

**Wounds That Will Not Heal: Affirmative Action and Our Continuing Racial Divide**, by Russell K. Nieli. New York: Encounter Books, 2012, 456 pp., \$29.95 hardbound.

### Both Wrong and Bad

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*Wounds That Will Not Heal: Affirmative Action and Our Continuing Racial Divide* is a splendid book, penetrating and right. I divide my review into three parts. In the first I explain the general character of Russell Nieli's superb accomplishment. In the second I identify specifically some (but by no means all) of the empirical arenas within which he does what he set out to do. In the third I report, reluctantly because I am so fully in agreement with his position, some faults of this big book.

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### The Wrong and the Bad

Philosophers have long distinguished between what is *right* and what is *good*. Rightness refers to the moral character of an act or a policy; it looks to the principles with which the act is done. Goodness refers to the worth of outcomes, to the merits of what results from acts and policies. Ideally, of course, we hope that right acts will have good results, but we know that in the real world things don't always work out that way. I may act rightly, and the result may be dreadful. If I tell the truth, which is the right thing to do, there may be hell to pay. But if I lie the outcome may be beneficial to all concerned. The rightness of a policy is one thing; the goodness of its consequences is another.

So it is also on the negative side. Some acts or policies are wrong, knowing violations of principles that ought to govern our conduct. But the products of wrong acts are not always bad. Wrongness is one thing, badness is another. Being clearheaded, we recognize with regret that sometimes a precious objective is advanced by a policy that is not right.

This book is about the policy of giving preference by race, commonly

called “affirmative action.” There is a semantic problem here, we know, because affirmative action originally referred to steps taken to insure the equal treatment of the races, while the phrase now refers to the deliberately unequal treatment of the races. Many positive steps supporting racial equality are not preferential and therefore deserve the good name of affirmative action. But over the past several decades advocates of preferential policies have captured the phrase “affirmative action”; perhaps one should say they kidnapped it. In any event, that phrase now means, in most ordinary conversation and in the public prints, policies that give some preference by race.

Preference by race is wrong. We all know that. Even those who advocate it often do so abashedly, hiding or obfuscating what they do, and not seldom lying about it. They believe sincerely that the products of such preference are so very good that we must accept the need to put aside for a while the principle that the races are equal and ought always to be treated equally.

Russell Nieli, very much to the contrary, contends that the products of race preference, or affirmative action, are bad—very, very bad. Their consequences, for all concerned, are dreadful. He is correct. The object of

*Wounds That Will Not Heal* is to prove this *badness*: to illustrate it, to explain it, and to drive it home as forcefully as it is possible to do.

I am on Nieli’s side. But in my view the bad consequences of race preference are only half the story. Advocates of preference may be uneasy, somewhat ashamed of policies they sense to be unfair, but they commonly fail to see how very deeply *wrong* these policies are. I contend that race preference is *both wrong and bad*. That is the title of the book that I am writing. I hold that the wrongness of race preference is fundamental. Race preference is wrong in every way: wrong because it is a violation of fundamental *moral* principles, but also wrong because it is a violation of central *constitutional* principles. Moreover, it is wrong, in our country, because it plainly breaks the law—the great Civil Rights Act of 1964.

I’m confident that Russell Nieli would agree with me about the wrongness of preference, but that is not the subject of his book. Nieli’s targets are the outcomes of preferences, the very bad results that they produce. These targets he hits with devastating force. And that is what he sets out to do: to prove that affirmative action is truly pernicious public policy.

Because Nieli addresses the consequences of preferences, his

arguments throughout are *a posteriori*; they rely upon proofs that long experience and careful science provide. The other half of the enterprise, which Nieli does not purport to explore, looks to the moral features of race preference, to *a priori* principles in morality and law that show it wrong. Affirmative action is both wrong and bad. In compiling the data that prove its *badness*, Russell Nieli is the grand champion.

### Marshaling the Arguments

Nieli accomplishes his objective by recounting, explaining, and weaving together conclusions recently established by a great host of social scientists. He is a scholar who has read and thought about virtually everything that has been written in this sphere. His triumph is that he has pulled it all together.

*Wounds That Will Not Heal* is a big book containing a vast quantity of empirical data and scientific detail. I register here only a fraction of the topics Nieli treats in examining the unhappy consequences of race preference. Without seeking to systematize the whole, I do no more below than identify, *seriatim*, some of the studies and conclusions reported. I make no attempt to provide the supportive empirical detail with which the book is very rich.

Consider:

- (1) The *mismatch* studies of Stephen Cole and Elinor Barber, explaining why “African American students at elite schools are significantly less likely to persist with an interest in academia than are their counterparts at the nonelite schools.”<sup>1</sup>
- (2) The *payoff* studies of Stacy Berg Dale and Alan Krueger, explaining why “students who attend more selective colleges do not earn more than other students who were accepted and rejected by comparable schools but attended less selective colleges.”<sup>2</sup>
- (3) The *ethnological* studies of Jonathan Rieder, reporting and explaining the complaints of whites who disproportionately bear the burdens of race preference.<sup>3</sup>

<sup>1</sup>Stephen Cole and Elinor Barber, *Increasing Faculty Diversity: The Occupational Choices of High Achieving Minority Students* (Cambridge, MA: Harvard University Press, 2003). Cited in Russell K. Nieli, *Wounds That Will Not Heal: Affirmative Action and Our Continuing Racial Divide* (New York: Encounter Books, 2012), 165.

<sup>2</sup>Stacy Berg Dale and Alan Krueger, “Estimating the Payoff to Attending a More Selective College,” *Quarterly Journal of Economics* 117, no. 4 (November 2002): 1491–1527. Cited in Nieli, *Wounds*, 147.

<sup>3</sup>Jonathan Rieder, *Canarsie: The Jews and Italians of Brooklyn against Liberalism* (Cambridge, MA: Harvard University Press, 1985).

- (4) The *stereotype vulnerability* studies of Robert Klitgaard, helping to explain black underperformance: “If a black and a white have the same test scores and prior grades, the black will on average do about a third to two thirds of a standard deviation worse in later academic performance than the white” at the most competitive academic institutions.<sup>4</sup>
- (5) The *negative stereotype* studies of Claude Steele and Joshua Aronson, helping to explain why test anxiety, caused by fears of being negatively stereotyped by whites, causes higher achieving blacks to “choke” on important exams.<sup>5</sup>
- (6) The *underperformance* studies of Douglas Massey and his colleagues, seeking to understand the causes of significant differences in academic performance between ethnic groups, and concluding that most of those differences may be attributed to
- different levels of entering preparation.<sup>6</sup>
- (7) The *supportive environment* studies of Walter W. Allen, calling attention to the great impact of engagement, connection, acceptance, and extensive support and encouragement upon intellectual growth and development, and the consequent salutary effect on black students in attending a historically black college.<sup>7</sup>
- (8) The *black college* studies of Jacqueline Fleming, concluding that “Black students who attend predominantly Black schools tend to have higher average grades, a richer learning environment, better relationships with faculty members, and exhibit better cognitive development than Black students who attend White schools.”<sup>8</sup>
- (9) The *diversity* studies of Stanley Rothman, Seymour Martin Lipset, and Neil Nevitte, demolishing

<sup>4</sup>Robert Klitgaard, *Choosing Elites* (New York: Basic Books, 1985). Cited in Nieli, *Wounds*, 156.

<sup>5</sup>Claude Steele and Joshua Aronson, “Stereotype Threat and the Test Performance of Academically Successful African Americans,” in *The Black-White Test Score Gap*, ed. Christopher Jencks and Meredith Phillips (Washington, DC: Brookings Institution Press, 1998).

<sup>6</sup>Douglas S. Massey, Camille Z. Charles, Garvey Lundy, and Mary J. Fischer, *The Source of the River: The Social Origins of Freshmen at America's Selective Colleges and Universities* (Princeton, NJ: Princeton University Press, 2003).

<sup>7</sup>Walter W. Allen, “The Color of Success: African American College Student Outcomes at Predominantly White and Historically Black Public Colleges and Universities,” *Harvard Educational Review* 62, no. 1 (1992): 26–44.

<sup>8</sup>Jacqueline Fleming, “SATs and Black Students,” *Review of Higher Education* 25, no. 3 (Spring 2002): 281–96. Cited in Nieli, *Wounds*, 268.

the claims that diversity brings great benefits to educational institutions. Using sophisticated social scientific techniques, they found that increased black enrollments not only did not have the intended beneficial outcomes, but did have, on balance, clearly harmful effects:

The statistically significant associations that did appear were the opposite of those predicted....As the proportion of black students rose, student satisfaction with their university experience dropped, as did their assessments of the quality of their education and the work ethic of their peers....The same pattern of negative correlations between educational benefits and increased black enrollment appeared in the responses of faculty and administrators. Both groups perceived decreases in educational quality and academic preparation as the number of black students increased.<sup>9</sup>

- (10) The arguments of Allan Bloom, contending, based on many years of teaching at Cornell and the University of Chicago, that “affirmative action now institutionalizes the worst aspects of racial *separatism*.”<sup>10</sup>
- (11) The arguments of John McWhorter, observing that the fact that black students at the University of California at Berkeley “tended to be among the worst students on campus” had horrible consequences for the quality of black/white and black/Asian relations on campus:

With it widely known among a student body that most minority students were admitted with test scores and GPAs that would have barred white and Asian applicants from consideration, it is difficult for many white students to avoid beginning to question the basic mental competence of black people as a race....A white person need not be a racist to start wondering why black students need affirmative

<sup>9</sup>Stanley Rothman, Seymour Martin Lipset, and Neil Nevitte, “Does Enrollment Diversity Improve University Education?” *International Journal of Public Opinion Research* 15, no. 1 (2003): 8–26. Cited in Nieli, *Wounds*, 300.

<sup>10</sup>Allan Bloom, *The Closing of the American Mind: How Higher Education Has Failed Democracy and Impoverished the Souls of Today's Students* (New York: Simon and Schuster, 1987), 96.

action even when growing up no poorer than they did...which will in turn encourage suspicion in black students, and thus perpetuate interracial alienation on campus, and undermine the mutual respect that successful integration requires.<sup>11</sup>

- (12) Studies by Rogers Elliott and his colleagues, exploring the disinclination of blacks to pursue the sciences. They found that while the same proportion of blacks as whites expresses an initial interest in the sciences, the *nonpersistence rate* is almost twice as high for blacks as for whites and Asians, at predominantly white institutions. Elliott reports his group's conclusion: "Race preferences in admissions in the service of Affirmative Action are harming the aspirations particularly of blacks seeking to be scientists by creating this huge mismatch....The differences are largest at the most elite universities because they have very high levels in their admission standards, levels which minorities, especially

again blacks, don't come close to meeting."<sup>12</sup>

- (13) The persistence rate of minority students in the sciences, of which the same conclusions as Elliot and colleagues are reached by Frederick Smyth and John McArdle. Their mathematical model predicted that eliminating the harmful mismatch effect would have produced (in the twenty-three schools they surveyed) 45 percent more black and Hispanic females with science, math, or engineering degrees, and 35 percent more males. "Race sensitive admissions, while increasing access to elite colleges, is inadvertently causing disproportionate loss of talented underrepresented minority students from science majors."<sup>13</sup>
- (14) The biomedical-related fields, in which the same painful mismatch phenomena were found in the studies of Mitchell

<sup>11</sup>John McWhorter, *Losing the Race: Self-Sabotage in Black America* (New York: The Free Press, 2000), 89, 229–30.

<sup>12</sup>Rogers Elliott, "Encouraging Minority Students to Pursue Careers in Science, Technology, Engineering, and Math," testimony before U.S. Commission on Civil Rights, Commission Briefing, Washington, DC, September 12, 2008, 35, <http://www.usccr.gov/calendar/transcript/091208CCR2.pdf>.

<sup>13</sup>Frederick L. Smyth and John J. McArdle, "Ethnic and Gender Differences in Science Graduation at Selective Colleges with Implications for Admission Policy and College Choice," *Research in Higher Education* 45, no. 4 (June 2004): 353–81. Cited in Nieli, *Wounds*, 195.

Chang and his colleagues. Students of all ethnic groups, including whites and Asians, were more likely to abandon their original intention to major in science if they attended a highly competitive college or university—but the falloff for blacks, Hispanics, and American Indians was much the greatest, and the likelihood that they would stick with their freshman-year intentions fell more sharply the more competitive the institution they attended. The lowering of admission standards for minorities at competitive colleges and universities therefore almost certainly reduces the number of minority students who complete a program in biomedical and biological sciences.<sup>14</sup>

- (15) The *perverse disincentives* created by race preference, explored by black social scientists Shelby Steele, John Ogbu, and John McWhorter, and recounted in detail. McWhorter writes: “One could think of few better ways

to depress a race’s propensity for pushing itself to do its best in school than a policy ensuring that less-than-best efforts will have a disproportionately high yield.”<sup>15</sup> Steele writes: “Out of deference, elite universities have offered the license *not* to compete to the most privileged segment of black youth.... And because blacks are given spaces they have not won by competition...we end up with the effect we always get with deferential reforms: an incentive for black weakness relative to others.”<sup>16</sup> Ogbu reports the behavior of black students in Shaker Heights, Ohio, who take their academic work much less seriously than do white students. They are less focused on their studies. They display what Ogbu calls a “low-effort syndrome.”<sup>17</sup> A quarter-century ago, Ogbu, with Signithia Fordham, reported the self-damaging consequences of black students’ conviction

<sup>14</sup>Mitchell Chang, Oscar Cerna, June Han, and Victor Sàenz, “The Contradictory Roles of Institutional Status in Retaining Underrepresented Minorities in Biomedical and Behavioral Science Majors,” *Review of Higher Education* 31, no. 4 (Summer 2008): 433–64.

<sup>15</sup>McWhorter, *Losing the Race*, 233.

<sup>16</sup>Shelby Steele, *A Dream Deferred: The Second Betrayal of Black Freedom in America* (New York: Harper Collins, 1998), 127.

<sup>17</sup>John Ogbu, *Black American Students in an Affluent Suburb: A Study of Academic Disengagement* (Mahwah, NJ: Lawrence Erlbaum Associates, 2003), xix.

- that studying hard was “acting white.”<sup>18</sup>
- (16) Patterns of student conduct distinguishing ethno-racial groups, reported in detail by a large team of investigators under the leadership of Laurence Steinberg. Huge ethnic differences were found. “Of all the demographic factors we studied in relation to school performance, ethnicity is the most important,” they write, with Asian students clearly surpassing all other groups in the amount of time they spend on homework, how attentive they are in class, how strongly they value academic success. White students were considerably behind the Asians on these measures, and Hispanics and blacks considerably behind the whites. “Many Black and Latino students,” Steinberg reports, “don’t really believe that doing poorly in school will hurt their chances for future success.”<sup>19</sup>
- (17) Similar ethno-racial patterns, reported by Abigail and

Stephen Thernstrom: Asians work the hardest in high school, and are least focused on social life, sports, and other diversions that compete with school work. Blacks and Hispanics display the opposite pattern. Blacks, they report, spend *twice* as many hours watching TV as whites. In this context, the disincentives created by the knowledge that race preferences will later be enjoyed are truly perverse.<sup>20</sup>

- (18) The hypothesis that increasing minority representation in elite colleges generates tangible *benefits for majority race students*, demolished by the studies of Peter Arcidiacono and Jacob Vigdor, who analyzed the consequences of that increase at thirty selective colleges and universities. Using four measures: (a) the likelihood of completing college, (b) income level in post-college years, (c) satisfaction with one’s job, and (d) general satisfaction with one’s life after college, they found nothing to confirm the rosy claims, so commonly heard, that affirmative action is good for white and Asian

<sup>18</sup>Signithia Fordham and John Ogbu, “Black Students’ School Success: Coping with the Burden of Acting White,” *Urban Review* 18, no. 3 (1986): 176–206.

<sup>19</sup>Laurence Steinberg, *Beyond the Classroom: Why School Reform Has Failed and What Parents Need to Do* (New York: Simon and Schuster, 1996), 86, 91.

<sup>20</sup>Abigail Thernstrom and Stephen Thernstrom, *No Excuses: Closing the Racial Gap in Learning* (New York: Simon and Schuster, 2003).

students. Using these measures, they write “we fail to find any significant evidence that white or Asian students who attend more diverse colleges do better later in life....In general, we find that the type of diversity increase brought about by affirmative action policies is, if anything, *detrimental* to majority race students.” Higher minority enrollment often leads to lower scores on those desirable outcomes. This detailed empirical analysis “strongly suggests that the predominant policy tool designed to increase the representation of minority groups, affirmative action, has a negative net impact on students not directly targeted by the program.”<sup>21</sup> A policy that would maximize the benefits of diversity to majority race students, they conclude, would have to reduce or eliminate cross-race differences in admission standards; that is, it would have to dispense with race preference and reestablish a uniform standard for college

admission. Justices Powell and O’Connor, they conclude, are clearly wrong to suggest otherwise.

- (19) The great size of current minority preferences, quantified in a recent study by Thomas Espenshade and Alexandria Walton Radford. At the eight highly selective colleges studied, they found that blacks enjoyed, other things being equal, a 310-point advantage over whites on a 1600-point scale. The advantage of blacks over Asians was 450 points.<sup>22</sup>
- (20) The very high level of student disapproval of race preferences, reported in 1999 by the research firm Angus Reid. They found overwhelming opposition among students in 140 different American colleges. To the statement “No one should be given special preferences in jobs or college admissions on the basis of their gender or race,” 85 percent of the students surveyed agreed, and 67 percent “strongly agreed.”<sup>23</sup>

<sup>21</sup>Peter Arcidiacono and Jacob Vigdor, “Does the River Spill Over? Estimating the Economic Returns to Attending a Racially Diverse College,” *Economic Inquiry* 48, no. 3 (July 2010): 537–57. Cited in Nieli, *Wounds*, 218.

<sup>22</sup>Thomas Espenshade and Alexandria Walton Radford, *No Longer Separate, Not Yet Equal: Race and Class in Elite College Admission and Campus Life* (Princeton, NJ: Princeton University Press, 2009). Cited in Nieli, *Wounds*, 177–78.

<sup>23</sup>Stanley Rothman, Seymour Martin Lipset, and Neil Nevitte, “Diversity and Affirmative Action: The State of Campus Opinion,” *Academic Questions* 15, no. 4 (Fall 2002): 60, 62.

(21) The classic and most definitive of the mismatch studies produced by Richard Sander, which addressed preferential admissions to law schools across the country. A professor of law and a statistician, Sander analyzed several very large data bases. He found that being preferred—winning admission to a fine law school as a consequence of some affirmative action preference—had a seriously damaging impact *on the persons thus admitted*. The reasoning is complex, the data are copious. Here is his summation of the damages done:

Blacks and whites at the same school with the same grades perform identically on the bar exam; but since racial preferences have the effect of boosting blacks' school quality but sharply lowering their average grades [52 percent of blacks at elite law schools had first-year grades that put them in the bottom 10 percent of the grade distribution], blacks have much higher failure rates on the bar than do whites with similar LSATs and undergraduate GPAs. Affirmative action thus artificially depresses, quite

substantially, the rate at which blacks pass the bar. Combined with the effects of law school attrition [also to be attributed to affirmative action policies] many blacks admitted to law school with the aid of racial preferences face long odds against ever becoming lawyers.<sup>24</sup>

The outright elimination of preferences, Sander argues, would substantially increase the number of blacks who pass the bar each year. Moreover, because law school grades are more important than law school prestige in determining a law school graduate's desirability to an employer, the size of his income is substantially reduced by preference. There is a "large market penalty for being at or near the bottom of the class."<sup>25</sup> Sander's conclusions are simple and stunning: For the sake of blacks, preferences must go. "By every means I have been able to quantify, blacks as a whole would be unambiguously better off in a system without any racial

<sup>24</sup>Richard H. Sander, "A Systemic Analysis of Affirmative Action in American Law Schools," *Stanford Law Review* 57, no. 2 (2004): 373.

<sup>25</sup>*Ibid.*, 460.

preferences at all than they are under the current regime.”<sup>26</sup>

One can go on and on in identifying the studies and the arguments that Russell Nieli has pulled together in *Wounds That Will Not Heal*, providing overwhelming evidence for the conclusion that race preference is very bad—for blacks, for whites, for us all. I emphasize the empirical, scientific character of the evidence he reports. These are not speculations; they are the well-confirmed results of studies by professional social scientists.

Perhaps the work of Lawrence Harrison, a career diplomat and Harvard research fellow who retains some sympathy for race preference, should be noted to provide a larger view of the entire terrain. Nieli summarizes Harrison’s conclusions: Affirmative action in the form of preferences has very limited public support. It is deeply resented by many whites. It overrides the highly worthy principle of merit. Among minorities it benefits those least in need of help, while giving no support to those most in need of help. It taints the credentials not only of those who benefit from it, but also of all those of the same race as those who benefit from it. It suggests that blacks are inferior and cannot make it on their own without racial favoritism. And

the policy once in place is very difficult to remove.<sup>27</sup>

I have only scratched the surface of Nieli’s big book. The richness of detail, the great many empirical studies he reports and reviews, pile up relentlessly. In demonstrating how very *bad* race preference is, Russell Nieli really is the grand champion.

I take the liberty of summarizing four general conclusions that are amply confirmed by Nieli’s compilation of empirical evidence:

*First:* Race preference does not achieve its professed goals of racial harmony, but on the contrary engenders resentment and interracial tension.

*Second:* Blacks and other minority members who are preferred because of their race—admitted where they would not otherwise have been admitted, appointed where they would not otherwise have been appointed—are *not benefited* by that preference, as was hoped, but are disadvantaged, in their studies and in their professional lives. Nieli reports and confirms, again and yet again, the disastrous impact of *mismatch*.

<sup>27</sup>Lawrence E. Harrison, *Who Prospers? How Cultural Values Shape Economic and Political Success* (New York: Basic Books, 1992).

<sup>26</sup>*Ibid.*, 482.

*Third:* Artificially insuring more contact between whites and blacks does not produce interracial understanding and sympathy as has been widely but mistakenly supposed, but results most often in greater distrust and hostility. Nieli reports and explains a host of studies that together demolish the “contact hypothesis.” Interracial contact, unless under conditions of equality and with common aims, is likely to produce the very reverse of what has been sought.

*Fourth,* and to my mind the most damaging consequence of all: Race preference, because it creates circumstances in which blacks and other minorities are statistically certain to perform less well than their white peers, *reinforces the mistaken supposition of minority inferiority.* No policy could be more

damaging to minority interests than preference by race.

### **Structural Deficiencies, Reluctantly Noted**

It is evident to the thoughtful reader that in preparing *Wounds That Will Not Heal* Nieli decided to join together several longish previously written pieces.

The joinery is not well done. The order of the chunks has no clear rationale. Some of the arguments presented in one chunk reappear in nearly identical form in another chunk. The author wanders from argument to argument, often needlessly repeating some point that has earlier been well made. Several passages quoted at length appear more than once at different points in the book.

Well, the reader must serve as the editor that Russell Nieli needed but did not have. It’s sort of fun, and one learns a great deal.