Paul Craig Roberts, a former Assistant Secretary of the Treasury, is co-author with Lawrence M. Stratton of The New Color Line: How Quotas and Privilege Destroy Democracy *(Regnery Publishers, 1995). Reprinted with permission of* The Wall Street Journal, *copyright 1995, Dow, Jones & Company, Inc. All rights reserved.*

The Rise of the New Inequality

By Paul Craig Roberts

I can actually remember when it was considered racist to be a segregationist. Now it is the other way around.

The mistaken direction of U.S. civil rights policy not only boosts black separatists. It also undermines the democratic process characterized by self-governance and equality before the law that defines the U.S. and differentiates us historically as a country. We are becoming a country in which there is almost no democratic outcome that cannot be set aside by a federal judge if he can find a race hook, and we are becoming a country in which people have different rights under the law based on their race and gender.

Feudalism Resurrected

In the name of civil rights, we are resurrecting the legal system of feudalism in which people's rights depend upon their status. This was not the intent of the 1954 *Brown* school desegregation decision or the 1964 civil rights act. However, both of these historic events relied on federal coercion to achieve racial integration, thus opening avenues for those impatient with the pace of change to resort to arbitrary power in order to speed integration.

This happened because *Brown* was decided not on the basis of constitutional law but on Gunnar Myrdal's argument, set out in his book *An American Dilemma*, that Americans are so irredeemably racist that democracy would forever perpetuate segregation. Democracy was the problem, not the solution. The "solution" was for the Supreme Court to substitute judicial coercion for democratic action.

Following in *Brown*'s footsteps, the Civil Rights Act gave up on freedom of conscience and persuasion as avenues to social progress and replaced them with regulatory coercion. As time passed, discrimination became everything that did not produce racially proportionate results, and quotas became the only way to avoid debilitating lawsuits.

Quotas touch all aspects of life. According to the Congressional Research Service, the federal government alone has 160 race and gender preference programs.

Chevy Chase Savings Bank in suburban Washington, D.C. was branded a discriminator by the Justice Department for having too few branches in "majority African-American census tracts." To make restitution, Chevy Chase had to open unneeded branches and provide blacks with below-market loans and grants for mortgage downpayments. Chicago's Daniel Lamp Company employed a 100 percent minority work force, but the EEOC sued the company in 1991 because it had the wrong mix of Hispanics and blacks.

Government contractors and spending programs are awash in set-asides and quotas. Corporations reserve fast career tracks for "protected minorities." Managers risk pay cuts and low "diversity report card" ratings for failing to promote by quota. Museums have been attacked for having too few holdings by women and minority artists. Demands are being made for the affirmative action records of prosecutors' offices in order to challenge law enforcement that has disparate impact on "protected minorities."

We even have quotas for the outcomes of elec-tions — not only racial gerrymandering but federal judges' imposition of cumulative voting and super-majority requirements on counties and municipalities to guarantee minority representation. When it comes to race, the separation of powers means nothing. Yonkers, New York and Kansas City, Missouri had their fiscal affairs taken over by federal judges claiming powers that the Founding Fathers would be unable to recognize.

A July 1995 Gallup Poll shows that the public is fed up with quotas. Americans reject employment quotas, 63 percent to 35 percent, and college admission quotas, 57 percent to 39 percent. Favoring a less qualified "protected minority" over a white applicant is rejected by 84 percent of the population. Even blacks disapprove of this policy, with 68 percent opposed and only 22 percent in favor. It is not surprising that the public rejects quotas. Preferences are inconsistent with our colorblind Constitution, and they are strictly illegal under the 1964 Civil Rights Act.

Quotas are the work of Equal Employment Opportunity Commission interpretative regulations — themselves illegal under the Civil Rights Act — as well as federal judiciary decisions. These decisions, which at the time appeared to be limited rulings to open opportunities for minorities, had far larger implications.

In the late 1960s, EEOC compliance officer Alfred Blumrosen set aside the statutory focus on intentional discriminatory acts against individuals and redefined discrimination in terms of statistical underrepresentation of groups in the work force. Under this approach, employers faced liability if they did not hire minorities in proportion to their percentage of the surrounding population.

This deviation from the Civil Rights Act reached

the Supreme Court in 1971 in *Griggs v. Duke Power*. Chief Justice Warren Burger saw the case in terms of opportunity blocked by "credentialism." In its decision the court deferred to the EEOC as the implementing agency and accepted what came to be known as the "disparate impact" standard, which defines as discriminatory any policy or job requirement that does not produce race and gender proportionality.

This disparate impact ruling made quotas mandatory to avoid discrimination lawsuits, though this was not realized at the time. It was not until 1979, in *United Steelworkers of America v. Weber*, which upheld racial quotas, that Chief Justice Burger confronted the quota implications of his *Griggs* opinion. Alarmed, he dissented from the *Weber* decision, accusing the majority of Orwellian reasoning that ignored "statutory language, uncontradicted legislative history, and uniform precedent."

Once racial imbalance became proof of discrimination, white males were deprived of the protection against reverse discrimination that the Civil Rights Act provided. It is impossible to have a civil rights policy that requires remedies for racial imbalance, and simultaneously recognize the adverse impact of the remedy on white males.

Over the past two decades we have inadvertently created a caste society in which there are two classes of citizens: those who are protected by civil rights laws, and white males, who are not. Catherine Crier reported on ABC-TV's "20/20" (November 18, 1994) that a Defense Department memo specifies: "in the future special permission will be required for the promotion of all white men without disabilities." Ms. Crier also reported that job postings for U.S. Forest Service firefighting positions specified that "only unqualified applicants will be considered," and the Federal Aviation Administration, the agency in charge of air traffic safety, has recently provided its supervisors with guidelines that state: "the merit promotion process … need not be utilized if it will not promote your diversity goals."

The exclusion of merit is an ironic outcome of a movement whose goal was inclusion.

In the ensuing public debate we must keep before our eyes the basic fact that democracy and equality before the law are the only reasons we have any civil rights. We certainly cannot protect civil rights or advance their cause by actions that erode the democratic process and equal standing before the law.

Sacred Cows

Both the 1954 *Brown* decision and the 1964 Civil Rights Act are treated like sacred cows. But these two events overthrew the presumptions on which modern liberal society was built: goodwill among citizens, freedom of conscience and persuasion. For four decades U.S. civil rights policy has been based on the essentially Marxist assumption that irreconcilable race and gender interests prevent self-rule from producing moral outcomes. By accepting the assumption that people cannot transcend their race and gender interests, we open the door to regulatory coercion.

Today, few, if any, of those who are regulated view civil rights compliance as a moral issue. It is a pocketbook matter, pure and simple. The goals are to escape from impoverishing lawsuits and to hold on to government contracts or, for beneficiaries of the law, to obtain favor unrelated to merit. Doing the right thing has been disconnected from moral consciousness. Indeed, the quotas required to prove that one is upright offend morality by requiring decisions to be made on the basis of the color of a person's skin. In the U.S. today, race has displaced citizenship as the badge of identity. ■