

## Vision and the End of Racial Preferences

Roger Clegg

Published online: 22 July 2008  
© The Author(s) 2008

The question I'd like to pose this Martin Luther King Day weekend is: *Are we likely to witness the end of racial preferences soon—not just in our lifetimes, not just within the twenty-five years that Justice O'Connor “expected” in 2003, but in the next, say, five to ten years?*

I think there is a good chance that we will. But I'm a non-determinist, so nothing is inevitable. In other words, I think we'll win, but I know that we can still lose.

There are different ways to think about this question, and different factors to consider.

### Demographics, Law, Attraction, Vision

For instance, consider demographics. America is becoming increasingly multiethnic (which it has always been) and multiracial (which has been less common). It should be obvious that a legal regime based on sorting people according to race and national origin becomes more and more untenable in such a society.

**Roger Clegg** is president and general counsel of the Center for Equal Opportunity, 7700 Leesburg Pike, Suite 231, Falls Church, VA 22043; [rclegg@ceousa.org](mailto:rclegg@ceousa.org). This address was originally presented at “Race and Gender Preferences at the Crossroads,” a conference organized by the California Association of Scholars and cosponsored by the American Civil Rights Institute and the Center for Equal Opportunity, held January 19, 2008, at the University of Southern California, Los Angeles, California. Mr. Clegg's remarks were first posted on 21 January 2008 under the title “Visions of Equality” on National Review Online at <http://www.nationalreview.com>.

On the other hand, you could also argue that, as the percentage of whites in the general population goes down, the difficulty of getting rid of preferences for nonwhites will go up.

Or consider the law. There are federal statutes on the books that already make it illegal to give preferences according to race and ethnicity in the three areas where they are commonly given: education, employment, and contracting. Thanks to ballot initiatives, more and more states are following suit. And right now the trend among judges is toward greater and greater skepticism of such preferences, as both a statutory and constitutional matter.

On the other hand, we also know that federal judges are perfectly capable of ignoring clear bans on racial preferences—as we’ve seen in Supreme Court cases like *Weber* and *Bakke*. And we are only one justice away from a Supreme Court that views politically correct racial discrimination as no big deal. It’s not just the Super Tuesday ballot initiatives that are important for racial preferences later this year: The presidential election is at least as important. I should add that bureaucrats are also happy to ignore clear bans—witness the way university officials here in California are trying to deemphasize academic achievement (as reflected in grades and standardized tests like the SAT and SAT II) in favor of “holistic” review, simply as a way around the ban on racial preferences in university admissions.

Another way to think about the answer to the question is to ask: What is it that makes racial preferences still attractive to many?

I would suggest that the short answer is, because African Americans are on the short end of so many disparities. Think about it. If African Americans were as wealthy and successful, proportionately, as whites, then there would be no point in preferences for them, and if there were no preferences for African Americans, it’s hard to imagine that there would still be preferences for anyone else.

So what is the reason for those disparities? And here again there is a short answer, namely that seven out of ten African Americans are born out of wedlock. Even among liberal African Americans, it is increasingly recognized that this is the real problem—not discrimination. Those who favor preferences do so, I am convinced, because they think that past and present discrimination justifies them (a non sequitur, to be sure, but there you are). As Jim Crow fades into the past, however, and as everyone fesses up to the fact that the main cause of present disparities is not discrimination, then the pressure for preferences must fade too.

On the other hand, who says we have to be logical? Some people are so outraged—or, at least, like to parade such outrage—by racial disparities that they will be willing to do anything to get rid of them, no matter what their cause. And if they want to get rid of racial disparities, the fastest way to do it in the short run—or, at least, the most ostentatious and psychically satisfying way—is to take from one race and give to another.

But perhaps the most basic way to answer the question is to ask: How likely is it that most Americans share a vision that includes the continued use of racial preferences?

If you believe in individualism and individual rights, in personal accountability and responsibility, in limited government and free markets—then, no doubt about it, you will find it very offensive if the government sorts its citizenry by race and national origin, and treats some better and others worse depending on which box they check. And I think that most Americans do have a vision like this, and the survey data bear me out.

But, unfortunately, not all Americans share this vision. If you believe in collectivism and group rights, are skeptical that individuals can be expected to overcome challenges, roll your eyes when people mention “morality” and “values,” view “hard work” and “law-abiding citizenry” as overrated, and are not convinced that the Nanny State and socialism ought to be given up on just yet—well, then, making sure that each group gets its “fair share” doesn’t seem so bad. And those people are out there. As Thomas Sowell wrote, we have “a conflict of visions.”

### **More on Vision**

Let me elaborate now on the vision that I think most Americans share when it comes to matters of acceptable and unacceptable diversity. It’s certainly relevant to the future of affirmative action, as I just discussed, but it goes beyond that, too.

A country that is multiracial and multiethnic—especially a country with lots of immigration—must take common values and assimilation seriously. Assimilation is not a dirty word: You come to America, you become an American—and then other Americans accept you as such. *E pluribus unum*.

The assimilation—the grounding in common values—that’s needed is not limited to the new arrivals. And sometimes immigrants come here more solidly grounded in traditional American values than the folks already here.

The need for nonimmigrant Americans to assimilate comes up in another way, too. As I've discussed, racial and ethnic disparities are often pointed to as proof of discrimination—and the need for racial preferences—when in fact those disparities are the result of bad life choices: having children out of wedlock, using drugs, committing crimes, dropping out of school, and so forth.

So, for immigrants and non-immigrants, in the past I've listed ten crucial aspects of assimilation. There's nothing wrong with ethnic pride, and we don't all have to eat the same foods or listen to the same music, but we do all need to (1) speak English; (2) respect other racial and ethnic groups; and conversely (3) not ask for special preferences for our own racial or ethnic group. We must also not (4) bear historical grudges; (5) believe that working and studying hard are "acting white"; or (6) have children out of wedlock. On the other hand, we should (7) follow the law; (8) be reasonably polite to one another; and (9) respect women. Finally, (10) we should all be patriotic, proud Americans.

Now, I think that most Americans believe that none of these rules is really that hard for individuals to follow or that controversial for politicians to endorse.

I know there are some loopy professors who really hate the idea of a melting pot, and some poor souls who just can't seem to follow the law, and some demagogues who make their livings through false accusations of racism. But I'm talking about the overwhelming majority of Americans of all racial and ethnic backgrounds and both political parties.

What politician, in other words, and what American, has a problem with this vision?

An America in which no American refuses to accept another American because of his race or national origin, or asks for special treatment on that account, or carries a grudge because his neighbor's ancestors did something to his own ancestors, or treats women as second-class citizens either, whatever culture or country or 'hood he came from.

An America in which Americans are reasonably polite to one another: where treating each other as human beings is required of us all and is not viewed as being an Uncle Tom, and where being sullen and truculent is not seen as authentic or tough or cool.

An America in which studying hard and working hard is expected of everyone and is not seen as "acting white." An America in which people

don't self-destruct by breaking the law or having children before they are married. An America in which, in order to be able to communicate with one another, we all learn English and use it as our principal language.

Finally, it is the vision of an America in which we are proud of being Americans, and accept and welcome those who follow all these rules as Americans, too.

As a conservative, I know that it is foolish to expect Heaven on earth—even in a fresh New Year—and that there will always be poverty and crime and bigotry and ignorance. But, on the other hand, the country as a whole would prosper, wouldn't it, and our society would be pretty tranquil, wouldn't it, if these rules were followed by most of us? And are they really that hard?

As I said, I believe the overwhelming majority of Americans share this vision, and that's another reason why the days of racial preferences are numbered. Conversely, a nation that has permanently entrenched racial preferences and that rejects this vision is not a nation that can hold together and have *E pluribus unum* as its motto.

Anyway, thank you for letting me explain why (for a variety of reasons) I think we'll win, but why our winning is not inevitable—and what's at stake and why it's so important that we win.