

Disparate Impact Thinking Is Destroying Our Civilization

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The most consequential falsehood in American public policy today is the idea that any racial disparity in any institution is by definition the result of racial discrimination.

If a cancer research lab, for example, does not have 13 percent black oncologists—the black share of the national population—it is by definition a racist lab that discriminates against competitively qualified black oncologists; if an airline company doesn't have 13 percent black pilots, it is by definition a racist airline company that discriminates against competitively qualified black pilots; and if a prison population contains *more* than 13 percent black prisoners, our law enforcement system is racist.

The claim that racial disparities are proof of racial discrimination has been percolating in academia and the media for a long time. After the George Floyd race riots of 2020, however, it was adopted by America's most elite institutions, from big law and big business to big finance. Even museums and orchestras took up the cry.

Many thought that STEM—the fields of science, technology, engineering, and mathematics—would escape the diversity sledgehammer. They were wrong. The American Medical Association today insists that medicine is characterized by white supremacy. *Nature* magazine declares that science manifests one of “humankind's worst excesses”: racism. The Smithsonian Institution announces that “emphasis on the scientific method” and an interest in “cause and effect relationships” are part of totalitarian whiteness.

As a result of this falsehood, we are eviscerating meritocratic and behavioral standards in accordance with what is known as “disparate impact analysis.” Consider medicine. Step One of the medical licensing exam, taken during or after the second year of medical school, tests medical students’ knowledge of anatomy, physiology, and pathology. On average, black students score lower on the grading curve, making it harder for them to land their preferred residencies. Step One, in other words, has a “disparate impact” on black medical students. The solution, implemented last year, was to eliminate the Step One grading disparity by instituting a pass–fail system. Hospitals choosing residents can no longer distinguish between high and low achieving students—and that is precisely the point!

The average Medical College Achievement Test (MCAT) score for black applicants is a standard deviation below the average score of white applicants. Some medical schools have waived the submission of MCAT scores altogether for black applicants. The tests were already redesigned to try to eliminate the disparity. A quarter of the questions now focus on social issues and psychology. The medical school curriculum is being revised to offer more classes in white privilege and focus less on clinical practice. The American Association of Medical Colleges will soon require that medical faculty demonstrate knowledge of “intersectionality”—a theory about the cumulative burdens of discrimination. Heads of medical schools and chairmen of departments like pediatric surgery are being selected on the basis of identity, not knowledge.

The federal government is shifting medical research funding from pure science to studies on racial disparities and social justice. Why? Not because of any assessment of scientific need, but simply because black researchers do more racism research and less pure science. The National Institutes of Health has broadened the criteria for receiving neurology grants to include things like childhood welfare receipt because considering scientific accomplishment alone results in a disparate impact.

What is at stake in these changes? Future medical progress and, ultimately, lives. Standards are falling in the legal profession, which came up with the disparate impact concept in the first place. Upon taking office in 2021, President Biden announced that he would no longer submit his judicial nominees to the American Bar Association for a preliminary rating. Why? According to a member of the

White House Counsel's Office, allowing the ABA to vet candidates would be incompatible with the "diversification of the judiciary." This claim was dubious. The ABA, after all, cannot open its collective mouth without issuing a bromide about the need to diversify the bar. Its leading members are obsessed with the demographics of corporate law firms and law school faculties. This is the same ABA that gave its highest rating to a Supreme Court nominee who as a justice would make the false claim during a challenge to Covid vaccine mandates that "over 100,000 children are in serious condition [from Covid] and many are on ventilators."

State bar associations are also busy watering down standards to eliminate disparate impact. In 2020, California lowered the pass score on its bar exam because black applicants were disproportionately failing. Only five percent of black law school graduates passed the California bar on their first try in February 2020, compared to 52 percent of white law school graduates and 42 percent of Asian law school graduates. The lack of proportional representation among California's attorneys was held to be proof of a discriminatory credentialing system.

The pressure to eliminate the Law School Admission Test (LSAT) requirement for law school admissions is growing, because it too has a disparate impact. As a single mother told an ABA panel, "I would hate to give up on my dream of becoming a lawyer just due to not being able to successfully handle this test." Note the assumption: the problem always lies with the test, never with the test taker. The LSAT requirement will almost certainly be axed.

The curious state of our criminal justice system today is a function of the disparate impact principle. If you wonder why police officers are not making certain arrests, or why district attorneys are not prosecuting whole categories of crimes—such as shoplifting, trespassing, or farebeating—it is because apprehending lawbreakers and prosecuting crime have a disparate impact on black criminals. Urban leaders have decided that they would rather not enforce the law at all, no matter how constitutional that enforcement, than put more black criminals in jail.

Walgreens, CVS, and Target would rather close down entire stores and deprive their elderly customers of access to their medications than confront shoplifters and hand them over to the law, because doing so would disproportionately yield black shoplifters, as the viral looting videos attest. Macy's flagship store in New York City was sued several years ago because most of the people its employees stopped

for shoplifting were black. The only allowable explanation for that fact was that Macy's was racist. It was not permissible to argue that Macy's arrests mirrored the shoplifting population.

Even colorblind technology is racist. Speeding and red-light cameras disproportionately identify black drivers as traffic scofflaws. The solution to such disparate impact is the same as we saw with the medical licensing exam: throw out the cameras.

The result of this de-prosecution and de-policing has been widespread urban anarchy and, in 2020, the largest one-year spike in homicide in this nation's history. Thousands more black lives have been lost to drive-by shootings. Dozens of black children have been fatally gunned down in their beds, in their front yards, and in their parents' cars. No one says their names because their assailants were not police officers or white supremacists. They were other blacks.

UNCOMFORTABLE FACTS

We need to face up to the truth: the reason for racial underrepresentation across a range of meritocratic fields is the academic skills gap. The reason for racial overrepresentation in the criminal justice system is the crime gap.

And let me issue a trigger warning here: I am going to raise uncomfortable facts that many well-intentioned Americans would rather not hear. Keeping such facts off stage may ordinarily be appropriate as a matter of civil etiquette. But it is too late for such forbearance now. If we cannot acknowledge the skills gap and the behavior gap, we are going to continue destroying our civilizational legacy. Let me also make the obvious point that I am talking about group averages. Thousands of individuals within underperforming groups outperform not only their own group average but great numbers of people within other groups as well.

Here are the relevant facts. In 2019, 66 percent of all black 12th graders did not possess even partial mastery of basic 12th grade math skills, defined as being able to do arithmetic and to read a graph. Only seven percent of black 12th graders were proficient in 12th grade math, defined as being able to calculate using ratios. The number of black 12th graders who were advanced in math was too small to show up statistically in a national sample. The picture was not much better in reading. Fifty percent of black 12th graders did not possess even partial mastery of basic reading, and only four percent were advanced.

According to the ACT, a standardized college admissions test, only three percent of black high school seniors were college ready in 2023. The disparities in other such tests—the SAT, the LSAT, the GRE, and the GMAT—are just as wide. Remember these data when politicians and others vilify Americans as racist on the ground that this or that institution is not proportionally diverse.

We can argue about why these disparities exist and how to close them—something that policymakers and philanthropists have been trying to do for decades. But in light of these skills gaps, it is irrational to expect 13 percent black representation on a medical school faculty or among a law firm’s partners under meritocratic standards. At present you can have proportional diversity or you can have meritocracy. You cannot have both.

As for the criminal justice system, the bodies speak for themselves. President Biden is fond of intoning that black parents are right to fear that their children will be killed by a police officer or by a white gunslinger every time those children step outside. The mayor of Kansas City proclaimed last year that “existing while black” is another high-risk activity that blacks must engage in. The mayor was partially right: existing while black is far more dangerous than existing while white—but the reason is black crime, not white vigilantes.

In the post-George Floyd era, black juveniles are shot at 100 times the rate of white juveniles. Blacks between the ages of ten and 24 are killed in drive by shootings at nearly 25 times the rate of whites in that same age cohort. Dozens of blacks are murdered every day, more than all white and Hispanic homicide victims combined, even though blacks are just 13 percent of the population. The country turns its eyes away. Who is killing these black victims? Not the police, not whites, but other blacks.

As for interracial violence, blacks are a greater threat to whites than whites are to blacks. Blacks commit 85 percent of all non-lethal interracial violence between blacks and whites. A black person is 35 times more likely to commit an act of non-lethal violence against a white person than vice versa. Yet the national narrative insists on the opposite idea—and too many dutifully play along.

These crime disparities mean that the police *cannot* restore law and order in neighborhoods where innocent people are most being victimized without having a disparate impact on black criminals. So the political establishment has decided not

to restore law and order at all.

CIVILIZATION AT STAKE

It is urgent that we fight back against disparate impact thinking. As long as racism remains the only allowable explanation for racial disparities, the Left wins, and our civilization will continue to crumble.

Even the arts are coming down. Classical music, visual art, theater—all are dismissed as a function of white oppression. The Metropolitan Museum of Art mounted an astonishing show last year called the Fictions of Emancipation. The show's premise was that if a white artist creates a work intended to show the cruelties of slavery, that artist (in this case, the great 19th century French sculptor Jean-Baptiste Carpeaux) is in fact arguing that the natural condition of blacks is slavery. Prosecuting this nonsensical argument required the Met to ignore or distort almost every feature of the Western art tradition—including the representation of the nude human body, artists' use of models, and the sale of art.

Only Western art is subjected to this kind of hostile interpretation. Chinese, African, and Indian cultural traditions are still treated with curatorial respect, their works analyzed in accordance with their creators' intent. As soon as a critic turns his eye or ear on Western art, however, all he can see or hear is imperialism and white privilege. It is a perverse obsession. We are teaching young people to dismiss the greatest creations of humanity. We are stripping them of the capacity to escape their narrow identities and to lose themselves in beauty, sublimity, and wit. No wonder so many Americans are drowning in meaninglessness and despair.

We must stop apologizing for Western Civilization. To be sure, slavery and segregation were grotesque violations of America's founding ideals. For much of our history black Americans suffered injustice and gratuitous cruelty. Today, however, every mainstream institution is twisting itself into knots to hire and promote as many underrepresented minorities as possible. Yet those same institutions grovelingly accuse *themselves* of racism.

The West has liberated the world from universal squalor and disease, thanks to the scientific method and the Western passion for discovery and knowledge. It has given the world plumbing, hot showers in frigid winters, flight, clean water, steel, antibiotics, and just about every structure and every device that we take for granted in our miraculously privileged existence—and I use the word “privilege” here to

refer to anyone whose life has been transformed by Western ingenuity—i.e., virtually every human being on the planet.

It was in the West that the ideas of constitutional government and civil rights were born. Yes, to our shame, we had slavery. What civilization did not? But only the Anglosphere expended lives and capital to end the nearly universal practice. Britain had to occupy Lagos in 1861 to get its ruler to give up the slave trade. The British Navy used 13 percent of its manpower to blockade slave ships leaving the western coast of Africa in the 19th century, as Nigel Biggar has documented. Every ideal that the Left uses today to bash the West—such as equality or tolerance—originated in the West.

The ongoing attack on colorblind excellence in the U.S. is putting our scientific edge at risk. China, which cares nothing for identity politics, is throwing everything it has at its most talented students. China ranks number one in international tests of K-12 math, science, and reading skills; **the U.S. ranks twenty-fifth.**

China is racing ahead in nano physics, artificial intelligence, and other critical defense technologies. Chinese teams dominate the International Olympiad in Informatics. Meanwhile the American Mathematical Association declares math to be racist and President Biden puts a soil geologist with no background in physics at the top of the Department of Energy's science programs. This new science director may know nothing about nuclear weapons and nuclear physics, but she checks off several identity politics boxes and publishes on such topics as "A Critical Feminist Approach to Transforming Workplace Climate."

What do we do in response to such civilizational immolation? We proclaim that standards are not racist and that excellence is not racist. We assert that categories like race, gender, and sexual preference are never qualifications for a job. I know for a fact that being female is not an accomplishment. I am equally sure that being gay or being black are also not accomplishments.

Should conservative political candidates campaign against disparate impact thinking and in favor of standards of merit? Of course they should! They will be accused of waging a culture war. But it is the progressive elites, not their conservative opponents, who are engaging in cultural revolution!

Most conservatives today are not even playing defense. How about legislation to ban racial preferences in medical training and practice? How about eliminating the disparate impact standard in statutes and regulations? Conservatives should by all means promote the virtues of free markets and limited government, but the diversity regime is the nemesis of both.

Lowering standards helps no one since high expectations are the key to achievement. In defense of excellence we must speak the truth, never apologize, and never back down.