Acad. Quest. (2008) 21:472–476
DOI 10.1007/s12129-008-9078-2

REVIEWS

# **Ending Racial Preferences: The Michigan Story**, by Carol M. Allen. Lanham, MD: Lexington Books, a division of Rowan & Littlefield Publishers, 2008, 422 pp., $90.00 hardbound.

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Published online: 14 October 2008


On June 27, 2008, the *Chronicle of Higher Education* buried a story in four column inches on page 20 that most in higher education never thought they would see. After a tumultuous three-year struggle to enact a constitutional ban in Michigan against the use of racial preferences, the University of Michigan (UM) announced that in its 2008 admissions class—the first enrolled without considering race and ethnicity—the percentage of underrepresented minorities (African Americans, Hispanics, and Native Americans) had barely declined: from 10.85 percent in 2007 to 10.47 percent. The predictions, almost universally embraced in academic circles, of a cataclysmic plunge in minority enrollment had not occurred.

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Now, one year does not a trend make and some other university sectors may be more affected. But regarding the focus of the political controversy, UM undergraduate admissions, it turned out that the tools of raw racial preferences were not worth the tenacious defense made by the university and it allies. UM apparently achieved its goals by opening up an admissions office in Detroit and targeting for additional outreach schools and neighborhoods in places that previously sent few students to Ann Arbor.

*Ending Racial Preferences* is a book well worth reading to understand not only what happened in Michigan, but also in the other three states (California, Washington, and Florida) where the anti-preference issue emerged. As this review is written, similar constitutional struggles are being waged in Colorado and Nebraska. This book will be a template for measuring developments in these battleground states and what will happen as the issue is raised in others.

Carol M. Allen was a research specialist in the political science department at Michigan State University (MSU), and her careful exposition of the history of the Michigan Civil Rights Initiative

(MCRI) and meticulous documentation (there are about six hundred footnotes) reflect her profession. Far from being a dry chronology, however, Allen tells a dramatic story of how a small group of underfunded, sometimes disorganized preference opponents took on and beat the political, educational, corporate, labor, and religious establishments arrayed against them.

MCRI intended to "Ban public institutions from using affirmative action programs that give preferential treatment to groups or individuals based on their race, gender, color, ethnicity, or national origin for public employment or contracting." When citizens were finally able to engage in the sovereign exercise of democracy by voting in 2006, MCRI received 58 percent of the ballots cast. Michiganders had opted to return to the original core principle of civil rights that no one should be discriminated against. *Ending Racial Preferences* describes a series of defiant speeches and legal maneuvers made after MCRI passed by UM leaders and some politicians who, perhaps taken in by their own doomsday campaign rhetoric, tried to overturn or evade the new mandate. But gradually compliance seems to be occurring.

MCRI supporters proposed a constitutional amendment similar to the successful Proposition 209 in California and the statutory initiative I-200 in Washington State. Ultimately, the ban on preferences received yes votes of 54 percent in California and 58 percent in Washington—but Michigan was tougher. In 2003, the Supreme Court had declared that racial diversity in university admissions was a compelling interest, even if preferences had to be used to achieve it. In the two UM programs under scrutiny, a closely divided Court found that the undergraduate process that awarded bonus points to "underrepresented" minority applicants was illegal because it was not narrowly tailored (*Gratz v. Bollinger*), but that a murky law school admissions process that purported to consider applicants individually using race as only one factor was narrowly tailored (*Grutter v. Bollinger*). (The Court did not have the benefit of UCLA law professor Richard Sander's new research, which demonstrates that the weight of the racial preference in operation was actually greater in the law school than in the undergraduate process.)

The higher education establishment generally regarded the Court's rulings as a green light to continue using race in admissions if the process was sufficiently obscure,

so MCRI posed a substantial tangible and symbolic threat to the establishment's plans. MCRI sponsors made their intent clear by staging a small rally two weeks after the Court's decisions on the steps of UM's graduate library and announcing the goal of amending the state constitution.

While *Ending Racial Preferences* focuses on the MCRI campaign, it also contains substantial sections about the effort to end preferences in California, Washington, and Florida by recounting the struggles before and after the initiation of anti-preference policies in those states. Very useful charts on enrollment and graduation statistics in those states, as well as a discussion of lobbying, legal, and public relations tactics used by both sides make the book a valuable reference on the history and consequences of the anti-preference movement.

When examining events in Michigan, Allen concentrates on two organizational efforts: the MCRI campaign led by Jennifer Gratz and Ward Connerly, the father of Proposition 209 and I-200; and Toward a Fair Michigan (TAFM), headed by Barbara Grutter and William Allen, MSU professor of political science (and the author's husband). TAFM's premise was that voters should hear both the pros and cons of MCRI (even though the sponsors favored it) and that Michiganders would still have to live and work together regardless of the ballot outcome. Consequently, TAFM sponsored fifteen balanced debates in Michigan and set up a website on which experts around the country discussed their views about the purposes of MCRI and its probable consequences. (I served in that role regarding MCRI and public contracting.) In the extremely polarized atmosphere surrounding MCRI, TAFM tried its best to inject facts and a civil demeanor to the discussions. It was often an uphill struggle.

Reasonable people can disagree about using preferences as a tool for seeking diversity or overcoming inequalities. There are also important questions about the initiative and referendum process as a public policy vehicle. But within these appropriate debates, there are some disturbing facets about the political tactics manifested in the MCRI campaign.

Opponents of MCRI and other referenda have settled on a three-prong strategy to derail the people's right to decide. Opponents will seek to prevent the initiative from being on the ballot by making the petition process as difficult as possible. Or they will attempt to alter the language of the original proposal by

convincing sympathetic state officials to substitute different language. Finally, if the referendum is passed, they will try to have it nullified in court. MCRI faced all these tactics. While these strategies may seem hypocritical when launched by people who regard themselves as committed to democracy, they are within the bounds of the checks and balances of the legal process.

But in the case of MCRI and the other state civil rights initiatives, a series of guerilla tactics were employed that should have no role in a democratic process. Many of them originate with a radical organization that calls itself By Any Means Necessary (BAMN). In Michigan and other states, BAMN organized because, its leaders proclaimed: "The key to defeating the initiative is to keep it off the ballot in the first place. That's the only way we're going to win." "A majority white electorate [will]…in the privacy of the voting booth…vote to uphold and advance white privilege."

According to news reports, BAMN has gone beyond shouting at, crowding, and photographing petition gatherers to threaten them, to using bribery to obtain batches of petitions presumably to destroy them, submitting bogus signatures to discredit the process, and blocking the entrance to buildings where petitions were to be delivered. In Michigan, BAMN disrupted pro-MCRI campus meetings and debates and bussed in hundreds of Detroit middle and high school students during class hours to intimidate—successfully—a Board of State Canvassers into delaying approval of the MCRI petition. Nevertheless, the pro-MCRI campaign eventually produced 508,202 signatures, nearly 200,000 more than required and the largest number ever collected for a Michigan constitutional amendment.

Why did the establishment organizations uniformly line up to preserve the right to discriminate, even to the point of countenancing a number of palpably false arguments, undemocratic tactics, and aligning themselves with BAMN, the disreputable shock troops of the anti-MCRI campaign? The book does not answer these questions, possibly because they are not answerable using documentary evidence, but they remain important inquiries if sense is to be made of the intense cultural warfare over preferences.

Perhaps preferences embody a kind of reparations, a commitment to redistributive social justice and assuaging white guilt in a particularly attractive way because elites and their families are usually able to avoid their direct negative effects. Elite families can more easily find alternatives to the loss of a job, a

contract, or an admissions slot than are available to the Crosons or Grutters of the world. Perhaps establishment institutions, under pressure from accreditors, politicians, interest groups, and clients to create proportional representation in all their activities, fear that without preferences they will not be able to get their numbers right.

MCRI threatened to shift the weight of the law against color and gender conscious decision making and to make institutions more vulnerable to reverse discrimination lawsuits. Perhaps, the opposition to MCRI was in part a reflection of the bureaucratic reorganization in almost all large institutions that have placed affirmative action officers in the position to make and enforce race- and gender-related organizational policies. These officers, who almost always represent the groups benefited by preferences, often have the clout to embarrass an executive who disagrees—assuming such a person would be even be hired, given the veto power such officers often have in the composition of search committees. Thus, it becomes risky behavior to debate preferences on campuses, let alone in corporations or nonprofits.

Whatever the reason, the regime of preferences is firmly entrenched in most institutions in most states and, since it constantly increases the number of beneficiaries and promises even more entitlements, it can rarely be dislodged, except by court order. Here, state constitutions may be more decisive than the equal protection clause of the Fourteenth Amendment because of the ambiguity of existing federal judicial precedents regarding the use of preferences.

Although *Ending Racial Preferences* carries a hefty list price ($90.00), it is the definitive work on one of the major civil rights controversies beginning the twenty-first century and it should be a valuable acquisition for academic and other libraries.