

### III. THE PEOPLE AND RACIAL REALISM, PART I: GOVERNMENTS AND THE PROMOTION OF RACIAL REALISM

By the measure of statutes passed by elected representatives, The People do not support racial realism the way they supported the Civil Rights Revolution. As discussed above, neither are there broad decisions by the Supreme Court authorizing racial realism in the employment context.

Yet there are other ways that we might say that racial realism has the support of the American people and is an act of popular sovereignty. Though there are no statutes authorizing its use, racial realism is a key strategy that elected officials sometimes use for filling jobs in government.<sup>91</sup> This derives in part from a combination of the willingness of political actors (including voters) to consider racial abilities and/or signaling,<sup>92</sup> and the especially painful histories of particular governmental institutions, specifically schools<sup>93</sup> and police departments.<sup>94</sup>

First, The People themselves appear to use racial realism when voting for elected officials, or at the very least, they respond positively to elected officials of their own race. This is suggested by the fact that the geographical areas most likely to be represented by nonwhites are those areas where nonwhites have formed majorities.<sup>95</sup> Whites tend to elect whites, and nonwhites elect nonwhites.<sup>96</sup> Hawaii, the only state with an Asian American plurality in the electorate, is also the only the state that regularly sends nonwhites (specifically Asian Americans) to the Senate.<sup>97</sup> Moreover, a large number of social science studies have shown that Americans prefer elected officials to be of the same race as themselves, and respond in positive ways to same-race officials.<sup>98</sup>

Presidents have anticipated or responded to Americans' racial realist proclivities, and have made appointments based on a strategy of racial

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91. SKRENTNY, *supra* note 17, at 90.

92. *Id.* at 92.

93. *Id.* at 121-29.

94. *Id.* at 112-16.

95. DAVID LUBLIN, *THE PARADOX OF REPRESENTATION: RACIAL GERRYMANDERING AND MINORITY INTERESTS IN CONGRESS* 23 (1999).

96. *Id.*

97. PEI-TE LIEN, *THE MAKING OF ASIAN AMERICA THROUGH POLITICAL PARTICIPATION* 90-93 (2001).

98. For a review of relevant literature, see Vincent L. Hutchings & Nicholas A. Valentino, *The Centrality of Race in American Politics*, 7 ANN. REV. POL. SCI. 383 (2004).

signaling. President Franklin Delano Roosevelt did the most to establish this pattern, though it was not until black civil rights leaders pressured him to create a position to oversee the treatment of blacks in his administration.<sup>99</sup> After Roosevelt appointed a white southerner to that position, Roy Wilkins of the NAACP told Roosevelt that African Americans “bitterly resent having a white man designated by the government to advise them of their welfare.”<sup>100</sup> Roosevelt then appointed Robert C. Weaver, an economist with a PhD from Harvard, to serve with the white southerner.<sup>101</sup>

President Lyndon Johnson would appoint the first African American to a cabinet position – also Robert C. Weaver – not following a classical-liberalism strategy (where Weaver’s race was irrelevant), or following an affirmative-action-liberalism strategy (where Weaver’s race was relevant only because Johnson was remedying past discrimination or imbalances), but a racial realist strategy, where Johnson sought organizational objectives by displaying Weaver’s race.<sup>102</sup> The opportunity came when Congress created the new Department of Housing and Urban Development, which required the appointment of a secretary. Black civil rights groups and the black press demanded that an African American, and specifically Weaver, be appointed, using various racial realist arguments emphasizing forward-looking rationales.<sup>103</sup> Johnson would end up appointing Weaver for his racial signaling value to African Americans, saying that a white appointment would disappoint “little Negro boys in Podunk, Mississippi,”<sup>104</sup> but that a white official was needed to work with Congress. He explained to his attorney general, Nicholas Katzenbach, “We’ve got to get a super man for [the] number two place, and then send this fellow [Weaver] all around policy touring and let this second fella do the work with the Congress and with the President and with all the other people.”<sup>105</sup> Thus, while serving as a major force for the Civil Rights Revolution, Johnson was also employing a racial realist strategy when making political appointments.

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99. HARVARD SITKOFF, *A NEW DEAL FOR BLACKS: THE EMERGENCE OF CIVIL RIGHTS AS A NATIONAL ISSUE: THE DEPRESSION DECADE 77-78* (1978).

100. *Id.*

101. *Id.*

102. SKRENTNY, *supra* note 17, at 95-96.

103. WENDELL E. PRITCHETT, *ROBERT CLIFTON WEAVER AND THE AMERICAN CITY: THE LIFE AND TIMES OF AN URBAN REFORMER 273-74* (2008).

104. *Id.* at 268.

105. *Id.* at 274.

Democratic presidents still use racial realism when making appointments, from Bill Clinton's efforts to have a cabinet that "looks like America"<sup>106</sup> to Barack Obama's strategic appointment of Sonia Sotomayor to the Supreme Court.<sup>107</sup> Yet Republican presidents use racial realism as well, though they use it somewhat differently. If Democrats—who in 2012 received majorities of African American, Latino, and Asian American votes<sup>108</sup>—have typically used racial realism to keep their supporters happy, Republicans have used it to signal to all Americans that they are not racists.<sup>109</sup> While Republican Party leaders may oppose affirmative-action liberalism, their actions indicate support for racial realism, and a long line of nonwhite conservatives have enjoyed rapid elevation to prominence in the party, including Clarence Thomas, J.C. Watts, Michael Steele, Bobby Jindal, Susana Martinez, and Marco Rubio.<sup>110</sup> Republicans have sometimes been quite explicit about this strategy: consider an op-ed by Representative Lamar Smith (R-TX) in the *Washington Post*, where he argued that Republicans could win Latino votes while opposing legalization or amnesty of undocumented immigrants if they maintained their social conservatism and ran Latino candidates in elections.<sup>111</sup>

#### A. Racial Realism in the Schools

Another government use of racial realism is in the employment of teachers. Though receiving little support in federal courts, there is a long tradition of support for the racial matching of teachers and students due to beliefs in racial abilities, racial signaling, or both.<sup>112</sup>

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106. Claire Jean Kim, *Managing the Racial Breach: Clinton, Black-White Polarization, and the Race Initiative*, 117 POL. SCI. Q. 55, 68 (2002).

107. Peter Baker & Adam Nagourney, *Sotomayor Pick a Product of Lessons from Past Battles*, N.Y. TIMES, May 28, 2009, <http://www.nytimes.com/2009/05/28/us/politics/28select.html>.

108. See *Changing Face of America Helps Assure Obama Victory*, PEW RES. CTR. FOR PEOPLE & PRESS (Nov. 7, 2012), <http://www.people-press.org/2012/11/07/changing-face-of-america-helps-assure-obama-victory>; *How Groups Voted*, ROPER CTR., [http://www.ropercenter.uconn.edu/elections/how\\_groups\\_voted/voted\\_12.html](http://www.ropercenter.uconn.edu/elections/how_groups_voted/voted_12.html) (last visited Mar. 26, 2014).

109. TALI MENDELBERG, *THE RACE CARD: CAMPAIGN STRATEGY, IMPLICIT MESSAGES, AND THE NORM OF EQUALITY* 7, 15 (2001).

110. For a discussion of this strategy, see SKRENTNY, *supra* note 17, at 96-105.

111. Lamar Smith, *The GOP's Other Election Day Victory*, WASH. POST, Nov. 27, 2010, <http://www.washingtonpost.com/wp-dyn/content/article/2010/11/19/AR2010111905213.html>.

112. SKRENTNY, *supra* note 17, at 121-29.

In 1935, decades before the Civil Rights Revolution, social scientist W.E.B. DuBois argued for racial realist strategies for staffing schools, maintaining that white teachers lacked the ability to adequately teach black students.<sup>113</sup> But even at the height of that revolution for classical liberalism in the 1950s and 1960s, prominent advocates in Detroit, Milwaukee, and New York City were arguing for the placement of black and Latino teachers so they could use their racial abilities to teach black and Latino students.<sup>114</sup> A director of personnel in New York City agreed that

because of the kind of society we have had, unfortunately, it may be that a Negro teacher, generally, may have a greater likelihood of developing rapport, and if this is an important characteristic, then we ought to try to tap it to the extent possible in getting this characteristic into our schools.<sup>115</sup>

From the 1980s and 1990s—around the time that the Supreme Court was denying the validity of the role model theory for hiring and placing teachers<sup>116</sup>—through the 2010s, various individuals and groups argued for racial realist strategies in employing teachers, emphasizing abilities or signaling or both. These included the Carnegie Corporation of New York’s Carnegie Forum on Education and the Economy,<sup>117</sup> the dean of the Harvard Graduate School of Education,<sup>118</sup> the National Education Association,<sup>119</sup> the National

113. W.E.B. DuBois, *Does the Negro Need Separate Schools?*, in *BROWN v. BOARD OF EDUCATION: A BRIEF HISTORY WITH DOCUMENTS* 91, 91-100 (Waldo E. Martin, Jr. ed., 1998); W.E.B. DuBois, *The Students of Lincoln*, in *THE EMERGING THOUGHT OF W.E.B. DuBOIS: ESSAYS AND EDITORIALS FROM THE CRISIS WITH AN INTRODUCTION, COMMENTARIES AND A PERSONAL MEMOIR BY HENRY LEE MOON* 138-40 (Henry Lee Moon ed., 1972).

114. See CHRISTINA COLLINS, “ETHNICALLY QUALIFIED”: RACE, MERIT, AND THE SELECTION OF URBAN TEACHERS, 1920-1980, at 109-11 (2011).

115. *Id.* at 235-36.

116. See *Wygant v. Jackson Bd. of Educ.*, 476 U.S. 267 (1986).

117. TASK FORCE ON TEACHING AS A PROFESSION, CARNEGIE FORUM ON EDUCATION AND THE ECONOMY, *A NATION PREPARED: TEACHERS FOR THE 21ST CENTURY* 79-84 (1986).

118. Patricia Albjerg Graham, *Black Teachers: A Drastically Scarce Resource*, 68 *PHI DELTA KAPPAN* 598, 599 (1987).

119. Livingston Alexander & John W. Miller, *The Recruitment, Incentive, and Retention Programs for Minority Preservice Teachers*, in *TEACHER RECRUITMENT AND RETENTION WITH A SPECIAL FOCUS ON MINORITY TEACHERS* 45 (Antoine M. Garibaldi ed., 1989); Jody Daughtry, *Recruiting and Retaining Minority Teachers: What Teacher Educators Can Do*, in *TEACHER RECRUITMENT AND RETENTION WITH A SPECIAL FOCUS ON MINORITY TEACHERS*, *supra*, at 25.

Commission on Teaching and America's Future,<sup>120</sup> the Education Commission of the States,<sup>121</sup> and Teach for America.<sup>122</sup>

State governments also supported racial realism in the employment of teachers. California passed a law stating that nonwhite teachers had abilities and signaling that benefited both nonwhites and whites, stating:

It is educationally sound for the minority student attending a racially impacted school to have available to him or her the positive image provided by minority classified and certificated employees. It is likewise educationally sound for the child from the majority group to have positive experiences with minority people, that can be provided, in part, by having minority classified and certificated employees at schools where the enrollment is largely made up of majority group students.<sup>123</sup>

The Texas Education Agency issued a report in 1994 that argued for increased nonwhite presence in the teacher corps due to nonwhite teachers' importance as role models, their abilities to "interact more successfully with students who have culturally similar backgrounds to their own," and their abilities to increase the skills of white teachers to teach nonwhite students.<sup>124</sup> At the federal level, Bill Clinton's Secretary of Education, Richard W. Riley, used racial realist arguments to justify increased diversity among the nation's teachers:

We need teachers who can relate to the lives of diverse students, and who can connect those students to larger worlds and greater possibilities . . . . Children need role models—they need to see themselves in the faces of their teachers . . . . [T]eachers of color help fight the tyranny of low expectations—the pernicious voices that whisper into young ears, "You can't do it. Don't even try."<sup>125</sup>

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120. NATIONAL COMMISSION ON TEACHING AND AMERICA'S FUTURE, WHAT MATTERS MOST: TEACHING FOR AMERICA'S FUTURE 8 (1996).

121. Arthur Dorman, *Recruiting and Retaining Minority Teachers: A National Perspective*, POLICY BRIEFS, no. 8, 1990, at 5; Barbara J. Holmes, *Guest Commentary: New Strategies Are Needed to Produce Minority Teachers*, POLICY BRIEFS, *supra*, at 8.

122. *The Importance of Diversity*, TEACH FOR AM., <http://www.teachforamerica.org/why-teach-for-america/who-we-look-for/the-importance-of-diversity> (last visited Apr. 22, 2014).

123. CAL. EDUC. CODE § 44100(a)(2) (2004).

124. Nancy Stevens, *Texas Teacher Diversity and Recruitment*, TEX. EDUC. AGENCY 2-4 (1994), [http://www.tea.state.tx.us/acctres/Spec\\_PRR\\_4\\_1994.pdf](http://www.tea.state.tx.us/acctres/Spec_PRR_4_1994.pdf).

125. Richard W. Riley, *Our Teachers Should Be Excellent, and They Should Look Like America*, 31

### B. Racial Realism in Law Enforcement

The other major area of government support for racial realism is, as described above, law enforcement, especially policing. As with teaching, the strategy of racial realism in policing had advocates as early as the 1930s, as can be seen in the 1931 report of the National Commission on Law Observance and Enforcement, which argued that ethnically diverse police officers would be beneficial in policing.<sup>126</sup>

But the most forceful and consistent advocacy of racial realism in this context began in the late 1960s, after the nation's cities began combusting in racial violence.<sup>127</sup> In response, New York City began to recruit black and Latino officers with the belief that their presence would mitigate the rioting and rebellions.<sup>128</sup>

In the late 1960s and early 1970s, a series of government commissions issued reports urging racial realist strategies in the hiring and employment of police officers, based on racial abilities or signaling or both. These include the President's Commission on Law Enforcement and the Administration of Justice in 1967,<sup>129</sup> the National Advisory Commission on Civil Disorders (also known as the Kerner Commission) in 1968,<sup>130</sup> and the National Advisory Commission on Criminal Justice Standards and Goals in 1973.<sup>131</sup> A special counsel who studied the Los Angeles County Sheriff's Department after rioting there in 1992 made similar arguments,<sup>132</sup> as did a 2001 report of the U.S. Justice Department.<sup>133</sup>

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EDUC. & URB. SOC'Y 18, 19-20 (1998).

126. THOMAS A. JOHNSON ET AL., *THE POLICE AND SOCIETY: AN ENVIRONMENT FOR COLLABORATION AND CONFRONTATION* 107 (1981).

127. SKRENTNY, *supra* note 17, at 113.

128. *Id.*

129. *The Challenge of Crime in a Free Society*, PRESIDENT'S COMM'N ON L. ENFORCEMENT & ADMIN. JUST. 101-02, 107 (Feb. 1967), <https://www.ncjrs.gov/pdffiles1/nij/42.pdf>.

130. NAT'L ADVISORY COMM'N ON CIVIL DISORDERS, *REPORT OF THE NATIONAL ADVISORY COMMISSION ON CIVIL DISORDERS* 165-66 (1968).

131. NAT'L ADVISORY COMM'N ON CRIMINAL JUSTICE STANDARDS AND GOALS, *POLICE* 329-30 (1973).

132. James G. Kolts et al., *The Los Angeles County Sheriff's Department*, L.A. CNTY. 197-216 (July 1992), [http://www.parc.info/client\\_files/Special%20Reports/3%20-%20Kolts%20Report%20-%20LASD.pdf](http://www.parc.info/client_files/Special%20Reports/3%20-%20Kolts%20Report%20-%20LASD.pdf).

133. *Principles for Promoting Police Integrity: Examples of Promising Police Practices and Policies*, U.S. DEP'T JUST. 18 (Jan. 2001), <https://www.ncjrs.gov/pdffiles1/ojp/186189.pdf>.

This kind of advocacy has not only come from appointees of elected officials, but also from some groups representing people of color. For example, while fighting for classical liberalism and affirmative-action liberalism, some local civil rights groups have supported integration of police departments with racial realist intents.<sup>134</sup>

Though it is not clear how often hiring occurs with racial realist motivations, it is clear that the hiring of nonwhite officers rose dramatically following the 1960s' racial violence and the strong advocacy of racial realist hiring and placement. Specifically, in the years between 1967 and 2000, minority employment increased in several police forces, including those in New York City (from 5% to 35%); Chicago (20% to 40%); Philadelphia (20% to 40%); Detroit (5% to 65%); and San Francisco (5% to 40%).<sup>135</sup>

#### **IV. THE PEOPLE AND RACIAL REALISM, PART II: THE PRIVATE SECTOR AND THE RACIAL REALIST STRATEGY**

In the private sector, it might be said that The People acted on their own: racial realism appears to be just as entrenched as in government employment. It is a prominent strategy and is often advocated in several fields, including medicine, business (especially marketing), and entertainment. It may be a part of any business that has some interaction with diverse populations, and where employers may perceive that racial abilities help them understand customers or use racial signaling to make customers feel a sense of trust.<sup>136</sup>

Medicine is an especially compelling sector for racial realism because the stakes are so high. Here, there was some vague statutory acknowledgement of

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134. NICHOLAS ALEX, *BLACK IN BLUE: A STUDY OF THE NEGRO POLICEMAN* 28-29 (1969); LEONARD MOORE, *BLACK RAGE IN NEW ORLEANS* (2010).

135. Sklansky, *supra* note 90, at 1214.

136. See the discussion of how minorities can provide "access and legitimacy" to businesses dealing with diverse populations in David A. Thomas & Robin J. Ely, *Making Differences Matter: A New Paradigm for Managing Diversity*, 74 HARV. BUS. REV. 79, 83 (1996). For a sense of how widespread employer use of racial realism may be, consider the findings of sociologists Eric Grodsky and Devah Pager, who observed that African Americans may earn opportunities but lower pay than whites in occupations when their clients are also black. Black clients are, on average, poorer than nonblack clients, and this depresses income when employers place blacks with same-race clients based on their perceived racial abilities or signaling. Grodsky and Pager find that there are fewer racial disparities in earnings when customer relations are not a measure of productivity, as in the case of bus drivers. Eric Grodsky & Devah Pager, *The Structure of Disadvantage: Individual and Occupational Determinants of the Black-White Wage Gap*, 66 AM. SOC. REV. 542, 561 (2001).