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Essays: Color-blind or Race-conscious Policies

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Abstract

The debate between advocates color blind and race conscious policies has been perennial in the United States since Reconstruction and has recently been resuscitated in the popular press with the publication of Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness* (2010). Alexander's book provided support for the race conscious side and students read Nathan Glazer's *Affirmative Discrimination: Ethnic Inequality and Public Policy* (1975) for a defense of the color blind side. The debate was framed in an even-handed manner by a selection from Desmond King and Rogers M. Smith's *Still a House Divided: Race and Politics in Obama's America* (2011) , which argues for both approaches under certain circumstances.

Introduction of Debating Essays

The debate between advocates color blind and race conscious policies has been perennial in the United States since Reconstruction and has recently been resuscitated in the popular press with the publication of Michelle Alexander's *The New Jim Crow: Mass Incarceration in the Age of Color Blindness* (2010). Alexander's book provided support for the race conscious side and students read Nathan Glazer's *Affirmative Discrimination: Ethnic Inequality and Public Policy* (1975) for a defense of the color blind side. The debate was framed in an even-handed manner by a selection from Desmond King and Rogers M. Smith's *Still a House Divided: Race and Politics in Obama's America* (2011), which argues for both approaches under certain circumstances.

---Professor Jim Simeone

Race-Conscious: Ignorance is Not A Virtue

Gus Castro

While there has been some progress made with advocacy and movements for civil rights and reformation, the problems of racial inequalities still persist today in some form.¹ With these problems in mind, it is important to consider which types of approaches the American society can take to address them. Two possible opposing policy stances are the "color-blind" and "race-conscious" approaches (King 7). Unsurprisingly, there has been much controversy and debate as to which approach America should take to address this issue. In this short essay, I will argue that Americans should adopt a race conscious approach to criminal justice and employment policy because it recognizes and addresses the persistent institutional and historical racial inequalities.

To put this point in context of republicanism, the race-conscious approach acknowledges that these issues negatively impact the American aim of protecting individual rights and serving the public interest. To elaborate, race-conscious view takes the approach that laws and policies should be made with constant, conscious concern to reduce severe racial inequalities in different arenas of American life (King 7). These racial inequalities hinder individual rights and suppress the public interest by targeting marginalized groups. For instance,

¹ In Michelle Alexander's *The New Jim Crow*, she argues that "the War on Drugs has given birth to a system of mass incarceration that govern not just a small fraction of of racial or ethnic minority, but entire communities of color" (118)

Michelle Alexander argues that the War on Drugs has led to a mass incarnation of marginalized groups in which “virtually all constitutionally protected civil liberties have been undermined by the drug war” (Alexander 62). While there are several more examples² to list, the point is clear: policy approaches such as the War on Drugs lead to “structural arrangements that locks a racially distinct group into a subordinate political, social, and economic position, effectively creating a second-class citizenship” (Alexander 185) Alexander’s solution to address these problems is a change within the culture of law that adopts a “compassionate humane approach to the problems of the urban poor” and “promotes trust, healing, and genuine partnership.” (Alexander 233) Indeed, when we consciously acknowledge the systemic racial inequalities that exist, we can make better policy decisions that prevent such careless consequences that violate rights.

In opposition to my argument, some will argue that the race-conscious approach creates significant problems to the republican virtues by resorting to grouping and categorizing individuals. Because of this grouping based of traits like race, some groups will gain different rights than others.³ This inconsistency of individual rights will force individuals not to utilize their own merit and skills to progress but affiliate themselves with a group they have no desire because it “becomes the basis for rights,

² Additionally, “The Supreme Court has seized every opportunity to facilitate the drug war, primarily by eviscerating Fourth Amendment protections against unreasonable searches and seizures by the police.” (61)

³ “The Orwellian nightmare ” ... all animals are equal, but some animals are more equal than others, ... ” comes closer.” (75)

and those who want to claim certain rights must do so as a member of an affected or protected class. (Glazer 75) Furthermore, this group categorization leads to “resentment and hostility between groups that is fueled by” such an approach. (Glazer 200-201) According to Nathan Glazer, “...All "whites" are consigned to the same category, deserving of no special consideration” which unfortunately may mean for individuals that they are tied to a “distinctive history of past -and perhaps some present- discrimination.” (Glazer 200-201). Such group categorization will inevitably lead to conflict. In contrast, the colorblind approach argues that laws and policies should be crafted in as "colorblind" fashion that treats people as individuals without reference to their racial identities. As Alexander states, this position argues that the best approach to “empowerment” and policy-making is “entrepreneurship and individual initiative.” (Alexander 241) This approach suggests minorities succeed on their own individual merit and worth, then the “group benefit(s), as does society as a whole. Indeed, “when individuals get ahead, the group triumphs. When individuals succeed, American democracy prevails” (Alexander 241).

In response to this objection, I argue that this approach is significantly ignorant of the “racial and structural divisions” that do in fact remain in society..⁴ The problem with framing the situation as one that can be analyzed with only statistical evidence (as Glazer does in

⁴ As Alexander explains, “The mass incarceration of people of color is a big part of the reason that a black child today is less likely to be raised by both parents than a black child born during slavery” (180).

Affirmative Discrimination) is that it ignores other institutional factors that may play a role (Glazer 72). Indeed, this is the result of “structural racism” in that it frames inequality by “examining only one wire of the cage, or form of disadvantage” which makes it difficult to understand why [minorities] are still trapped. (Alexander 184)⁵. Furthermore, it is extremely problematic and ignorant for the opposing side to frame this debate as only an affirmative action issue. As Alexander states, “Diversity-driven affirmative action, as described and implemented today, sends a different message that legitimizes the systemic inequalities.(Alexander 255) In fact, the opposing side will insist, through “black exceptionalism”, that because some individual group members, that “represent” the race, succeeded in hierarchies of power that lack diversity”, both race and the system are no longer an issue (Alexander 248) However, this only adds further to an ignorant belief that those who did not succeed and “are trapped in the bottom” of the system are entirely responsible for their fate (Alexander 248). The truth of the matter is that “racial differences” will always persist and no color-blind policy can get around such conscious differences (Alexander 243). The only way to resolve these differences is not to ignore but to recognize these differences and proactively reform both the public consensus and systemic inequalities

⁵ It can never be forgotten that during the Jim Crow era, color-blind policies such as “poll taxes, literacy tests, grandfather clauses, and felon disenfranchisement laws” were enacted, which led to the political disenfranchisement of various groups.

that prevent us from striving towards the republican goals we strive for.

Race-Conscious Color-blindness

Hannah Lyons

Debate over the role of race in policy in America has a long history. According to King and Smith, debates progressed from being between pro and anti-slavery groups, to pro and anti-segregationists, and currently exists between advocates of color-blind policy and color-conscious policy (9). Color-blindness is “judging people not on the color of their skin but on the content of their character” (Smith & King 9) which entails “a rigorous adherence to requirements of no discrimination on grounds of race, color, and national origin” (Glazer 203). Race-consciousness is defined as providing benefits to disadvantaged groups in order to compensate for past or current inequalities, so that they may be on equal footing with all. The color-blind approach to criminal justice and employment policy should be adopted because it has the potential to better fulfill the republican ideals of protecting individual rights and the public interest, while avoiding the ascriptive tendency, the ‘writing on’ of demeaning traits or stereotypes upon certain groups, of race-conscious policies.

Color-blindness in employment opportunity and criminal justice is desirable, because both institutions judge according to merit. In criminal justice, a suspect is released after his or her merit, or innocence, is proven. Job candidates too should be hired on the basis of merit and qualifications, regardless of race.

Quotas imposed under threat of penalization to reach proportional representation of minority employees often cause skewed results and extenuating circumstances for businesses. For instance the requirement to hire one black per white teacher until 20% of the teaching force in Boston was black, despite a shortage of qualified black candidates (Glazer 65). Businesses should act in good faith to seek out minority candidates--even those who might not apply--as was the original meaning of affirmative action (Glazer 65). But quotas merely depress the quality of the working force and place unnecessary burdens on businesses. It is not for the government to reward or punish individuals based on group affiliation. Conversely, it *is* the responsibility of the government to protect individual rights on the basis of universal human rights. When individuals are all treated equally under the law, the public interest is also served, since “it clearly does not serve the creation of an integrated nation for government to intervene in creating sharper and more meaningful ethnic boundaries” (Glazer 202).

In recent years, color-blindness has come under serious attack, to the degree that it cannot continue as an effective ideal without alteration. The most serious accusation leveled at proponents of color-blindness is that it perpetuates indifference to racial inequalities, and therefore does not produce color-neutral results. Alexander shows that what is really necessary to perpetuate racism is not discrimination, but indifference. Because “unconscious and conscious biases lead to discriminating actions, even when an individual

does not want to discriminate” (Alexander 106). The drug war is a prime example. Regardless of race, people “use and sell illegal drugs at remarkably similar rates” (Alexander 99). However, of those imprisoned for drug related offenses, 90% are black or Latino (Alexander 58). Despite the overwhelming evidence that sentencing unfairly targets black men, “the Supreme Court ruled in *McCleskey v. Kemp* that racial bias in sentencing, even if shown through credible statistical evidence, could not be challenged under the Fourteenth Amendment in the absence of clear evidence of conscious, discriminatory intent” (Alexander 109). In essence, as long as sentencing is outwardly color-blind, no one can be held accountable for statistically disparate results. It is for these reasons that proponents of color-consciousness advocate special privileges for the disadvantaged, because color-blindness has *blinded* American society to systems of racial injustice.

A serious evaluation of the discriminatory results that have occurred under color-blind policies is in order. The key question is, does color-blindness need to be blind? Does it need to be indifferent? It does not. Today’s conditions make a combination of race-consciousness and color-blindness possible. The language of the law must remain color-blind, in order to treat all citizens equally under the law. Top-down special privileges should not be allotted to groups because of their racial affiliation, for this use of race would further ascriptive bias, crystalize and enshrine racial differences in law, and feed hostility and resentment. However, a recommitment to *no*

discrimination in or as a result of color-blind policies is necessary. It is time for proponents of color-blindness to reclaim moderate affirmative action in order to ensure that Americans are not blind or indifferent when the results of color-blind policies are not race-neutral. Not only the text of the law must be color-blind, but also the implementation. The illusion that discriminatory intent is necessary for discriminatory results must be done away with, and credible statistical evidence showing such results must be allowed to impact how policies are enforced. What is necessary is not color-conscious policy, allocating special privileges to some citizens over others, but a renewed commitment to ensuring that color-blind policies are enacted in such a way that they bring about color-blind results.

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Color Contrast

Anna Eager

A topic of contention today is racial equality. Many believe that a division remains between citizens of the United States due to race. To dissolve this division, there are two potential approaches that could be taken. One is the color-conscious approach, which implies Americans must be conscious of who they are dealing with and what inequalities they may have faced due to the color of their skin, especially in the justice system and workplace. The other is the color-blind approach, which upholds the idea that race should not be taken into consideration, especially when it comes to criminal justice and job opportunities. Both could potentially help this division that exists in America, but the color-blind approach is truly the best solution. This approach is superior for two reasons: it embodies republican ideals such as individual rights, while promoting the public interest, but also it is the least ascriptive tradition, a value Americans do not want to carry on. The color-blind approach is the most republican choice. It dictates that there should be a promotion of individualism and self-betterment in the criminal justice system and employment policies. As Alexander (2012) mentioned in *The New Jim Crow*, “there should be a concern for individuals not groups” (p. 243). Color-conscious policies do not ensure this, as they are not concerned with an individual’s performance or merit. Businesses should want to hire the very best so their company can succeed and “merits of an individual [should be] more significant than

that individual's race" (Glazer p. 54). An employer does not want to have to check off a box to meet a regulation on diversity – they want the people who are going to make the business more successful. The racial identity of employees should not matter.

Color-conscious policies do carry a threat of a rebirth of the ascriptive tradition. This tradition is something Americans try to avoid, because of its discriminatory consequences. Color-conscious policies create an environment in which one can assign certain traits onto someone else simply because of a group the latter is a part of. As Glazer (1979) mentioned, "The EEOC has already ruled that to take into account a criminal record in hiring is discrimination on account of race". If one is allowing themselves to be criminal history blind, but not color-blind, they could still write those assumptions onto a person based on insignificant statistics. Therefore, a true color-blind policy would be one in which one can be blind to both color and crime.

However, it is also easy to argue that race-conscious policies help reverse inequalities that have been ascribed onto those of color throughout their entire life. Blacks have faced struggle after struggle in the U.S., from slavery, to Jim Crow, to today's mass incarceration.

They are consistently a step behind because of injustices and traits that have been projected onto them. Something like affirmative action helps ensure that race-consciousness levels the playing field by giving disadvantaged groups opportunities they might not otherwise have access to.

Additionally, this policy could be a virtuous sacrifice for the public interest. This means that employers could assist minorities by giving them a chance regardless of their background. Bettering these individuals who need the help will lead to bettering the United States. If employers are turning away potential employees due to race, this is an extreme problem; therefore, placing requirements on employers could ensure an equality of opportunity that would be a necessary sacrifice for the common good.

Yet, when discussing affirmative action, it should be mentioned that this can create even more division among groups. It can create a type of competition that people think is swayed due to the color of one's skin instead of legitimate achievement. Moreover, mass incarceration can only truly be combated if arrests are being done based on the crime, not on the color of one's skin. Policies may not be in place for this yet, but they surely can be implemented through color-blind ideals. Though employers sacrificing for the public is a great ideal, this is not always plausible. The Glazer (1979) piece mentions the Skelly-Wright example, which references a quota of 1:1 white-to-black teacher ratio. However, this policy led to a shortage that employers could not fix, because many black teachers were teaching at other schools. There is no easy answer to the question of how to improve equality in the criminal justice system and employment standards for all races. Everyone believes they are following the correct answer or method. What is most worrisome is that this division could become an

even greater gap if not handled correctly. Yet, it has been shown that color blind policies would prove to be the most beneficial to change the status quo of racial inequality. As such, it is important to hypothesize about where the line is drawn when finding this common ground that will make everyone equal. The pursuit will be a long one, but it is well worth it.

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The Color-blind Approach Toward Racial Equity

Jonathan Panton

The United States has dealt with racism throughout its existence, starting from the importation of slaves in 1619 to the modern subliminal racial caste system. In the fields of criminal justice and employment policy, there are two prevalent approaches to racial inequity: the color-conscious approach and the color-blind approach. While each approach has its merits, the color blind approach is more republican in regards to criminal justice and employment.

The color-blind approach is more republican in the field of criminal justice. First of all, the color blind approach is the more individualistic approach. Unlike the race conscious approach, which is an overly ascriptive method designed to right past wrongs against historically marginalized groups, the color blind approach judges people as individuals. All Americans are entitled to equal protection under the law.

Color-conscious supporters argue that the criminal justice system in the United States is inherently biased against African Americans. A striking example of this anti-African American bias exists with the infamous 100-to-1 ratio of crack cocaine penalties to powder cocaine penalties. Since the vast majority of individuals charged with crack-related crimes were black while the majority of people charged with powder cocaine offenses were white, African Americans were punished more severely (Alexander 112). Alexander addresses the

flaws of colorblindness in criminal sentencing. "... [mass incarceration] purports to see black and brown men not as black and brown, but simply as men -raceless men- who have failed miserably to play by the rules..." (Alexander 241). Alexander argues that mass incarceration is the result of seeing minorities as raceless criminals. While such a mindset is not borne out of racism, the effects are just as racist.

In contrast, advocates of color-blind sentencing defend policies that do not explicitly mention race. Recently, many cities have dramatically increased the number of random searches as a technique to control the drug trade. The landmark case of *Florida v. Bostick* examined the legality of a drug sweep on a Greyhound bus leading to the arrest of Terrance Bostick for trafficking cocaine. "The Court ruled that Bostick's encounter with the police was purely voluntary, and therefore he was not 'seized' within the meaning of the Fourth Amendment... A reasonable person, the court concluded, would have felt free to sit there and refuse to answer the officer's questions..." (Alexander 65). Random drug sweeps did not violate the defendant's Fourth Amendment rights since the individual involved gave permission for the search. The color-blind approach is more republican than the color-conscious approach in not just the criminal justice system.

The color-blind approach is also more republican in the field of employment. Glazer addresses the issue of affirmative action in employment. "A rigorous adherence to requirements of no discrimination on grounds of race, color, and national origin would

weaken these concentrations and offer opportunities to many of other groups" (Glazer 203). Glazer argues that it is actually color blind policies that have ended up helping diverse groups of people.

But, supporters of the race-conscious approach want affirmative action to help historically-marginalized groups. Executive order 11246 created affirmative action in employment starting in 1965, which resulted in comprehensive programs soon afterwards. "An acceptable affirmative action program must include an analysis of areas within which the contractor is deficient in the utilization of minority groups and women, and further, goals and timetables to which the contractor's good faith efforts must be directed to correct the deficiencies" (Glazer 48). Essentially, this race-conscious approach not only mandates equality of opportunity, but expects equality of outcome for women and minorities.

However, the use of race neutral policies may actually help minorities more directly than race conscious policies. "By the 1970's black women had earnings as high, or higher than, comparable white women in the country as a whole; young black male college graduates earned as much as their white counterparts..." (Glazer 42). As shown, black incomes for women and college-educated men increased after the Civil Rights Movement. While the income gap between the two races still persists, the disparity lessened. Also, Glazer examines the hypocrisy of affirmative action. "We are indeed a nation of minorities; to enshrine some minorities as deserving of special benefits means not to defend minority rights against a

discriminating majority but to favor some of these minorities over others” (Glazer 201). Glazer describes how affirmative action is fundamentally discriminatory because it favors one group over another. Simply put, the presence of so many minorities in the United States makes the goals of affirmative action virtually impossible to consistently achieve.

The color-blind approach is more republican than the color-conscious approach. The color-blind approach is a more effective policy in the fields of criminal justice and employment. While the color-blind approach is not perfect, the approach grants everyone equal protection under the law. Thomas Jefferson enumerated the goals of the new nation in the Declaration of Independence, “We hold these truths to be self-evident, that all men are created equal...” From the very origins of the republic, the equality of all men is considered paramount and the race neutral approach better achieves those goals.

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