Salem, OR 97301

- May choose their own organizational structure (but ministries may find it prudent to form a 501 (c)(3) corporation for the welfare services).

Rights of Welfare Beneficiaries

- Providers may not discriminate against beneficiaries because of their religion.
- Providers must serve beneficiaries even if they do not want to actively take part in religious activities. However, beneficiaries who often object to the practices of a provider should select another provider.
- Beneficiaries have the right to receive services from another provider if they object to a faith-based provider. Vouchers themselves institutionalize choice; in the case of contracts, the state must make a nonreligious alternative service available if a beneficiary requires it.
- When a provider receives government funds via contracts, none of the funds may be used for "sectarian worship, instruction, or proselytization." This restriction does not apply in the case of vouchers, where a beneficiary, rather than government, chooses the provider.

...

Should your faith-based organization or congregation become involved with state and local welfare programs? This decision requires careful study, planning, and prayer. You will need to ask your welfare administrators and state and local politicians how they plan to help families move to independence and how they will include community and faith-based groups in the new welfare system.

Exactly how these rules will be implemented depends in part on whether Christian ministries make a persuasive case to state and local officials of their desire to meet the welfare needs of the poor, their commitment to respect the rights of beneficiaries, their acceptance of the rules governing participation in public programs, and the vital importance of government safeguarding the religious character of the organizations.

To help you understand Charitable Choice, the Center for Public Justice and the Christian Legal Society's Center for Law & Religious Freedom have published a *Guide to Charitable Choice*. The *Guide* includes Questions & Answers, a complete explanation of the provision, and the actual language of Section 104.

The Guide to Charitable Choice will help you understand what the law requires, what it permits, and what it safeguards. Use it as you decide whether to cooperate with public welfare, as you plan your programs, when you discuss welfare opportunities with legislators, as you negotiate with state and local welfare officials, and when you consult with legal counsel.



Please send me the *Guide to Charitable Choice*. My check is payable to the Center for Public Justice. Prices include postage/handling. Maryland residents please include 5% sales tax. **No phone orders.**

☐ 1 copy for \$5.00

☐ _____ copies for \$4.50 each (2-10 copies) ☐ _____ copies for \$4.00 each (more than 10 copies)

Name _____ Work phone _____

Address _____

Send to **Center for Public Justice, PO Box 48368, Washington DC 20002-0368**

As state and local governmental authorities begin to implement PRWOR, and as faith-based charities consider if and how they will expand their involvement with governmental assistance programs, it is vital that the requirements and intent of Section 104 be understood and accurately applied. This guide is designed to foster an accurate understanding and full utilization of Charitable Choice. Following this Introduction, it includes a series of Questions and Answers on Section 104, followed by a detailed Overview of the Section.² The text of the Section is printed in the Appendix.

— Stanley W. Carlson-Thies
Director, Project on
Government and the
Religious Social Sector
The Center for Public Justice
Washington DC

² The detailed explanation is based on a memorandum prepared by Carl H. Esbeck, *Isabelle Wade & Paul C. Lyda* Professor of Law, University of Missouri-Columbia (J.D., Cornell University, 1974). The staff of Sen. John Ashcroft (R-Missouri), the sponsor of Section 104, worked closely with Esbeck beginning in February, 1995, when Charitable Choice was just an idea. His university position is listed for identification only.

Questions and Answers

General

Q/ What is the purpose of the Section 104?
A/ The goal is to encourage state and local governments to provide new federal welfare law, while providing for participating faith-based organizations to serve the needs of beneficiaries.

Q/ How does Charitable Choice affect faith-based providers in government programs?
A/ Many faith-based organizations compromise their religious character in government programs. Government has only thought that the Constitution requires that faith-based organizations be entirely excluded from participating in government programs. Charitable Choice allows faith-based organizations to participate in government programs and secures the religious autonomy of faith-based organizations to operate with government welfare programs.

Q/ What activates the Charitable Choice requirement concerning faith-based providers?
A/ If a state chooses to use federal funds to provide vouchers redeemable for a social-service provider, then the state must also provide Charitable Choice requirement not to discriminate against faith-based providers.

Q/ To what programs does Charitable Choice apply?
A/ The provision applies when state and local governments enter into service contracts or voucher arrangements with faith-based organizations under the new Temporary Assistance for Needy Families program (the replacement of AFDC). The provision also applies to the Supplementary Nutrition Program.

Faith-based Organizations Cooperating with Public Welfare

The "Charitable Choice" Option of the 1996 Federal Welfare Law

The new federal welfare law features a "charitable choice" provision to expand cooperation between state welfare programs and faith-based and grass-roots organizations (Section 104 of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996). Welfare reform means that states need to help families achieve self-sufficiency. Many services are needed, some of which can be provided by faith-based organizations. Examples include job-readiness and life-skills programs; community-service positions; GED programs; budgeting and nutrition advice; maternity homes for teen moms; abstinence education; drug-treatment services; extended child-care programs; and programs to solidify families. If your state turns to nonprofit organizations to provide such services, then it may not exclude faith-based organizations from competing to participate.

The Charitable Choice provision:

- encourages states to contract or use vouchers with **nongovernmental organizations** to provide welfare services;
- requires states that turn to independent providers **not to discriminate** against faith-based organizations;
- requires states to **respect the religious character and autonomy** of organizations that accept government contracts or vouchers to provide welfare services;
- protects the **right of recipients** to receive services without religious coercion.

These rules accompany federal welfare block-grant funds. They are not optional for any state. (However, the Charitable Choice rules do not apply to other kinds of federal funds.)

These are technical rules that must be followed in states' contracting and voucher practices. However, the Charitable Choice rules also reflect a **new model for welfare** and for **government's relations with civil society**. Government should carry out its welfare responsibilities not only through its own departments and in accordance with its own designs, but also find ways to encourage, protect, and support the assistance activities of nongovernmental organizations (NGOs). Government should take care not to turn NGOs into replicas of governmental agencies; instead it should support the activities of NGOs when and to the extent that those activities carry out the public purposes that government seeks to fulfill.

AN OUTLINE OF CHARITABLE CHOICE

Rights of Faith-based Providers in Public Welfare

- May compete for state contracts or to redeem vouchers for welfare services financed by federal welfare funds.
- May maintain, express, and change their religious mission.
- May maintain a religious atmosphere, including keeping Bibles, crosses, and religious art in the place of service.
- May use religious criteria in hiring, firing, and disciplining employees, despite using federal funds.
- May use religious language and a faith-based approach to assisting the needy.
- May constitute their governing board and executive as they choose, without regard to diversity criteria.
- May limit government fiscal audits to a separate account that receives and spends the federal funds.

Education: a) ↑ in return for clean targets
b) extend school day to 5:30 pm.

4/

C. Zaretsky "The Hidden Paradox of Welfare Reform" Am Prospect May. 3rd '97

• ch. care #

• federal bkg subsidies Δ

↓
At families w/ a f-t worker
@ head of waiting list
for a subsidy, get
rest @ 25% of more

• all low-income families buy into
Medicaid for ~ 10% income

"The
S. Greenberg Mythology of Capitalism" Am Prospect Sept-Oct '97

Blair / Clinton led by ^{new} working-class / lower ML voters
who is Reagan / Thatcherism

"New Party"
Bolton & 3 Rogers "What's Next?" Nation Nov 18 '96

shd fight p L-R but bottom-top
↓
↓ ↑
diversity /
corporate
accountability

Bewildering collage of programs (p. 14)

Econ As $\rightarrow$ increase savings, $\downarrow$ expenditures

$\rightarrow$ low income generally do not -
if had in '96, Dems cd have $\rightarrow$ lose

* low w Americans see no reason to vote

|
eat integrity - "raping", get ϕ
trust big institutions

To win back, need "a few bold initiatives that
will clearly reduce economic
stresses on working families" (p. 29)

Examples of Am.

major outrage on

high issues - MW

- FMLA

- sweatshops

- layoffs

(5): a) require minimum level HI
from employees for employee / dependent

b) assure day-care -

refundable child care tax credit

low-w parents up to \$2,000 / yr
in CC,

mid-w direct credit of \$2,000

c) Expand FMLA to cover common childhood ailments,
pd maternity leave of $\rightarrow$ 6 weeks

d) new WPA

funded by 1% corporate tax

e) Title reparation shd pay 6 mos.
severance pay

Yes, Clinton defended Moore etc., but did it in context of
~~the~~ centrist govt. (love, budget, welfare)

2/

Gains for New Dems -
a - ~~big~~ ind's
b - married w/ children
c - MC families

f - $\therefore$ defense of entitlement,
BUT also $\therefore$ fiscal discipline,
athleticism, values

Animal
resistance - $\therefore$ Reborn anti-immigration

Shd try to replace "wired workers" - the knowledge workers who are
new force in American economy. (51% (A workforce, 31% decline,
and $\uparrow$) rapidly

a - ~~X~~ industrial subsidies

b - PBO's in govt

c - entitlement plan

R. L. Borsage,

S. Greenberg - "New Clinton" ($\therefore$ '96, p. 92)

sd defense of Moore, education, env.
as most imp in vote decision.

i.e. p just broke.

(summer) and new pres. yr = 75% non-college ed., HH income < \$50k.
voting

Big gains were not suburban/MC - Clinton $\uparrow$ H's goal

$\downarrow$ college grad -

biggest gains \$15 - \$50k,

~~biggest~~ gains moves > \$50k

Moore > budget

$\rightarrow$ Dems and $\therefore$ working Americans - noncollege educated,
MC/LC working people

Pearl - balancing budget key

E3 Dioune Am Subject 5-0 '96

Y

Burham / Forbes defined Rblion primary debate as economic issues.

↓
Mc
jobs
↓
g!

American "Anxious Middle" 3 crises:

a - economy

transition, global, Ftx w, ws. trends

b. political

= less autonomy for gov'ts, p. clt over

g!, tax, regulation

c - moral

'60s, also had work & pay much

"neoliberalism" -
lead to failure of
1980s

→ a - need gov't
b - need inst

Both DCC / campaign for America's future → 1 - need g!

2 budgets - consumption / investment

2 - invest in job training

need alt. labor rep structures

3 - Mkt agreements a labor rep / env.

Tough social policy.

H. M. Mergerson Am Subject 3-F '97

"values" focus of Penn / Schoen → ↓ participation -

issues under 450k seized home

votes of '92 who didn't vote '96 overwhelmingly

downscale, tended to be Democrats,

New forces: 1 - Hispanics
2 - Labor

Debate Am Subject M-Apr '97

W Marshall: Clinton was w/c synthesizes traditional Democratic commitments /
new Dem initiatives - "New Dem" ↑ party's base.

* votes in '96 dist. b/w traditional Democrat ways of doing

business / Clinton - - balanced budget

- alive
- alive

E J Dionne, Jr. *They Only Look Dead: Why Progressives will Dominate the Next Political Era* (New York: Simon & Schuster, 1996)

Now resembles the moral crisis, economic opportunity, economic dislocation which led to the Progressive Era ---> new progressivism: to preserve the American middle class and expand the choices available to individuals by using government to realize potential of new era while containing threats. (12-13)

“The nation’s most thoughtful conservatives are arguing that the central political question before the country is whether America’s Progressive tradition -- involving the careful but active use of government to temper markets and enhance individual opportunities -- is dead.” (15)

The conservative solution: get rid of taxation, regulation, and litigation to unleash the market. (266) (i.e. create a new “Gilded Age”)

BUT this poses false choice between big gov’t and small gov’t -- key is not size of gov’t but direction of gov’t policy.

William Kristol / William Schambra synthesis -- gov’t helps intermediate institutions to deliver ctn things.

Incidentally, obvious contradiction in conservatism: “many of the anxieties of the cultural conservatives and the far right are rooted in the very changes that the economic conservatives applaud” (272)

Problem of the “Anxious Middle” who fears for living stds and vs. both state and mkt.

Conservatism wrong in applying mkt model to all areas of human life.

Deficit: Robert Shapiro and other economists argue that federal gov’t should divide budget between consumption spending and investment spending -- always balance consumption budget, but you shouldn’t always balance investment budget.

Shd figure out ways that the gov’t can act to enhance human freedom.

Problems with Progressivism:

1. Rule by “experts” instead of democratic, mass participation.
2. Guardians of public morality by government instead of confidence in the family.
3. Confusion re reasonable gov’t role with like to expand gov’t for its own sake. (= often marginalize intermediate institutions)

See, capitalist society depends on non-capitalist values to prosper (Adam Smith, Daniel Bell, Francis Fukuyama) = “If the problem is cast in this way, the purpose of Progressivism is not to use government to undermine the free market, but precisely the

opposite: to create the social conditions in which the market can work well in its proper sphere.” (297) “The Progressive’s goal is not to strengthen government for government’s sake, but to use government where possible to strengthen the institutions of civil society.” (297)

2- make widup of earnings in all
state-based / P! svcs for
of 2x taxation.

3- allow contributing of stocks, bonds,
etc.

4- allow transfer in and out
of
assets

(i.e. mutual
funds, etc.)

STATE PREPAID PLANS

prepaid tuition programs - parents purchase a bond
denominated in units of education, bought @
(have to use in-state) today's ticket
prices.

308 TRNG

X
vouchers, all \$ to inst and redirect to
individuals, workers get \$ in tax free Ed
Savings Accts to pay for career AS / retraining.

FLC

have svgs acct for @-have for
vs. gambling, sex ed, Xtian perversion

of wide

194 juveniles w/ ~~just~~ correction system

193 dty / sep

194 study Duke / NC state - family disord.

for reflection, counseling, & mediation

later suicide
predt Annun
w/emp

Also program for kids - Cobb County, GA
4hr seminar w/in 31 days of
filing for divorce re
helping kids w/ the Δs.

POVERTY

success of City Team, evangelical urban arm prog
in San Jose, inc. running a residential
tr/counseling prog. called "House of Grace"

CITIZENSHIP - Lamar Alexander

- vouchers for job training
- school choice, + GI Bill for kids w/ \$1B to finance

Four Pts - 1997 lecture

shd reassert "four points" of capitalism - rule of law,
ind. rts, sanctity of property, sense of nat'l identity.

HI ED

Education Investment Accounts - special acctz families cd
use to save tax-free for college.

1- "back-ended" savings acct - allow w/draw
later w/o additional taxes; no limits on
annual contributions

5 - charitable contribution tax credit

75% credit of amt cont. to

PI charity or poor, to qual

must vol 10 hrs / yr @ charity

\$100 base

\$200 joint

6 - allow RI affiliated drug tx to receive
fed funds

FLEX-TIME FOR FAMILIES

extend 1978 Fed Emp Flex: compressed work sched

Act (overtime in either \$ or pd vacation)

to all workers

ADOPTION "Adopt A special kid" - matches special needs / difficult kids
w/ families.
\$2500 match / child

TEEN PREG

Abstinence curriculum taught by its juniors/
seniors in Indianapolis.

FATHERHOOD

• Natl Fatherhood Initiative

DIVORCE

"3 Wm Galston - shd eliminate unilateral no-fault for
couples w/ dependent children - shd have breaking
mechanisms such as mandatory pause of one year

FEL, xian Cal,
parent keepers

Shd also strongly encourage ÷ severely
abused kids from parents and ↑
adoption — allow transracial, etc.

+ drug test pregnant ♀,
replace sex ed w/ abstinence/
marriage ed

HZ FOR CHILDREN

- tax deduction for children's medical
expenses for families w/o tax cov.,
introduce refundable tax credits
for HHC purchases for low-income
working families.

- allow flexible use of Medicaid funds
to cover ♀ / children (example: target neonatal area
b/c infant mortality
w/o doing for whole population.

AMERICAN CMNTY RENEWAL ACT OF 1997

HR 1031 bipartisan =

for troubled counties — comprehensive, county-created approach

1. "renewal counties"

tax relief, regulatory reform, savings incentives
for recip. of EITC

2. ↑ Work opp'ty Tax Credit

= incentives for employers to hire the recip or
hi-risk youth

3. fed-funded school vouchers

4. county home ownership — HUD vouchers sold to county

Program is key element in Columbia's county - policing initiative - chief attrib. + 16% ↓ crime since 1991 to prog. - 11 officers moved.
= you live in area you patrol = Δ attitude

Banks provided 90% financing below mkt rates,
each volunteered to do ^{at least} one loan.

Similar programs: Sarasota, FL - stab. in night =
 100% financing of car mt,
 10 down, take home police car

Chicago

Elgin, IL

Atlantic City, NJ ~~down~~ →

low int; 30-yr, fixed rate loans w/
no down payments to cash to move into
other areas $\rightarrow$ carry out county-oriented
policy activities.

CHILD ABUSE

family breakdown → child abuse - cohabitation is especially bad. ~~least~~ worst among poor.

*

Key issue - and a.) ↑ research on abuse esp. marriage/fuz
b.) " y/y

c. 7

d.) ⑥ - ↑ Adoption Promotion Act
1997 (H.R. 867)

c.) empowerment zones, & old urban
policies

shd also ↑ recruitment of police (PT stats),
esp. minority / police - but & officers / quotas

personal plans - b/g ✓, modernized
mgmt,

recruits from military

share info w/ state / local entities

• SURV RFM Attila lead Amar : Vietnam David Amar

a.) respect jurors (nie quarters, etc.)

b.) ↑ representation of jurors (pMals, litigate)

c.) limit peremptory challenges (or X'en)

d.) pay jurors

shd also require annual service, allow take notes,
plan - English materials etc.

shd uphold nonunanimous verdicts. - even 1st day

11-1 2nd
10-2 3rd

Until reach 2/3.

• "A Cop Next Door"

1991 police in Columbia, SC started to offer low-interest
mortgages to any cop willing to live in a high-crime or
deteriorating area.

• CRIME (Bratton)

Well known ↓ NY crime rates

Δ from old (creative policing,
random patrols,
reactive investigation)

- broken windows

- graffiti

- big headlines

(5) partnership w/
city,
local - state - fed

understand qual. of the
issues

↑ call in street, etc.
make subways / streets safer.

- measure (1) by how much crime ↓
"COMPOST"

database of arrests, etc.
= leads id., etc.

~~Getting Backup~~ ~~Getting Backup~~

• "Getting Backup" (more crime.) Robert E. Moffitt, Edwin Meeuse

• Bratton techniques - but still also

a.) ↑ flexible fed \$ for local law enf.

- tax rebates

- block grants

b.) Δ judiciary

- Affm ex rule — "good faith" exemption

- ban judicial caps

HERITAGE FDN

X DOE

- DOE first to respond to OPEC crisis, yet mission did over time - now does w/plus cleanup, env. quality

Gov's Nat'l Rpt Review = 40% reductions =
→ \$70B lost over 30 yrs

transfer defense → DOD

research → env. / NSF

X led to research

commercial energy for P! → P! sector

= save ~ \$17B over five years (inc. sub Strategic Petroleum Reserve)

⑤ JUVENILE CRIME

96 ⑤ Youth Predator Act 1996 (HR 3565)

a. juveniles who commit a serious crime

b. major drug trafficking offenses

sent

(S. 1854)

Hatch
Dole

→ tried as adults in fed ctz

b. mandatory min sentences on juv. who use firearms in committing federal crime

c. replace office of Juvenile Justice & Delinquency Prev.

w/ off (one w/1 in) change into

Also → stuff they like:

Serious Habitual offenders

Comprehensive Anti program

(SHOAP) = computer sharing of records

ii) \$500M → states

\$250M incentive grants

\$250M block grants

Lana Alexander : charter schools (Empower America)

CSE (CER law : Soc Policy)
CSA rules. (print this ASAP)

HHS Care FM
Review
Thomas Hodgson (CDC) .. the Economic
Costs of Illness
CDF

homepage rhetoric — +

Healthy, Hard, Fair, Safe,
Moral.

• Hatch-Kennedy S. 525 / S. 526

• did fully fund Head Start

• S.A.F.E. Act in Senate S. 511

- ↑ child safety in state agency decisions
- ↑ sub abuse to for referred parents
- ↑ foster care
- ↓ disabled kids → adoption
- ↑ long
- ↑ state protect (care for kids)

HIAA

202-824-1600

Stat3

202-862-4108

Temp - reintroduce talk of "right" and "wrong"
w/are Afri

↓
"asset based" w/are system →

1 - p taxes agree w/ 170%
pay.

2 - Pl. all gov. owned bus

3 - allow same w/ AFDC

4 - p's choices → EZ

5 - school choice

∴ Pl. values

think re covers virtue, & vice.

Moral values -
corporations
justice

of ~~out~~ ~~in~~ (Emp Amerca)

Dec '96 edit. w. Bennett ∴ Wal-Mart for p. stocking ~~issue~~
CPs.

Jan '96 USA TODAY edit. vs. ~~issue~~ of all record companies to
clean up lyrics.

vs. 7/1 - act - act
- (V)
- ref - ∴ & warning labels - + vs,
advertising

"values" - tough punishment, ed res, wife beat, etc.

Can (S)... - remove obstacles to
adoption, ↑ res.
schools etc. for
abandoned kids.

character ed - schools, churches, family & culture

moral strategy - Bennett.

How to (S) (as speech before Verbovich)

1- DECENTRALIZE

and X "dependence" on FGs

↑ responsibility - encourage ♀ to
finish HS / get married & kids

2 CRIMINAL

shd emphasize on punishment >
severe punishment

3- FAMILY

- A tax law to "fair"
- needs
- care requiring in adoption
- vs. homosexual adoption
- X no-fault divorce
idea of fatherhood.

4- ED

teach values, character.

IMMIGRATION (Central America)

interestingly enough, are v. pro-legal-immigration.
Definitely vs. where for legal / illegal. ~~at birth~~
~~still~~ ~~pro~~.

- ⑤: a.) shd have extended family visitation
b.) shd be able to have hi-skilled from
other countries.

c.) humane refugee policy

still need tough vs. illegal immigration.

↑ border ctrl, quick
departure, ~~then~~ ~~US~~
bureaucracy.

shd accept imm who take a pledge to go as native.

v. vs. nat'l worker registry - bureaucracy, privacy, etc.

MORAL CULTURE (Central America)

1. Do no harm
2. Be local

⑤ 1. where ~~then~~
family cap
CSE

2. shd ① remove child from family as
last resort.

3. orphanages, * adoption

lots of potential
fams.

4 - ditto ~~then~~ -
cooling off is, fault req.
Δ money class as
"family property"

5 - ed - black groups -
then PI etc.

6 - crime
2 drugs

education to teach moral / spiritual values

loans 3-strikes, you're out (which. Prop 593)

• DEVOLUTION (Empire America)

to ⑤ illegitimacy, crime — must rebuild values

civil society — X'd by state, public &

slum clearance

⑤ w/ "Project for American Renewal" **

• DRUGS (Empire America)

public wants anti-drug ed, law enforcement — in TX

⑤ - 1-mil in choice of X's

2 - sanctions / ^{drug} paid to cocaine cartels

3 - X drug trading

4 - law enforcement block grants

5 - anti-drug mgmt for all

• SCHOOLS (Emp Am)

choice. (Milwaukee, AZ?)

• DC flat tax, X 0.25 (Emp Am)
Fleeter Norton
* progressive flat tax plan
- vouchers, P! gov services,
Ø capital gains tax

- AFF. AXN (Empower America)

Bennett: any race-based preference is wrong - old i CA
CCRI (prop. 209)

Kemp: can't just call for a colorblind America and ignore racism.
quotas wrong - shd instead focus on aff. axn based
on need. - gov. shd make apply:

- a - education esp. for minority / low-income schs
= shd have *choice
- b - X barriers job seeker / entrepreneur, ↑ access to credit esp. minorities.
- c - X fed prog. that penalize poor ↓ - saving
- d - ↑ g!

- CRIME (Empower America)

Bennett: prevention: by "reviving the character-forming institutions of civil society"

protection: county policing, citizen anti-crime, ↑ security ind / business

restraint: too many @ criminals get back out

PM/AND AMERICA

1/1

Feb '93 Wm Bennett, Jack Kemp, Zeare
Kemp, Patrick, Vin
Weber -

pub policy / pol advocacy

"progressive - conservative policies
based on the principles of
economic growth, international
leadership and cultural
renewal."

5. MATERNITY SHEETZ ACT

gives incentives for ♀ to use P! (faint) - based maternity group homes, grants to P! rent & repair / rehabilitate existing group homes.

2/2

C. FATHERING, MENTORING, FAMILY

1. FAMILY HSG ACT

make it easier for families to get public hsg - "15% pub hsg units for families headed by married ind.

b - ensure 7 fam. \$ & 7 rent

c - meet 15% goal two preference

2. RESPONSIBLE PARENTHOOD ACT

a - require every child spent in fam planing method
all for awareness ed / inform

b - shift \$ Don Title X to Maternal and child Health block grant

c - ↑ \$ MCH

d - prohibit MCH Don → abortion,
fam planning in elementary / secondary schools

3. CHARACTER DEVELOPMENT ACT (i.e. Big Brothers / Big Sisters)

a - give school districts 3yr demonstration grants when agree to work w / community groups to dev. mentor prog.

b - priority to low income school districts

c - \$5M in research grants to ↑ study dev

4. FAMILY RECONCILIATION ACT

a - additional fed \$ states to → within 60 days, pre-divorce counseling for parents w / kids < 12

b - ban LSC \$ for divorce

5. MONITOR SCHOOLS ACT, (SOME MODELS) ACADEMY ACT

a - "some gender" schools legal ed. alt to § 106 Title IX as long as reasonable avail.

b - → monitor residential academy for at-risk youth - high stress, discipline - retired military personnel.

6. KINSHIP CARE ACT

a - \$30M demonstration prog for states using adult relatives as preferred placement option for kids w / parents

b - require meet child protection stds

c - → alt to foster care

"principles of free ~~govt~~ enterprise, limited govt, and freedom, and American values, is a strong national defense"

∴ Flat tax, which argues R! has with / sociological benefits

launched as '96 "visions" dereg of agriculture and telecommunications, —
w/are from, urban strategy is "American

(Anti Renewal Act" - ↑ jobs, charity,
education, X machine, a faith-based
~~small firm~~))
legislative
etc.

*

TEEN PREGNANCY (DLC-PP1)

addressed 6/23/99 by Senate Dems

"Second Chance Homes" -

group residences where teen moms live under adult supervision w/ children, while mtg social/personal obl. for where sppt.

For moms under 18.

county-based - need \$: guidance from govt.

Moms use AFDC et. as program fees to Δ cost. 79 gives startup subsy - (mtg groups connect to counties.

Also... a - end moral relativism re teen pregnancy

b - gov. catalyst -

end agst married teen moms

CSE

punish sexual predators

c. rebuke reg sex

(or outaid marriage)

d - new opprties -

Ind Dev Act

neighborhood opprties

(lots felt were...)

WPADE (DLC-PP1)

shd encourage states to adopt str kind of active firm "Walk first"

3. college adm on need, place — +
↑ students, ↓ study

tg + low-income, +
shd have extra staff for
affair students so all
concerned.

IN DEFENSE CIVIC CULTURE CDLC-PP1

000 — vs. ethnocentric voting, ed, economic start.

DC PUBLIC ED CDLC-PP1

Currently has broadest charter school net in nation —

20 legally ind. charter schools / yr

Yet vid by tws unions.

NY District 4 @d.

~~Public~~ Wash DC ed b/cane "charter district"

= P. P. ROUTES

or P. DISCRIMIN

5- w/ low public
f. from

failing
schools

• clear stds

• contract w/ all groups

• schools hire own tws / admin

High expectations.

parents shd help.

- To ⑤:
1. X corp exits → single firm move suby not
 2. X prod only sure for x. Jangle only
 3. ↑ X export subsidies / import restrictions

• UNEMPLOYMENT / TRNG SYSTEM (DLC-PP1)

Clinton Reemployment Act 94

- a. immediate reaction "career disc" for dislocated workers
 - b. "one-stop" career disc gradually for all workers
- Ex-state Emp serv
 off → local "brokers" of re-emp services.

* • NCARE (DLC-PP1)

- mkf-based AM
- a. insurance P! to = choice, etc
 - b. voluntary purchasing co-op act as "buying agents"
 - c. 2000 MT, ↑ reentry age
- = gov. pays ① avg premium.

• AFF AM (DLC-PP1)

- cash sub pay : nation skill ✓, 1/2 sub org: policies
- sub take group preferences for ind empowerment -
- a. too limited
 - b. = \$ @ nation
1. phase out mandatory net in govt, entire voluntary off-own by P! employers
 phase out tjt, ↑ ext. anti-disc (= EDC...)
 2. replace gov preferences of new policies to expose poor ind countries
 = sub help mainly poor, \$ mainly MC.
 \$ for money poor
- a. schools
 - b. @ schools to P! employers

• TRANSPORTATION (DLU - PPI)

- we cd tax vehicles by weight, size, poll - & property values
 - gas tax / subs. alt energy
 - 1. correct highway deterioration ^{extensively}
 - 2. pre-qualification for demonstration projects
 - 3. competition for the "system car" - smart car, cheap, small.
 - 4. used for other
 - bus surcharge
 - sales tax from prop sales
 - ~~charge~~ tolls
 - reg / licensing fees
 - 5. hi-speed rail
 - 6. Pl. inv.
 - 7. Pl. Air traffic ctrl
- + effect - employers can provide employees w/ tax ~~where~~ transportation allowance - or ↑ mt. more tax exap. propert. to ↑ user fees.
→ alt fuels, etc.

• GREEN TAXES (DLU - PPI)

pollution charges - (1) to carbon content of fossil fuels
utilities
municipal solid-waste systems

• END AG ENTITLEMENTS (DLU - PPI)

1. coop-by-coop entitlements → fed subs go to a few, rich farmers
2. land use rights (2) d to subsidies
3. protection of EEP but, most sales make anyway - at higher prices

wheat, corn, cotton, rice - \$100K subs
local 16.4% farms w/ 65% direct farm payments
got

Rest Book

• "2d Gen" env laws (COPPP)

- Core principles -
- a. set goals : priorities
 - b. harness mkt forces / stimulate innovation
 - c. decentralize decision making
 - d. flexible means to ach. goals
 - e. measure env. results

- = 7 initiatives -
- a. state reg. at all stage
 - b. empower states to ③ own problems
 - local land use decisions
 - c. leverage publicly available env. info
 - EPA shd be like SEC for env. - = cd. rank companies
 - d. mkt, w/ mandates -
 - GTE - emissions trading + cong. fixed HGTs
 - states - interstate mkt for H₂O vs
 - e. not good stewardship w/ flex -
 - ↑ EPA project Nr (alt compl.)
 - Ref Part grants w/ states
 - Convene sectoral mt
 - f. X gov sub that ✓ env. goals
 - irrigation water subsidy
 - below-mkt timber sales
 - mining patents pub lands
 - g. restrictive EPA
 - sectoral, place, substance - based

tax subs for 61 d

3 3719

Also want ♀ to stay @ home

Paternalism -

a - ↑ fathers working @ home

b - ↑ higher wages, flexible benefits,
flexible work

arrangements
instead of child care,
etc.

CWA

vs. Goals 2000 v/c = nat'l. stds — shd
have stds set by local school
districts, esp. stds that
respect R! freedom

vs. sex ed (kinsey child molestation)

807
500/child vs. NETA school prayer
tax credit pro-life, anti-gay
vs. - summit on ethics & mg

CP 3 / So 30 v R NORS

Dan Balz and Ronald Brownstein *Storming the Gates: Protest Politics and the Republican Revival* (Boston: Little, Brown, 1996)

Don Fierce, dir. strategic planning RNC: "Washington has replaced communism as the glue for conservatives . . . Washington is financially and morally bankrupt and because of that it is the glue that binds economic and social conservatives. These are people that love their country but hate their federal government. Where is the evil empire? The evil empire is in Washington." (15)

Rise of GOP in last decade = rise of anti-gov't forces: NRA, ind businesses, Christian Coalition, talk shows, Bennett/Murray, etc.

Hence the big idea now: "All the intellectual energy in the Republican Party is now focused on finding new ways to reduce the scope and reach of the federal government" (295)

Examples: block grants, cutting welfare and replacing it with private charity, vs. federal affirmative action, env. Laws.

In general, want to cut back gov't to the level that it was at before the Progressive Era.

BUT most with brains know that's too simple -- "We don't have an overall, overarching, compelling thesis for the future of the country" (Jeffrey Eisenach, pres. Progress and Freedom Fdn) (370)