

Color and Money: How Rich White Kids Are Winning the War over Affirmative Action, by Peter Schmidt. New York: Palgrave Macmillan, 2007, 272 pp., \$24.95 hardbound.

The Price of Preferences

Carl Cohen

Published online: 26 April 2008
© Springer Science + Business Media, LLC 2008

Peter Schmidt is a good reporter. He has long covered the controversies that beset university admissions for the *Chronicle of Higher Education*, in which his many accounts have been accurate and well balanced. His new book, *Color and Money*, aims to draw together what he has learned studying and writing about the battles over affirmative action. It's a good book: not very well organized and somewhat repetitive, but smoothly written, informative, and honest.

The subtitle of the book reveals its thrust: *How Rich White Kids Are Winning the War over College Affirmative Action*. About half of the book

is devoted to a history of the University of Michigan cases (*Grutter v. Bollinger* and *Gratz v. Bollinger*), which resulted, as we know, in a substantial victory for those defending the uses of racial preference in admission. And yet white kids continue to do very well—too well, from Schmidt's perspective—while black kids do not.

That rich kids meet with more success than poor kids, whatever their color, is surely no revelation. The egalitarianism we profess as a society does not extend to economic circumstances, and economic inequalities produce highly uneven results in schooling, in housing, and especially in pre-school environments. So we are not surprised when told that in selective colleges and universities the rich greatly outnumber the poor—and that blacks, who are disproportionately poor, are not enrolled there in proportion to their numbers.

Peter Schmidt is pained by these inequalities. His book, on the whole a tribute to his integrity as a reporter, is built on his underlying conviction that something has gone wrong; earnest efforts to right the balance among the races in our universities using affirmative action have failed. That is so; affirmative action has indeed failed. But whether that in-

Carl Cohen is professor of philosophy at the Residential College of the University of Michigan, Ann Arbor, MI 48109-1245; ccohen@umich.edu.

strument ever was suitable for advancing the goal of racial justice is a question he does not ask.

To understand the history of the admissions controversies one must be clear about how “affirmative action” has been transformed, and why opposition to it is now so deep and so widespread. Slippery words confuse the matter. What has failed is *racial preference*. It has proved injurious as well as unjust, and hangs on, as a result of the decision in *Grutter*, by a thread. The executive orders given by Presidents Kennedy (in 1961) and Johnson (in 1965) calling for “affirmative action” were unambiguous in calling for positive steps to *extirpate* discrimination and preference, then widely given (or tacitly approved) by government contractors. Still today we strive actively to eliminate discrimination in employment, in lending, in housing; we take affirmative steps to eliminate prejudicial bias in standardized tests. Affirmative action in this original sense was, and remains, morally right. But the appealing words “affirmative action” were kidnapped by those who sought, with honorable motivation, to fix things by giving *preference* to blacks and other minorities. “Affirmative action” as that phrase is now commonly used (and used throughout this book by Peter Schmidt) has

now come simply to *mean* race preference. Affirmative action has been turned on its head; it has become what it was designed to eliminate.

Preference inevitably does some injustice to those among the disfavored races (now whites) who are displaced because of their color. Peter Schmidt understands this. But his heart is generous. The aim was always to mitigate great racial imbalance, and thus, for him, affirmative action as transformed was a good thing, an honest try, and its failure regrettable. Appreciating his moral concerns one reads his book with some sympathy.

The first portions of the book are devoted to a compendious report of the economic and racial imbalances, past and present, that Schmidt so keenly laments. His readers are well served here by the mass of reports that he reviews and the torrent of statistical data that he seeks to distill. The organization of this compilation is not fine; the percentage numbers and citations are so numerous that one’s eyes begin to glaze over. But his reports are accurate and on point: rich white kids are doing very well, poor black kids are not. What went wrong?

He turns, by way of explanation, to the history of “affirmative action” (by which he always means racial preference in college admissions)

and to the arguments surrounding it. Here his reports retain accuracy—but they are presented in ways that reveal his own convictions. On the one hand, he recognizes explicitly that universities exhibited a “willingness to adopt quotas and double standards for minorities.” That he does not criticize. What he bemoans is the fact that “from the time that colleges first adopted affirmative action, various forces swirling around them would hinder their efforts to take in black students and would undermine black gains.” Circumstances, he believes, defeated the morally right effort to give remedy using race preference.

There are many serious objections to the compensatory defense of preference, of course. These objections are noted in a chapter with a title that reveals his spirit, “Assault from the Right.” The arguments against preference put by the Center for Individual Rights, by the Center for Equal Opportunity, by Ward Connerly, by Roger Clegg, and by me are presented very briefly but without distortion. (Disclosure: he reports my role in the initiation of the Michigan cases accurately, and describes me as one of those “strict civil libertarians [who] oppose race-conscious admissions policies based on a belief that any state-sponsored racial discrimination is offensive, no

matter how noble the intent,” which is correct and entirely fair.) But every report of a telling point against preference gives Schmidt the opportunity to present a response in its defense. When, for example, Schmidt recounts the arguments of Justice Powell, in *Bakke*, against the defense of preference as remedy, he answers it immediately with a passage written a quarter of a century later by Gary Orfield: “the most powerful argument for affirmative action would be that it is remedial.” That is precisely the perspective from which Schmidt writes. Thus, when the arguments about the Michigan cases are reviewed, he devotes pages to the role of a black high school student from Detroit (enlisted by the group that calls itself, fittingly, “By Any Means Necessary”) in presenting the woes of the minorities. One is not surprised to find as the subtitle of one chapter, “Black Voices Fight to Be Heard,” and of another, “The Uprising of the Excluded.”

Since (in his view) preference is a tool designed to do justice, referenda that forbid preference are not to his liking. Reviewing the arguments against Proposition 209 in California he reports, without comment, that “women’s groups [had] issued warnings that it would leave women vulnerable to being fired for becom-

ing pregnant or for filing sexual harassment complaints.” It is a far-fetched complaint, but he registers no response. He does not fail to report that “Students at California State University at Northridge invited David Duke, the former Ku Klux Klansman turned Louisiana politician, to campus to represent the pro-209 side in a debate.” That is true. But he does fail to report that this invitation came from zealous *opponents* of the proposition, as a clever tactic designed to smear the proposition by linking it to the name of a known racist. (In fairness, Peter Schmidt may not have known this.)

I do not wish to leave the impression that Schmidt has been devious in writing this book. Not so; I judge that he strives earnestly to be fair. But the mass of data he confronts is huge, and he cannot keep himself from selecting, for his reports, material that tends to support the view that preference (“affirmative action”) is essentially a tool justly designed to compensate for earlier oppression.

This point of view becomes more evident in the later portions of his account. Since preference is to be rightly understood as *remedy*, the defense of preference as an instrument to advance an allegedly compelling need for the *diversity* of college classes he finds highly suspect. Claims regarding the benefits of di-

versity cannot be defended with solid evidence, as his many reports make clear. He is convinced for good reasons (bear in mind that he was almost always on the scene) that the universities, which had virtually ignored diversity when preferences were first introduced, turned to this defense of preference only because the courts had rejected the remedial defense they (and he) would have much preferred. In the Michigan cases diversity was, as it remains, little more than a device. Schmidt sees this clearly. He wants an honest defense. As much as he would like to see minorities receive the preferences he thinks advantageous to them, he is repelled by the devious arguments that have been well sold by the University of Michigan and others, and bought by the U.S. Supreme Court. Because diversity has virtually nothing to do with the racial remedies he cares deeply about, this chapter of his book he calls “The Diversity Dodge.”

Is Schmidt an impartial reporter? Or is he a reasonably fair and very well informed partisan? How one ought to act when confronting conflicting alternatives depends upon the role that one adopts. If you sell your old car to your nephew, shall you be the generous uncle and treat him with particularistic altruism (as Hegel might say), giving him an absurdly low price because you love

him? Or shall you be the prudent businessman, and treat him as you treat all others, with universal egoism, selling him the car for the best price you can get? Your answer depends upon how you see yourself in that setting. Schmidt's dilemma is roughly similar. He is an honest reporter, but he also cares deeply. It is much easier to say to the uncle, "Avoid all financial dealings with your nephew," than it is to say to Peter Schmidt, "Avoid all reportorial writing on a topic on which you have strong convictions."

One who seeks a truly impartial and penetrating account of the Michigan cases must turn to another reporter, Greg Stohr of *Bloomberg News*, whose 2004 book, *A Black and White Case* (Bloomberg Press), is both exceedingly detailed and scrupulously even-handed. As a history of very complicated moral controversies that became legal battles it is much superior to Schmidt's. Yet it was entirely fitting for Peter Schmidt to have written this book. More than any other person anywhere he has had the opportunity to watch, and weigh closely, the many storms over college admission. He is personally acquainted with the central characters in most of the events of which he writes, and he has understanding sympathy for them. His closeness to the battle scenes has given him

insights that enrich his book and make for enjoyable reading.

Two other matters deserve attention here—one that Schmidt addresses briefly, and one that he ought to address but does not. First, in the early chapters of *Color and Money* he seeks to convince readers that there are admission preferences given by universities that far exceed the race preferences that have become so highly vexed. Among those others are preferences given to athletes. These, as Schmidt points out, "are the biggest admissions preferences of all." Indeed they are, and this is, in my judgment, a very serious matter.

We—and as a senior member of a major athletic power I bear some fraction of responsibility here—give admissions preferences to students whom we *know* are not likely to do well in college work, and who *certainly would not have been admitted* had it not been for their athletic prowess. It is a good thing that students should have wide opportunity to participate in team sports, representing their clubs or their colleges in competition. There are important virtues strengthened by athletic participation, as we all know: self-discipline, the ability to lead and to understand teamwork, and so on. But these are not intellectual virtues and however eager we

may be to encourage them, they cannot serve to justify huge intercollegiate sports programs that have very little to do with the world of arts and sciences. Nor can they justify the overwhelming preferences in admission that we give to athletes.

But we do give athletes preferences, with extraordinary largesse. I do not know how many athletic scholarships are awarded by my university, the University of Michigan, but they probably number in the hundreds. Small colleges, in proportion, do the same or worse. Intercollegiate sports is great fun for spectators (of whom I am one)—but it is not scholarship. Many of the students to whom we give admission preference and “scholarships” because they can hit hard, run fast, and throw balls through hoops, are simply not qualified for university admission. We give preference to applicants for admission who can barely read; we give preference to applicants whom we can predict with high probability will not complete their college degrees. Our interest in them lies only in their athletic skills; and most of those applicants, in turn, have little interest in us beyond the opportunity to advance their athletic careers. What color they are, I neither know nor care. The preferences given to athletes are—to speak

bluntly—a shameless corruption of our intellectual mission.

Of course, athletes admitted to university in this way do very poorly; this is reflected in the common figure of the “dumb jock.” In fact, physical talent and intellectual talent go hand in hand; that has been long known. Yet we have managed to stain the reputation of athletes, in the public eye, by giving some of them admission preference that ends in intellectual ignominy. Most college athletes are fortunate in that the preference given to them is not evident in their faces, so the shame of the corruption, although generally recognized, does not fall as a burden on them as individuals. In the case of minority students, however, the burden of the corruption is borne inescapably by each individual—and, more horror, by all students with the same color of skin, even if they had wanted and received no preference at all.

Mindful of the enormous investments of our universities in their athletic programs, and our dependence upon them for support from alumni, I do not know how this repugnant mess is to be ameliorated. It is important, nevertheless, to see that athletic preferences are very different from ethnic preferences in this: the latter, but not the former, are addressed directly by the U.S. Constitution. Public universi-

ties like mine have the authority to corrupt themselves, and they do, but they have not got the authority to ignore the Equal Protection Clause of the Fourteenth Amendment.

Finally, the humiliation of athletes highlights one exceedingly important aspect of racial preferences in college admissions, which Schmidt mentions only in passing. He explains the negative impact preferences have even upon those who receive them, reporting the studies of Professor Richard Sander, who argues persuasively that the *mismatch* of students and institutions produced by minority preferences leads to results (in the nation's law schools) in more minority failures, and fewer minority lawyers than would have been the case had preferences not been given.

But there is a bitter consequence of preference for minorities that reaches more widely and more deeply than that. If we lower entrance standards for some racial groups—which is what we do when skin color or national origin are treated as admission factors of consequence—it is statistically inevitable that those who are so admitted will perform less well than their non-preferred peers. Like “dumb jocks,” preferred minority students will have markedly weaker academic credentials. Blacks and Hispanics being the major recipients of these preferences, it is

inevitable that theirs will be an *inferior academic performance*—not because of their color, but because of the corruption in their admission. Color has nothing to do with intellect, we know; the assumption of minority inferiority is a canard, a vicious lie. But there will certainly be a pattern of inferior performance for those given race preference, and it will be a pattern evident to all because of the *color* of the recipients of that preference. The resultant inferiority will inevitably be *linked* to that color and ascribed to the race of those so admitted. Race preferences, therefore, actually *forge* links between intellectual inferiority and race, and *reinforce* nasty stereotypes. This injury to the minorities concerned, almost the worst imaginable, is deeper, and longer-lasting, and more hurtful by far than any good that may possibly come from preferential admissions.

Peter Schmidt is troubled by the fact that black kids are losing out. They are, and he is rightly indignant. Of course, in largest part their defeats are the products of inequalities very far from the world of college admissions. But when the time for college arrives for them, they lose again, damaged and humiliated by policies that were honestly intended to help, but which prove in fact to be insidiously counterproductive.