Randall Kennedy attended St. Albans School for Boys, Princeton University and Yale Law School. He served as a law clerk for Supreme Court Justice Thurgood Marshall. He is a professor at Harvard Law School. And he has been inducted into the American Academy of Arts and Sciences and the American Philosophical Society, two of the most prestigious honorific academic organizations in the United States.

Affirmative action, he acknowledges, played a role in his admittance to every one of these “selective, expensive, and powerful institutions.”

Defending the practice
Kennedy does not believe that his status as a beneficiary of affirmative action obliges him to defend the practice. He does so, he tells us, because affirmative action is a policy that “partially redresses the debilitating legacy of past wrongs” that will not be resolved without interventions that go beyond prospective prohibitions on intentional racial mistreatment.

To the author of “Nigger: The Strange Career of a Troublesome Word” and “The Persistence of the Color Line: Racial Politics and the Obama Presidency,” Kennedy has a well-deserved reputation for addressing difficult and divisive racial issues with clarity, candor and courage.

Leaves a stigma
In “For Discrimination,” he provides a remarkably astute and tough-minded analysis of the costs and benefits of affirmative action, the constitutional arguments for and against it, and the pros and cons “of a merely procedural color blindness.” His book should be required reading for anyone interested in genuine equal opportunity in the United States.

Kennedy gives critics of affirmative action their due. “Diversity,” he admits, is not all that strong a justification for the policy. It is an amorphous concept and it is hard to know how, when, and even whether “learning through diversity” actually occurs in school or at work. Kennedy also believes that affirmative action leaves a stigma on its beneficiaries by inviting “a depreciation of their credentials.”

And he cites a study by Professor Richard Sander that many affirmative action applicants to law school struggle academically, fail to pass the bar or perform poorly as attorneys, leaving the profession with fewer Black lawyers than it would have had under a race-blind system.

Best remedy
Kennedy’s responses to these critics are nothing if not provocative. Sander might be right, he suggests, if the goal is to create as many Blacks as possible eligible to practice law. But, in a variant of W.E.B. DuBois’ 100-year-old “talented tenth argument,” he claims that a cadre of Black attorneys trained at top-tier schools might be “more valuable to the black community” than a larger number from lower-tier schools.

More importantly, Kennedy makes a compelling case that, despite the skepticism and hostility accorded it by the Supreme Court, the strongest argument for affirmative action is that it’s the best available remedy for the “cruel, debilitating, racially motivated wrongs, imposed on racial minorities, particularly blacks, over a long period.”

Reality is messy
Justice, he writes, “demands such an effort,” even if it “rewards” some people who were not “direct victims of massive social wrongs” and provides more assistance to the “most privileged of racial minorities” than to those
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