

THE INTERNATIONAL COUNCIL ON HUMAN RIGHTS POLICY

International Seminar

Racism: Economic Roots of Discrimination

Geneva, 24-25 January 2001

RACIAL JUSTICE: THE SUPERFICIAL MORALITY OF COLOUR-BLINDNESS

Glenn Loury

© 2001, International Council on Human Rights Policy  
ICHRP commissioned this document as a Working Paper.  
ICHRP has not edited it and is not responsible for its accuracy or for the views and opinions expressed.  
ICHRP welcomes the re-use, re-publication and re-distribution of this paper, appropriately cited.

INTRODUCTION<sup>1</sup>

1. In this essay, I reflect on the interconnections between economic marginalisation and racial discrimination in the United States, focusing on the case of African Americans. My concerns are *normative* (seeking to evaluate the public morality of alternative policy responses to the scourge of racial inequality) and *conceptual* (seeking to clarify our understanding of the subtle processes that create and sustain durable racial inequality.) I do not here review statistical data, or take up empirical questions concerning the size of the income or wealth gap between racial groups in the United States (this I have done elsewhere, see references below). Rather, I am interested in the overarching philosophical commitments that inform and structure thinking about this problem, especially in the industrial democracies of Europe and North America. Specifically, I want to question the adequacy of *liberal individualism* as a philosophical paradigm for addressing questions of racial justice, in the American society and beyond.
2. I argue for two main conclusions in this brief essay. First, I attempt to show that the philosophical resources of liberal individualism are strained to the breaking point by the intractable problem of racial injustice. That is, the animating ideals of Western Liberalism prove inadequate as a guide to achieving moral public action in the face of large and durable differences in life chances across racial groups in the United States. (One implication of liberal individualism with which I take particular issue is the idea that the appropriate response to a history of racism and oppression is to establish a contemporary policy of ‘colour-blindness’ – that is, inattention to the racial identity of citizens.) Second, and closely associated with the first point, I argue that it has become crucially important to distinguish between *racial discrimination* and *racial stigma* when discussing the problem of continuing social exclusion and economic disadvantage among African

---

<sup>1</sup> Paper prepared for “Economics of Racism” Seminar, International Council on Human Rights Policy, Geneva, January 24-25, 2001. The ideas sketched here are developed more systematically in the author’s series of three lectures, the W.E.B. DuBois Lectures delivered at Harvard University in April 2000. The first lecture is available on the Internet at [www.bu.edu/irsd/files/DuBois\\_1.pdf](http://www.bu.edu/irsd/files/DuBois_1.pdf). Lectures two and three can be found at [.../DuBois\\_2.pdf](http://www.bu.edu/irsd/files/DuBois_2.pdf), and [.../DuBois\\_3.pdf](http://www.bu.edu/irsd/files/DuBois_3.pdf), respectively. A postscript for the series is posted at [www.bu.edu/irsd/articles/addendum.htm](http://www.bu.edu/irsd/articles/addendum.htm).

Americans. (Racial discrimination has to do with how blacks are *treated*, while racial stigma is concerned with how black people are *perceived*.) My view is that what I call *reward bias* (unfair treatment of persons in formal economic transactions based on racial identity) is now a less significant barrier to the full participation by African Americans in U.S. society than is what I call *development bias* (blocked access to resources critical for personal development but available only via non-market-mediated social transactions.) By making these points in the specific cultural and historical context of the black experience in U.S. society I hope to contribute to a deeper conceptualisation of the world-wide problem of race and economic marginality.

3. One overriding reality motivates this reflection. This is the fact that now, nearly a century and a half after the end of racial slavery in the United States and a half-century past the dawn of the civil rights movement, social life in the United States is still characterised by significant racial stratification. Numerous indices of wellbeing – wages, unemployment rates, income and wealth levels, ability test scores, incarceration and criminal victimisation rates, health and mortality statistics – all reveal substantial disparity among different racial groups. Indeed, over the past quarter century the black-white gap along some of these dimensions has remained unchanged, or even widened. Although there has been noteworthy progress in reversing historical patterns of racial subordination, there is today no scientific basis upon which to rest the prediction that a rough parity of socio-economic status between blacks and whites in the United States will obtain in the foreseeable future.<sup>2</sup>
4. “*So what?*” one might ask. That, anyway, is a question being raised by observers across the political spectrum in the U.S., from Left to Right, who are growing increasingly weary of public discussions about race and discrimination. These observers are not, in the main, indifferent to human rights or deaf to demands for social justice. They merely believe that, for the most part, racial discrimination has been significantly curtailed in the United States as a consequence of the liberalisation of law and social attitudes that accompanied the successful civil rights revolution of the 1950s and 1960s. From this point of view, it may seem reasonable to ask why the majority of citizens in the United States should care about racial inequality per se, as long as the individual members of a disadvantaged racial minority group are not being discriminated against.
5. This question is particularly important for adherents of *liberalism individualism*, who hold that any critical assessment of distributive justice in a free society should be rooted in a consideration of the welfare of individual persons, and not based on the economic or social position of population sub-groups. My principle aim in this essay is to argue that this tendency of thought particular to liberalism is mistaken. I aim to show that it is wrong to think only individuals and never groups can be the legitimate subjects of a discourse on social justice. In doing so, I criticise the manner in which liberal political theory deals with the ethical problems raised by the pronounced and durable social-economic disadvantage of African Americans.
6. My topic, then, is ‘racial justice.’ Now, it would be nice, were this possible, to avoid a philosopher’s quibble over this use of word but, alas, I do not expect to get off so easily. Taking ‘racial’ as modifier of ‘justice’ inevitably raises hackles, because doing so hints that the wellbeing of groups of persons – groups defined in terms of something called ‘race’ – can have moral significance. Liberals rightly worry that the freedom, dignity, integrity, autonomy, and/or rights of individual persons can be trod underfoot in a mad rush to obtain justice for fictitious ‘races.’<sup>3</sup>

---

<sup>2</sup> See, e.g., United States, Office of the President (1998) chapter 4, Farley (1996) chapter 6, and Loury (2000a) for documentation of these claims.

<sup>3</sup> There has been much discussion among social philosophers writing in the liberal tradition about the ontological status of “race” – are there any things in the world that may be taken as corresponding to the word “race,” etc. [See, e.g., Appiah (1992) chapter 2 (“Illusions of Race”)] Some writers have even taken to putting that word in quotation marks, by way of emphasising its problematic scientific and philosophical status. Their claim is that no objective criteria are available – biological, cultural or genealogical – through use of which the set of human beings

Beneath the surface of ostensibly progressive rhetoric about ‘racial justice,’ liberal individualists detect the distinct odour of an unjustifiable essentialism – a retrograde belief in racial essences. I acknowledge that ‘racial justice’ talk courts these dangers. Nevertheless, I hold that public talk about justice for racial groups is necessary for an intellectually rigorous and historically relevant social criticism in the US. Moreover, I think it possible to conceive of social justice in regard to matters of race in such a way that these pitfalls are avoided.

7. To fix ideas, consider the formidable intellectual edifice that is modern social choice theory. This literature at the junction of economics and philosophy pursues the formal, logical derivation of implications for public decision-making that issue from various postulates chosen to capture ethical intuitions about social justice.<sup>4</sup> A near universally imposed constraint on collective decision making in this literature is the so-called Anonymity Axiom. This postulate denies the ethical legitimacy of distinguishing for purposes of social choice between two states of affairs, A and B, that differ only in the identities of the people located in various positions of the social order. Thus, imagine that states of affairs A and B entail the same number of persons living in poverty, suffering from inadequate health care, held in prison, and the like, but that a different group of people suffer these conditions in state A than in state B. The Anonymity Axiom then requires that a just public decision-making process be indifferent between these two states.
8. It follows as an immediate corollary of this requirement that the diminution of racial inequality for its own sake would not be a legitimate social goal. I argue here against this implication of the Anonymity Axiom (and, perforce, against the axiom itself.) More generally, I call into question the adequacy of political liberalism as a normative theory, in view of the historical facts of racial subordination, and the continuing reality of racial inequality. There seem to be questions of social justice arising under these conditions, in societies such as the United States that are sharply stratified along racial lines, to which liberalism gives no good answers.

## WHAT IS WRONG WITH LIBERALISM?

9. Two distinct moral desiderata animate the debate about race and social justice in the United States. Though not necessarily incompatible, these ideals can come into conflict in practice. One view might be called ‘race-blindness’ (or, colour-blindness). This is the conviction that racial

---

can be consistently partitioned into a relatively small number of mutually exclusive, collectively exhaustive subsets that may be taken as “races.” Belief in the existence of races, on this view, is rather like belief in the existence of witches – mischievous superstition, nothing more. I do not dispute the core claim here, but neither do I find this exercise in linguistic philosophy to be of much interest. Rather, as any good social scientist would be, I am impressed by the fact that so many behaviours have come to be organised around the “race” category, despite its evident lack of an objective basis in human biology. This is what needs to be explained. Objective rules of racial taxonomy are not required to study, as I do here, the subjective use of racial classifications. It is sufficient that influential observers (police officers, employers, bankers, and passers-by on the street) have classificatory schemes, and act on those schemes. They need not make the schemes explicit. Their classificatory methods may well be mutually inconsistent. They are unlikely to be able to give cogent reasons for adopting these methods; but then, they are also unlikely to be asked to do so. Still, if a person is aware that others in society are classifying him or her by reference to certain markers, and if this classification, in turn, constitutes the basis of differential actions affecting his or her welfare, then such markers will become important to this person. He or she will attend to them, become conscious (and self-conscious) in regard to them. He or she will, at some level, understand and identify himself or herself as “raced.” This, we assert, will be a rational cognitive stance on this person’s part, not a belief in magic of some kind, and definitely not a moral error. Thus, following Cornell and Hartmann (1998) I define ‘race’ as: “...a human group defined by itself or others as distinct by virtue of perceived common physical characteristics that are held to be inherent. A race is a group of human beings socially defined on the basis of physical characteristics. Determining which characteristics constitute the race – the selection of markers and therefore the construction of the racial category itself – is a choice human beings make. Neither markers nor categories are predetermined by any biological factors. These processes of selection and construction are seldom the work of a moment. Racial categories are historical products and are often contested.” (p. 24).

<sup>4</sup> Further elaboration can be found in Arrow (1963), Sen (1970), and Elster and Hylland (1986).

identity should play no part in the way people are treated in public life – people should be, as it were, “blind” to race. This emphasis on autonomy and impartiality is the natural by-product of a commitment to liberal individualism. Another view could be called ‘race-egalitarianism.’ This is the notion that, given an unjust history, effort must be taken to reduce racial group disparities in wealth and power.

10. It is instructive to contrast these two ideas. The ‘race-blindness’ ideal is procedural, deals with the prerogatives of individuals, and can be applied without reference to historical events. The ‘race-egalitarianism’ ideal focuses on the status of groups, attends to social outcomes and not only to procedures, and is rooted in a particular historical understanding about the sources of current group disparities. I argue here for a priority of these moral concerns: race-egalitarianism over race-blindness.
11. The argument to be advanced here relies on the vast body of empirical work in the social sciences that has been devoted to establishing the central place of race in the relational structures that mediate social life in the United States. These are matters having to do with patterns of family formation, with the shaping of personal identities, with adolescent peer interactions, residential segregation, and job referral networks. My position is that the normative issues of concern require for their proper exploration that attention be paid to patterns of interaction among persons within and across those social boundaries that have come through history to be organised around the category of race.<sup>5</sup>
12. Explaining protracted and durable racial inequality becomes relatively easy if one admits the possibility of inherent racial differences in human attributes that significantly influence the ability of individuals to act effectively (intelligence, for example). As one who subscribes to the view that race is a social, not biological construct, I reject this possibility *a priori*. I call this position *anti-essentialism*. This anti-essentialism is certainly an empirically plausible stance (the evidence that inherent racial differences can account for the observed social disadvantage of blacks in the United States is not persuasive), but I think it necessary to stipulate the anti-essentialist position *a priori* because, in a ‘raced’ polity committed to democratic values, public discourses imputing inherent incapacity to some ‘raced’ group of citizens are fundamentally inconsistent with espoused democratic ideals. Policy argument in such a political setting, I hold, must as a matter of civic duty proceed under the maintained hypothesis of anti-essentialism.
13. This anti-essentialist position amounts to the assertion that, like the social convention of ‘race’ itself, the social fact of widespread, durable, large scale disparity in the status of different racial groups within the same society is also a constructed, not a natural, outcome. It follows, then, that a successful and consistent theory will need to account for the relatively disadvantaged position of African Americans by reference to processes that systematically block the realisation of the human potential of the members of this racial group. One can account for racial inequality without reference to essential racial difference in only two ways: One can show that the rewards accruing to members of the disadvantaged group, given their productivity, are lower than the rewards garnered by others. Alternatively, one can show that, through processes unrelated to their innate capacities, members of the disadvantaged racial group lack opportunity to realise

---

<sup>5</sup> I am much encouraged in this way of thinking by Charles Tilly’s recent contribution to social theory (Tilly 1998) and, in particular, by his emphasis on *categorical inequality*: “Durable inequality among categories arises because people who control access to value-producing resources solve pressing organisational problems by means of categorical distinctions. Inadvertently or otherwise, those people set up systems of social closure, exclusion, and control. Multiple parties – not all of them powerful, some of them even victims of exploitation – then acquire stakes in those solutions.... Through all of these variations, we discover and rediscover paired, recognised, organised, unequal categories such as black/white, male/female, married/unmarried, and citizen/noncitizen.” (pp. 7-8). One may regard the present essay as an initial exploration of some of the philosophical implications of this social theoretic point of view.

their productive potential. (These means of argument can, of course, be used in combination; it need not be either one or the other.)

14. In the first mode of argument, one shows that, systematically, productivity is rewarded differently for members of distinct racial groups. Call this the reward bias argument. In the second mode, one shows that, systematically, opportunity to acquire productivity is unequally available to the members of distinct racial groups. Call this the development bias argument. There is a significant distinction to be drawn between these two modes of argument, one that is critical for the enterprise being undertaken here.
15. Another name for the reward bias argument is *discrimination*. I am not high on this concept, and would like to see it demoted, removed from its current prominent place in the conceptual discourse on racial inequality in American life. Instead, I argue that the concept of *racial stigma* should have a more prominent place in this discourse. While I cannot here develop a theory of racial stigma (see, however, Lecture Two in the DuBois Series cited above), it is desirable to give some general sense of the intellectual work I hope the concept can do, and the place it occupies within my larger theoretical enterprise. The basic point is that racial discrimination, as an analytical category, deals mainly with the reward bias problem, and cannot effectively reach the problem of development bias. Yet, it is development bias, not reward bias, that explains more fully the extent and durability of current racial inequality.
16. Racial stigma, on the other hand, takes us some way toward understanding the persistence in American society of development bias affecting African Americans. Confronted with the experience of racially disparate achievement, racially disproportionate transgression of legal strictures and racially unequal development of productive potential, observers need to give an account. They need to tell themselves a story. They must, in effect, answer the question: where does the problem lie – with *us* or with *them*? Their willingness to examine taken-for-granted assumptions about the extent to which their nation's civic arrangements correspond to its professed ideals will depend upon the answers they give to this question. Indeed, their very processes of social cognition, of discernment, their awareness of anomaly, their capacity for empathy, their stirrings of conscience are all conditioned by beliefs in this regard. Faced with manifestations of extreme marginality and dysfunction among some of the racially marked, will the citizenry indignantly cry out, "*What manner of people are they, who languish in that way?*" Or, will they be moved, perhaps after overcoming an instinctual revulsion, to ask themselves reflectively (and reflexively!), "*What manner of people are we who accept such degradation in our midst?*"
17. I hold the latter response ("*What manner of people are we who accept such degradation in our midst?*") to be less likely, the greater credit is given to the essentialist view (that the 'races' really differ in some deep ways that can account for durable and pronounced racial inequality.) And, I understand a 'raced' population subgroup to be stigmatised in the perception of an external observer when this latter response comes less easily to that observer's mind. 'Racial stigma,' then, is (tacitly) presuming an essentialist cause for racial inequality, thereby ascribing a 'virtual social identity' to (some) blacks that implies they are, in some inherent sense, 'damaged goods,' 'not like the rest of us,' 'people for whom negative social outcomes are not particularly anomalous or surprising.'
18. These stigma-influenced social dynamics make it possible, in other words, for observers to say something like the following:

Why don't the blacks in the inner city get up off their duffs and do something like these folks who just got off the boat and no labour so industriously are doing? Don't you see that the structure admits of the possibility of people being equal? It's merely their lack of character, or capacity, that results in their laggardly status? We have nothing to apologise now for about the fact that here now are some generations after the end of slavery – our jails our overfilled, overflowing with these blacks. There's

nothing that we apologise for. Our laws are objective and they're objectively administered to the best of our ability. Here these people don't keep them. We have nothing to apologise for that our elite universities are schools of engineering and management and law are bereft of the presence of these people. We admit those who are qualified. They don't measure up.

19. The argument quoted above can be plausible only if one forgets about the processes of history and culture – ‘raced’ processes – that were rooted in a structure that was hierarchical, exploitative, de-humanising, and defended as legitimate explicitly in racial terms. We sit now with the product, the workings out through time of that structure. We sit now, in other words with inner city Detroit (and similar places across the nation). It did not come out of the sky, or pop up with the spring flowers one morning. It is the product of structured behaviour over decades by race-conscious agents behaving in racially motivated ways – to the detriment of the sons of slaves who migrated to this purported Land of Opportunity, and found themselves shunted to a backwater. Put to the end of the queue, etc., etc. No. This is not a harangue or a lament about how bad the “bad old days” were. This is an observation, dispassionate as I can make it, about the processes by which the days we are confronted with right now came to be as they are. A political theory that has no place for taking those processes seriously, that wakes up one morning after three centuries and says, “*Aha, race shouldn't matter at all, we're just human beings here, let's get on with the project at hand*” – such a political theory is bankrupt in my view – both as an intellectual and a moral matter.
20. Thus, I see the phenomenon of racial stigma as posing intractable problems for liberal individualism. For there is a sphere of intimate social intercourse, governed to some degree by ‘raced’ perceptions in individuals’ minds, which, out of respect for liberty and the dignity of human beings, should not become the object of political or bureaucratic manipulation. Yet, I hold that such race-preferential associative behaviour helps perpetuate a regime of development bias against blacks, largely because of a protracted, ignoble history during which reward bias against blacks was the norm. Thinking in terms of racial stigma, I believe, provides insight into race-constrained social interactions and into race-impacted processes of social cognition, helping us to see the forces at work in a ‘raced’ society like the US that create causal feedback loops perpetuating racial inequality, and that impede their identification. Moreover, as expanded upon below, this way of looking at things has an important implication for political philosophy. In particular, it leads us to reject colour-blindness (or the related notions of race-neutrality, or racial impartiality) as the moral standard in regard to issues of social justice and racial inequality in the United States.
21. Indeed, I argue that colour-blindness – a quintessential icon of liberal neutrality – is a superficial moral standard, one that reveals how starkly under-socialised is the entire intellectual project within which it is embedded. It will be important now to stress that I do not think of this weakness as irremediable. The root of my argument is not to announce a bedrock philosophical inadequacy; it is to decry a sociological naivete. I do not attack liberalism in a wholesale manner. But I long to see liberalism enriched by taking seriously the relational structures that mediate the contacts between the autonomous, dignity-bearing subjects of liberal political theory. I want the socially situated context of these subjects to be integrated into the philosophical project itself. Thus, I do not defend simpleminded racial utilitarianism – the idea that we aggregate the incomes or utilities of people defined by superficial racial characteristics, and use this sum as an indicator of the goodness of society. But I insist that reflection about the rights of individuals and the vitality of the institutions that influence individual interactions, should take seriously the ‘raced’ historical and social structures within which those individuals function.
22. So, my core objection to liberalism has to do with this sociological naivete and the limited place for historical developments to enter when liberal political theory is brought to bear on the problem of race. Sure, the so-called ‘underclass’ in the ghettos of America is behaving badly, in self-destructive and threatening ways. But those patterns of behaviour, embodied in those

individuals, reflect structures of human development mediated by social relations that are biased against those persons because of a history of racial deprivation and oppression. The result then is to produce, in our time, wide disparities in some indicia of behaviour across racial groups. What does the abstract individualism of liberal theory suggest that we do now? Throw up our hands? There are no questions of justice raised? Scratch our heads? We do not quite know what to do. Too bad. We lament, but... There is, I believe, a gaping hole in liberalism as a normative framework if no better answer is to be had.

23. The fundamental point here is that the selves that are the enshrined subjects of liberal theory are not given a priori. Rather, they are products of social relations, and of economic and political institutions. They are creatures, to some not inconsiderable degree, of the very system of laws, social intercourse, and economic relations that normative political theory is supposed to assess. Neither their ideas about the good life, nor (crucial for my purposes here) their self-understandings as ‘raced’ subjects, come into being outside of the flow of history and the web of culture. The diminished selves, the self-doubting, alienated, nihilistic selves – these are social products, and I want to attend to this fact within the project of political theory.<sup>6</sup> This leads me to reject colour-blindness as a normative standard because I cannot abide the imposition of abstract strictures of neutrality upon a game in which, systematically, non-neutral practices have left so many ‘raced’ and stigmatised outsiders with so few good cards to play.
24. *Succinctly stated, my argument with liberalism is that it fails to comprehend the following. Stigma-influenced dynamics in the spheres of social interaction and self-image production lead to “objective” racial inequality which is de-coupled from the discriminatory acts of individuals, carries over across generations, shapes political and social-cognitive sensibilities in the citizenry, makes racial disparity appear “natural” and non-dissonant, stymies reform, and locks-in inequality.*

## BEYOND DISCRIMINATION

25. Most discussion of the topic of race and social justice in the United States, whether in the social sciences or in social philosophy, has been centred on the concept of discrimination. It was animus against racial discrimination that prompted those monumental achievements – the Supreme Court’s 1954 Brown decision and the Civil Rights Act of 1964 – that ultimately established equality of citizenship for the descendants of slaves as a matter of law in the US. The legal apparatus erected on this foundation endeavours to enforce equality of treatment of individuals in public and quasi-public spaces – the public schools, the labour market, the voting booth. Although this is a classic way of stating the problem of group-based social injustice, I nevertheless suggest that a focus on the discriminatory treatment of individuals is now misplaced, because it obscures the most crucial normative questions raised by the fact of large racial disparities in life chances.
26. To see this more clearly, consider an elemental distinction between two kinds of behaviour – discrimination in contract and discrimination in contact. The phrase ‘discrimination in contract’ is meant to invoke the unequal treatment of otherwise like persons based on race in the execution of formal transactions – the buying and selling of goods and services, for instance, or the interactions with organised bureaucracies, public and private. By contrast, ‘discrimination in contact’ refers to the unequal treatment of persons on the basis of race in the associations and relationships that are formed among individuals in social life, including the choice of social intimates, neighbours, friends, heroes and villains. It involves discrimination in the informal, private spheres of life. An important difference is to be noted between these types of discrimination. Discrimination in contract occurs in settings over which a liberal state could, if it

---

<sup>6</sup> This critique of liberalism is thus similar in spirit to the so-called Communitarian arguments found in the work of Michael Sandel (1982) and Charles Taylor (1992), among others.

were to choose to do so, exercise review and restraint in pursuit of social justice (subject, of course, to the limitations of information and authority that inhibit any regulatory enterprise.) Thus, the US courts no longer enforce racially restrictive covenants in real estate deeds, or allow employers to advertise that “no blacks need apply,” etc. Such discrimination is legally proscribed, and this proscription is regarded not only as consistent with, but as necessary for, the realisation of liberal ideals.

27. However, in any liberal political order some forms of discrimination in contact must remain a prerogative for autonomous individuals. Preserving the freedom of persons to practice this discrimination is essential to the maintenance of liberty. This is so for two reasons. The social exchanges from which such discrimination arises are so profoundly intimate and cut so closely to the core of our being that all but the most modest interventions in this sphere would have to be avoided if liberty and autonomy are to have any real meaning. More fundamentally, while the ethical case against racial discrimination in formal (e.g., market) transactions is relatively easy to make, it is far less obvious that there is anything wrong in principle with forming or avoiding close association with another person based, in part, on racial identity.<sup>7</sup>
28. So, we have on the one hand a formal sector of contract. We have on the other hand, what we are referring to as the informal sector of contact. When discrimination in contract takes place, the tendency is to say that individuals are being treated unfairly, not given their due. But when discrimination in contact occurs, it is more likely to be seen as a necessary if not always desirable consequence of our commitment to liberal principles. Given that individuals socialised in the United States understand themselves partly in racial terms, and that they must in any liberal political order be endowed with autonomy regarding their choices of association, it is inevitable that the selective patterns of social intercourse that are the stuff of discrimination in contact will arise.
29. And yet, mechanisms of status transmission and social mobility depend critically upon the nature of social interactions in both spheres – that is, on the patterns of contact as well as on the rules of contract. The provision of resources fundamental to the development of human beings is mediated both by formal and informal, by contractual and non-contractual, social relations. I have in mind here the roles played in the shaping of persons by the family, the social network, and (using the word advisedly) the ‘community.’ I am thinking about infant and early childhood development, and about adolescent peer group influences. I mean to provoke some reflection on how people come to hold the ideas they, in fact, do hold concerning who they are (their identities), which other persons are essentially like them (their social identifications), and what goals in life are worth striving toward (their ideals). The fundamental empirical claim, taken here to have important philosophic implications, is this: In American society, where of historical necessity patterns of social intercourse are structured by perceptions of race, it is inevitable that developmental processes operating at the individual level will also be conditioned by race. From this I hold it to follow that, in a racially divided society like the United States, fighting discrimination in the sphere of contract while leaving it untouched in the sphere of contact will generally be insufficient to produce a baseline circumstance of equality of opportunity for all individuals. And yet, a commitment to political liberalism would seem to require precisely this – hence the dilemma.<sup>8</sup>

---

<sup>7</sup> Recall, in this context, that even the Civil Rights Act of 1964, which undertook to regulate discriminatory behaviour only in the formal, contractual sector of US society, was (and still is, see Epstein 1992) opposed by libertarian conservatives worried about the threat to personal liberty posed by laws of this kind.

<sup>8</sup> Our argument here is influenced by the work of James Fishkin (1983). Fishkin defines a “*tri-lemma*” for liberalism, insofar as it is committed at one and the same time to the ideals of equality of opportunity, reward according to merit, and autonomy of the family. He observes that autonomous but differentially endowed families will pass along developmental advantages to their children who, because rewards are distributed in reference to merit alone, will have superior life chances, unearned by them, thus defeating the goal of achieving equal opportunity. A difficult choice, he concludes, must be made among these ideals.

30. There are, however, influential traditions of social inquiry in which this basic point seems to have been insufficiently appreciated. For instance, the scholarly literature on racial inequality in economics focuses almost entirely on the differential treatment of individuals, based on race, in formal market transactions (jobs, housing, credit, etc). Little attention is paid to underlying social processes that lead to racial differences in the acquisition by individuals of productive skills. The primary normative claim in this approach is that such discrimination (in contract) is morally offensive, a legitimate object of regulatory intervention, and a significant contributor to the scourge of race and sex inequality in society. These claims are true. But implicit here also is the notion that, to the extent that racial inequality is due to supply-side differences – in the skills presented to employers by black and white employees, for example – the same moral issues are not raised, nor is comparable warrant given for intervention. This notion I hold to be both wrong and dangerous.
31. In the United States, while it is clear that some discrimination in contract against blacks still exists, it is also clear that such discrimination can no longer be taken as the major explanation of racial inequality. Indeed, it is entirely possible that ending discrimination in markets will not lead, even in the very long run, to a solution for the problem of racial economic inequality. The substantial gap in skills between blacks and whites is a key factor in accounting for racial inequality in the labour market. Yet, this skills gap is itself the result of processes of social exclusion that deserve to be singled-out for explicit study and, where possible, for policy remedy. This skills gap is in part a reflection of social and historical factors – geographic segregation, deleterious norms and peer influences, and poor educational quality – all of which have racial dimensions.<sup>9</sup> In this view, inequality between blacks and whites in the United States is a phenomenon that cannot be understood, or remedied, with a focus on market discrimination alone.
32. There is a long history of justified concern that approaching the problem of racial inequality with less of a focus on employer discrimination and more on skills differences could foster dangerous stereotypes and undermine arguments for policies to narrow the racial wage gap. In the decade after the enactment of US anti-discrimination laws, researchers who began to find evidence of a decline in labour market discrimination were sometimes criticised for giving aid and comfort to political conservatives.<sup>10</sup> This reaction, however, accepts the implicit normative assumption that racial inequality based on skill disparities is not as important a moral problem and does not warrant as vigorous a corrective intervention as does inequality based on discrimination in contract (in the labour market, say). But that assumption is much less compelling when one recognises that persistent racial skill disparities are in part the result of discrimination in contract.

## **SOCIAL CAPITAL AND SOCIAL OPPORTUNITY**

33. The conventional economist's approach to social analysis begins with an atomised agent, acting more or less independently, and seeking to make the best of opportunities at hand. This way of thinking has been very fruitful for economics, but it cannot adequately capture the ways that racial inequality persists over time. In actuality, individuals are embedded in complex networks of affiliations: they are members of nuclear and extended families; they belong to religious and linguistic groupings; they have ethnic and racial identities; they are attached to particular localities. Each individual is socially situated, and one's location within the network of social affiliations substantially affects one's access to various resources.

---

<sup>9</sup> We cannot here undertake to review the voluminous literature that supports this claim. Loury (1998a) cites some of this literature. It should be noted that some recent work in economics, both empirical (Cutler and Glaeser, 1997) and theoretical (Akerlof, 1997) moves in the direction we urge here.

<sup>10</sup> A classic example is the reception by some on the political left of William Julius Wilson's book, *The Declining Significance of Race* (Wilson 1978).

34. Opportunity travels along the synapses of these social networks. Thus, a new-born is severely handicapped if its parents are relatively uninterested in (or incapable of) fostering the youngster's intellectual development in the first years of life. A talented adolescent whose social peer group disdains the activities that must be undertaken for that talent to flourish is at risk of not achieving his or her full potential. An unemployed person without friends or relatives already at work in a certain industry may never hear about the job opportunities available there. An individual's inherited social situation plays a major role in determining his or her ultimate economic success.
35. In earlier work, I introduced the term "social capital" to suggest a modification of human capital theory designed to provide a richer context within which to analyse group inequality.<sup>11</sup> This idea builds upon the observation that family and community backgrounds play an important role, alongside factors like individual ability and human capital investments, in determining individual achievement. Some important part of racial inequality, in this view, is seen to arise from the way that geographic and social segregation along racial lines makes an individual's opportunities to acquire skills depend on present and past skill attainments by others in the same social group.<sup>12</sup>
36. In cities across the country, and in rural areas of the Old South, the situation of the so-called black underclass and, increasingly, of the black lower-working classes, is bad and getting worse. This is certainly a race-related problem. The plight of the black poor is not rightly seen as another (albeit severe) instance of economic inequality, American-style. But conventional market discrimination is only one small part of it. These black ghetto dwellers are a people apart, susceptible to stereotyping, ridiculed for their cultural styles, isolated socially, experiencing an internalised sense of helplessness and despair, with limited access to communal networks of mutual assistance.<sup>13</sup> Their purported criminality, sexual profligacy, and intellectual inadequacy are the frequent objects of public derision. They suffer a stigmatised, pariah status (Goffman, 1963). It should not require enormous powers of perception to see how this degradation relates to the history of black-white race relations in the United States.
37. Here is where the implicit normative model that accompanies the emphasis on discrimination in contract is most seriously flawed. And, here is where the challenge to political liberalism is also the greatest. Given social segregation along race lines, the effects of past discrimination can persist over time by adversely affecting the skills and social contacts acquired by the victims of discrimination, to be sure, but also by those closely connected to them – their children, for instance. Moreover, discrimination in one market can leave its victim less well prepared to compete in another market. The cumulative impact of an act of discrimination – within a single lifetime, over generations within a family, or between various venues of social interaction – should be no less problematic, as an ethical matter, than was the original offence. But these effects will be far more difficult to counter because such historical causal processes are near impossible to quantify. One can rarely say with any confidence what portion of an observed

---

<sup>11</sup> See Loury (1977, 1981, 1987, and 1995).

<sup>12</sup> There is fairly strong support for this view of the lagging economic position of blacks in the literature. Akerlof (1997) provides a theoretical argument, supported by a wealth of evidence from social anthropology, for the notion that concerns for status and conformity are primary determinants of individuals' educational attainment, childbearing, and law-breaking behaviour. Anderson (1990, 1999) provides ethnographic accounts of life in inner city Philadelphia, where peer influences significantly inhibit skill acquisition by adolescents in poor neighbourhoods. Waldinger (1996), in a study of immigrant labour in New York City, concludes that poor blacks suffer less from the racism of employers than from the fact that they do not have access to the ethnic networks through which workers are recruited for jobs in construction and service industries. Glaeser and Cutler (1997), comparing US cities with varying degrees of racial population concentration, find blacks to be significantly disadvantaged by residential segregation; they estimate that a thirteen per cent reduction in segregation would eliminate about one-third of the black-white gap in schooling, employment, earnings, and unwed pregnancy rates. Mills and Lubuele (1997) argue that a central problem for students of urban poverty is to explain why "*low income black residents actually or potentially eligible for jobs that have moved to suburbs (have) not followed such jobs to the suburbs.*"

<sup>13</sup> See Wilson, 1996 for an extend discussion.

racial disparity is due to the indirect effects of past discrimination in contract, as mediated and reinforced by contemporary discrimination in contact. Moreover, the most effective means of disrupting these causal chains usually run afoul of the cherished liberal ideal of individual autonomy.

38. Thus, we have now in the United States a curious and troubling situation. The civil rights struggle, which succeeded brilliantly in winning for blacks the right to be free of discrimination, failed for the most part to secure a national commitment toward eradicating the effects of such discrimination as had already occurred. When those effects manifest themselves in patterns of behaviour among poor blacks which lead to seemingly self-imposed limits on their acquisition of skills, the tendency of many who think only in terms of market discrimination is to argue that society is not at fault. This is the grain of truth in the insistence of some conservative observers that, while overt racism was implicated in the past, it is behavioural differences that lie at the root of racial inequality in the United States today.<sup>14</sup> But the deeper truth is that, for many generations now, the communal experience of the descendants of the African slaves has been shaped by political, social and economic institutions that, by any measure, must be seen as racially oppressive. When we look at the so-called “underclass culture” in American cities today we are seeing a product of that oppressive history.<sup>15</sup> In the face of the despair, violence, and self-destructive behaviour of these people, it seems to us to be both morally obtuse and scientifically naïve to argue, as some conservatives now do, that “*if those people would just get their acts together then we would not have such a horrific problem.*” Yet for closely related reasons, I also hold it to be a mistake to argue, as some liberals do, that the primary cause of continuing racial inequality is ongoing market discrimination.
39. This analysis would seem to have an important ethical implication: Because the creation of a skilled work force is a social process, the meritocratic ideal should take into account that no one travels the road to economic and social success alone. The facts that generations overlap, that much of social life lies outside the reach of public regulation, and that prevailing social affiliations influence the development of the intellectual and personal skills of the young, imply that present patterns of inequality – among individuals and between groups – must embody, to some degree, social and economic disparities that have existed in the past. To the extent that past disparities are illegitimate, the propriety of the contemporary order is called into question.

## **HISTORICAL CAUSATION AND SOCIAL JUSTICE**

40. One aspect of this perspective should be commented upon. History has been invoked here as a factor conditioning the ethical assessment of contemporary social arrangements. And yet, the explicit channels of historical influence, on which social scientific work can shed some light, must of necessity remain opaque, and vaguely specified. What might be called an ‘epistemological fog’ obscures the causal dynamics at work across the generations and limits our ability to know in detail how past events have shaped current arrangements. Thus, it may be reasonable to assert in a general way that past racial discrimination in contract, together with present discrimination in contact, disadvantages blacks by impeding their acquisition of skills. But it is nearly impossible to say with any quantitative precision just how much of current racial inequality is due to this source of disadvantage.<sup>16</sup>

---

<sup>14</sup> See Thernstrom and Thernstrom (1997) for an example of this conservative view, and Loury (1997) for a vigorous critique of it.

<sup>15</sup> This point about the long historical shadow of racial categorisation is powerfully developed in Thomas Sugrue’s Bancroft Prize winning study of race and inequality in post-war Detroit (Sugrue, 1996).

<sup>16</sup> Consider the recent argument of Orlando Patterson (1998) on behalf of the proposition that the high rates of paternal abandonment of children among contemporary Afro-Americans is due to the devastating consequences for gender relations among blacks of American slavery, and of the racist system of Jim Crow segregation that

41. Now one could take the view, as some conservatives have done, that this knowledge limitation should short-circuit claims for racial egalitarianism that rely upon the past unjust treatment of some racial group.<sup>17</sup> While acknowledging the plausibility of this view, I nevertheless reject it. Rather, I hold that a compensatory model, familiar from tort and liability law, is the wrong way to think about this question. My position, contrary to what I believe are simplistic applications of liberal neutrality that issue in mandates of colour-blindness, is that past racial injustice is relevant in establishing a general presumption against indifference to present racial inequality (thereby militating against the implications of the Anonymity Axiom mentioned earlier). But the degree to which social policy should be oriented toward reducing present racial inequality and the weight to be placed on this objective in the social decision calculus is not here conceived in terms of “correcting” or “balancing” for historical violation. Thus, I argue that, even when quantitative attribution of causal weight to distant historical events is not possible, one can still support qualitative claims.<sup>18</sup>
42. This distinction between quantitative and qualitative historically based claims is important, we think, because it casts doubt on the adequacy of purely procedural theories of justice when analysing matters of race. Colour-blindness as understood by critics of affirmative action is one such theory. In general, procedural theories of social justice turn on the answers to two kinds of questions: What are people entitled to? And, what actions affecting the distribution of claims are legitimate? Then, any state of affairs that respects individuals’ entitlements and comes about from procedurally legitimate actions is held to be just. Notice, however, that procedural theories are essentially incomplete because they cannot cope with the consequences of their own violations.
43. Suppose we are given a set of rules about how people are to treat one another. Suppose further that people happen not always to follow these rules. As just noted, history can be messy stuff. Teasing out causal implications across the centuries of historic procedural violations is impossibly difficult. So, if procedurally just requirements are not adhered to at some point – people entitled to the fruits of their labour are not rewarded accordingly, say – then, at some later point, perhaps a century on, there will be consequences rife in the interstices of society. But, as argued above, it will be impossible in principle to identify and to quantify these effects. What then would a procedural account have to say about this? Simple notions about providing compensation for identifiable historic wrongs may work when individual interactions are being

---

followed. In our view, Patterson’s argument is persuasive. But, even so, he can provide no answer to this crucial counter-factual query: What would family patterns look like among today’s blacks in the absence of these historical depredations? This question is important because, without some sense of the *extent* of damage caused by past violation, it is difficult to gauge the appropriate scope of remedy.

<sup>17</sup> Thomas Sowell is perhaps the leading exponent of this view. A representative work is Sowell (1983).

<sup>18</sup> A sharp contrast can be drawn between two different ways of dealing with the problem of a morally problematic racial history. One seeks ‘reparations,’ conceiving the problem in compensatory terms. The other conceives the problem, let us say, in interpretative terms – seeking public recognition of the severity, and (crucially) contemporary relevance, of what transpired. In this latter view, the goal is to establish a common baseline of historical memory – a common narrative, if you like – through which the past injury and its ongoing significance can enter into current policy discourse. (A crude analogy might be drawn here, suggested by the debate over the Truth and Reconciliation Commission in post-Apartheid South Africa: The compensatory approach is rather like putting as many past offenders as possible on trial, punishing them for their wrong doing and getting justice for survivors of the victims. The interpretative approach is a bit like waiving the pursuit of individual criminal liability in the interest of bringing to public light the true nature of what took place under Apartheid.) What seems conceptually important, though, is to clarify that, while some reckoning with the racist history of the US remains to be done, this reckoning may, for political as well as epistemological reasons, be inappropriately specified when cast in terms of “reparations.” What is required, instead, is a commitment on the part of the public, the political elite, the opinion shaping media, etc, to take responsibility for such situations as the contemporary plight of the urban black poor, and to understand them in a general way as a consequence of an ethically indefensible past. Such a commitment would, on this view, be open-ended and not contingent on demonstrating any specific lines of causality.

considered, but they cannot possibly work for broad social violations – chattel slavery, for instance. A procedural theory leaves us with no account of justice under such circumstances. This is a fundamental incompleteness in the theory, one that is especially pertinent to a consideration of racial justice in the United States.<sup>19</sup>

44. To pursue this point somewhat more formally, let us call a system of rules about social justice procedural if it satisfies the following: (1) a list of rules or procedures is specified about how people are supposed to deal with one another. And, (2) a state of affairs is held to be just if it evolves from a just original state, where every step in the evolution is brought about by the freely chosen actions of mutually consenting agents, all of which are consistent with the rules specified in (1). Furthermore, call such a system closed to moral deviation if it meets the following test. Whenever some state of affairs is brought about through actions by some agents that breach the rules specified in (1), it is in principle possible to ‘recover’ from the effects of this breach through a series of counter-actions that are themselves consistent with the rules set out in (1). In other words, a procedural account of social justice is closed to moral deviation if one can correct the consequences of rule violation through actions that are themselves consistent with the rules. In the absence of this “closure” property, a procedural theory would need to be supplemented by some non-procedural account of how to manage the states of affairs arrived at in the aftermath of the commission of procedurally unjust acts.
45. All right. Enough of that formalism. Here is what I am saying. Closed to moral deviation. Is colour-blindness (as a way of thinking about the justice problem raised by racial difference in a society) a procedural conception that is, itself, closed to moral deviation? If, in fact, at some point in time people do not behave that way toward others, is it possible to counter the consequences of their breach of that standard through a sequence of interventions that are themselves consistent with the standard? That is the question to which I am asserting to you that the answer in general is, no. Consequences of violating colour-blindness can persist forever if we restrict our counter-interventions so that they may take no cognisance of people’s race. This is so because in a “raced” society like the United States, people are themselves cognisant of race, and because there is a sphere of social intercourse that lies outside the domain of any legitimate intervention, but is nevertheless powerfully productive of the capacities of human beings to actually function in the society, in which access to developmental opportunities is conditioned by race. Disadvantaged, racially identified agents can remain unequal for a very long time after an initial, procedurally unjust and race-conditioned act, because their inequality is nurtured by venues of human development that are less effective than they otherwise would be, were the people operating in a genuinely colour-blind manner – not just colour-blind with respect to formal economic and governmental transactions, but colour-blind across the board. Because they are not operating in such an environment – and because no liberal theory can compel such an environment without running roughshod over individual rights, and so they will never operate in such an environment – it becomes a matter of relatively straightforward dynamical analysis to show that the inequality engendered by historical violation of their right not to be treated differently because of race can persist indefinitely if no one takes any further account of race after the initial violation (see Loury 1977 and 1995). That is, non-discrimination, once having been established in the sphere of contract but not in the sphere of contact, can admit of an indefinite perpetuation of the racial inequality originally engendered by historic contractual discrimination. *This demonstration implies that the colour-blindness derived from the Anonymity Axiom – treat all subjects interchangeably and take note of no person’s racial identity in the execution of social choice – when viewed as a procedural account of racial justice, is not closed to moral deviation.*

---

<sup>19</sup> Nozick (1974) provides a prototype of the procedural approach, in the sense being criticised here. We hasten to note that Nozick is himself aware of these difficulties, and proposes various amendments to his procedural theory in an effort to deal with them.

46. This, then, is the basis of my larger argument that, as a matter of social ethics, policies should be undertaken to mitigate the economic marginality of members of historically oppressed racial groups. This is not a reparations argument. I am not saying that people should be compensated for something that happened to their ancestors in the past. I am saying that if you want social justice now, and if you ground your wanting of such on an individualistic conception of justice, even so, if you recognise the historical backdrop, and the ongoing sociological processes within which the current society is nested, you will not affirm colour-blindness as your bedrock moral standard about how to proceed in racial matters. Rather, you will give greater weight to race egalitarianism. For, when the developmental prospects of an individual depend on the circumstances of those with whom he is socially affiliated, and when patterns of social affiliation are influenced by racial stigma, then even a minimal commitment to equality of opportunity for individuals (such as liberal individualism would affirm) requires such policies.

### CONCLUDING OBSERVATIONS

47. There is, however, an objection to be raised to the position being developed here that I wish to consider. At the consequentialist level, a critic may concede that some departures from colour-blindness are needed, though they should be “narrowly tailored” to meet only the most “compelling interest” as the language of recent U.S. Supreme Court rulings on affirmative action would have it. But at the most profound moral level, a critic might ask, doesn’t someone who abhors the consequences of racial stigma (as I do) have to affirm some kind of moral blindness to the race of agents?
48. I think this is in fact the case, and am not the least bit reluctant to say so, but I continue to urge clarity on this point. Now, the relevant point for the purposes of this essay turns on the conceptual distinction between procedural and egalitarian moral interests. To develop this point, I suggest a terminological convention: Let us adopt the term “race-blind” to identify the practice of not using race when carrying out a policy. And, let us employ a different term – “race-neutral” – to identify the practice of not thinking about race when determining the goals and objectives on behalf of which some policy is adopted. If a selection rule for college admissions can be applied without knowing the racial identity of applicants, call that rule “race-blind.” On the other hand, if a selection rule is chosen with no concern as to how it might impact the various racial groups, then call the choice of that rule “race-neutral.” I can now restate my core claim: the key moral question in matters of race is about neutrality, not blindness. (This is not to deny, of course, that “blindness questions” can sometimes matter a great deal.)
49. The power of this distinction between race-neutrality and race-blindness becomes clear when one considers that both ameliorating the social disadvantage of blacks, or exacerbating this disadvantage, can alike be achieved with race-blind policies. Yet, whereas a race-blind policy explicitly intended to harm blacks could never be morally acceptable, such policies adopted for the purpose of reducing racial inequality are commonplace, and uncontroversial. Put differently, given the facts of American history, departures from race-neutrality are, and should be, evaluated asymmetrically: those that harm blacks are universally suspect, whereas non-neutral undertakings that assist blacks are widely recognised as necessary to achieve just social policy.
50. To illustrate, I observe that recently a federal court ruling forbade the practice of affirmative action in college admissions in Texas. The state legislature responded by guaranteeing a place at any public university to the top ten percent of every high school class in the state. This so-called “ten percent rule” mainly benefits students with low test scores and good grades at less competitive high schools – disproportionately blacks and Hispanics – and certainly this was the intent. That is, this rule, while being race-blind, is most decidedly is not race-neutral. Thus, we have a situation in Texas where the explicit use of race in a college admissions formula is

forbidden, while the intentional use of a proxy for race publicly adopted so as to reach a similar result is allowed. Yet, can there be any doubt, had a different colour-blind proxy been adopted in order to exclude black and Hispanic students from public institutions in Texas, that this would be morally unacceptable?

51. This example illustrates why the key moral issues having to do with race are most often about neutrality, and not blindness. The moral intuition being drawn on in the example derives from the fact that in the United States citizens on the whole see reversing the effects of our history of immoral race relations as a good, while perpetuating those effects is an evil. The choice of instruments used to achieve these ends is often of less moment than the choice among the ends themselves. Indeed, this is the case in other policy arenas as well: the primary normative concern is not discrimination as such, but rather it involves deciding how much account to take of racially disparate consequences when choosing among what may be alternative, non-discriminatory policies. Thus, worthy racial goals can be pursued by race-blind means. Moreover, race-neutral public purposes are sometimes most effectively pursued by non-race-blind (shall we say, “race-sighted”?) means.
52. Consider, to further illustrate, a state’s governor who seeks to appoint judges to the courts. He might reason as follows:

I need to have a diverse group of appointees both for my own political protection and in the long-term interest of preserving the legitimacy of the administration of the justice in this jurisdiction. If I appoint all white men, even when they appear to be the best qualified, I may do damage not only to my reputation, but also to the institution of the court itself. This is because I may create a situation where some people doubt that the institution fairly represents them. I have a responsibility as governor to ensure this does not happen.

53. Now, maintaining the legitimacy of the institution of the court is not a racial goal; it is something that everybody has a stake in. And yet in order to do it, the governor might have to take racial identity into account to see whether his or her list of possible appointees contains a sufficient number of racial minority group members.
54. On the other hand, consider a federal anti-drug policy concentrating on arresting street-level traffickers and putting them away for a long time. This is a race-blind policy – formulated to pursue non-racial public ends, but having pronounced racially unequal results. Such policies have led to the incarceration of young people of colour in vastly disproportionate numbers – young people, it might be argued, who to some degree are engaged in the illicit traffic precisely because they are at the margin of society and their alternative opportunities are scant.<sup>20</sup> As a result of this and similar policies, out of the two million people under lock and key on any given day in the United States, some 1.2 million are blacks, though blacks are only about one-eighth of the national population. A concern solely for the race-blindness of policy instruments – are the police and courts applying the laws without racial discrimination? – would fail to raise the larger question: Is this not a public policy that should be examined because of the cost it is imposing on a particular racial community?<sup>21</sup>
55. Of course, the example of US anti-drug policy is controversial, but at a minimum reasonable people must accept the central logical claim here: that this race-blind policy instrument raises a question of social justice, the answer to which turns in part on the policy’s racially disproportionate effects. And, it is this distinction – between “blindness” and “neutrality” – that

---

<sup>20</sup> See Tonry (1996) for an extended critique of US drug policy along precisely these grounds, and for compelling evidence in support of the claim that US drug policy has led to young blacks being imprisoned disproportionately.

<sup>21</sup> Obviously, there are also benefits to blacks from anti-drug law enforcement. This illustration is by no means intended to suggest that those benefits are slight. Taking them into account, and calculating the net impact of the policy on blacks as a group, would be entirely consistent with the spirit of the argument here.

we seek to emphasise, because one can slide quickly from a forceful critique of race-sighted policy instruments (arguing that they should be race-blind) into a denial of the legitimacy of any discussion of public issues that is formulated in racial terms (arguing that such discussions should be race-neutral).

56. The relevance of the affirmative action controversy to our larger argument about liberalism can now be seen more clearly. We have just asserted a priority of moral concerns – racial justice before race-blindness. The broad acceptance of this moral ordering in American society would have powerful consequences. When exclusive colleges and universities use racial preferences to ration access to their ranks, they tacitly and publicly confirm this ordering in a salient and powerful way. This confirmation is the key civic lesson projected into American national life by these disputed policies. At bottom, what the racial preference argument, in college admissions and elsewhere, is really about is this struggle for priority among competing public ideals. This is a struggle of crucial importance to the overall discourse on race and social justice in the United States.
57. The priority of concerns asserted here has far-reaching consequences. It implies, for example, that an end to formal discrimination against blacks in this post-civil rights era should in no way foreclose a vigorous public discussion about racial justice. More subtly, elevating racial equality above race-blindness as a normative concern inclines us to think critically, and with greater nuance, about the value of race-blindness. It reminds us that the demand for race-blindness – our moral queasiness about using race in public decisions – arises for historically specific reasons – slavery and enforced racial segregation over several centuries. These reasons involved the caste-like subordination of blacks – a phenomenon whose effects still linger, and that was not symmetrical as between the races. As such, to take account of race while trying to mitigate the effects of this subordination, though perhaps ill advised or unworkable in specific cases, cannot plausibly be seen as the moral equivalent of the discrimination that produced the subjugation of blacks in the first place. To do so would be to mire oneself in a-historical, procedural formalism.
58. Finally, I would like to distinguish between three distinct domains of concern about raced based behaviour in a racially divided society to which the intuitions of colour-blindness might be applied. One is the domain of *policy-implementation*. Here we are admitting students to college, or hiring fire-fighters, or distributing public benefits. We are using some mechanism to do so. And the mechanism might, or might not, take cognisance of the race of those subject to the action. A second domain is *policy evaluation* – assessing the consequences of public action. Here we are deciding whether or not to build a prison or a school. And if a school, at what level of elite pedagogy do you focus it? We are framing a war on drugs, and deciding on whether to focus attention on the buying or the selling side of the illicit transactions. We are determining whether it is necessary to induce a recession, in order to prevent a bout of inflation. We are building a highway through the middle of the city, or we are making it go around the perimeter, and so on. In other words, we are taking public actions, and we have to make an assessment, if you will, of the costs and benefits of the action. And now the question arises as to whether or not the impact of the public action being taken, on persons of particular racial groups – can be taken into account. In other words, might we tolerate a little bit more risk of inflation if we recognise that black youth unemployment is getting down to humane levels for the first time in a half century? And if we yank on the chain of the economy to prevent inflation, we just might induce slackening of the labour market that would hurt those people – and that would be a bad thing. We are overcoming racial stigma now. We are bringing these people into the society. They are able to work and earn the respect of their fellow citizens. Can we take the count of the benefit in terms of reducing racial division and racial isolation in the society to be garnered from a race neutral action? But one now undertaken mindful of its racial consequences?

59. This assessment activity is another domain where we might affirm colour-blindness. Notice that a liberal individualist well might be inclined to say, “*We should do it or not, regardless of the racial consequence of what we undertake, but only with regard to the human consequence of our actions.*” We should have the War on Drugs – even though it will lead to a lot of people going to jail – whenever we think it is worth it, and without regard as to whether most of those people are black and brown, or whether they are a representative sampling of the population. One could take that position. That would be colour-blindness in the domain of the evaluation, as distinct from the implementation of public policy. So we have those two domains.
60. The third and final domain that I want to consider is that of the construction of national community – the development of our sense of nationhood, common purpose, civic engagement – through pedagogical enterprises of all sorts: building monuments, proffering public ritual and, of course, making public policy, which is an inescapably, expressive as well as directly instrumental undertaking. Consider capital punishment. It either does, or does not deter murder. But it is most definitely the state-sanctioned killing of a human being. There is no way around that. That is a definition. So now, is the racial imbalance in the powerfully pedagogic public undertaking of killing violators of the law, a matter of any concern? Does it do anything to our self-understanding as a nation in the United States that we might take to be deleterious? Or, on the other side, consider the conscious act of integrating the elite who exercise power in the society, and who bear honour in the society – the people to whom we look up, the people to whom we delegate discretion over our lives. Consider the conscious effort to make sure that there are, visibly, African-Americans amongst that elite in an effort to integrate the national community by rubbing out in the consciousness of the populace a perception of racial difference – in inherent capacities, in social standing, etc. Is that a valid enterprise? That is, after all, a kind of colour-blindness too. The project of diminishing the sense within the polity that we consist of different peoples, ranked differently, differently endowed, differently participating in all that is good and wonderful about our common public life is a project of race blindness, properly understood. It is race-blind, public civic pedagogy.
61. So I have these three domains. What rules are we going to use to choose people? What rules and concepts are we going to use to evaluate the alternative paths that our public policy might pursue, and what consciousness are we going to have about the extent to which the conduct our public business does or does not perpetuate into yet another generation the inherited stigmata associated with race?
62. Eschewing the use of race in the domain of implementation is what most critics of affirmative action mean by race-blindness. No more of those “*disgusting little boxes,*” as Ward Connerly, leader of the national political campaign to end affirmative action, has put it.<sup>22</sup> I wish here to stress that, given US history, fewer people are prepared to import their love of the race-blind principle into the domain of evaluation of public actions. That is, while they may object to race-based selection rules, they do not object to the pursuit of explicitly race-egalitarian outcomes through public policies taking no notice of race at the point of implementation. That is, using my linguistic convention introduced above, though they may embrace *race-blindness* they reject *race-neutrality*. Thus, there is much (I think plausible) disquiet at the thought of constructing race-based electorates for the purpose of giving blacks greater political voice, but hardly any opposition to moving from at-large to non-racially drawn single-member voting districts when the intent is to produce a similar outcome. And, as mentioned, policies like the ten-percent plan in Texas, implemented through race-blind decision rules but adopted with the intent of benefiting blacks and Hispanics, are not controversial – either politically or constitutionally – among most affirmative action opponents.

---

<sup>22</sup> Connerly’s recently published memoir, *Creating Equal*, (Connerly, 2000) provides an extended exposition of his views.

63. Consider now the domain of the construction of civic community. What would race-blindness mean here? Roughly what I have in mind is what the sociologist Orlando Patterson has called the *principal of infrangibility* (i.e., the absence of boundary) – saying that we are One Nation, Indivisible, and taking that idea seriously enough to try to act (whether in a race-blind or a race-sighted fashion) so as to bring that circumstance about. Those people, languishing at the margins, even if they are strange and threatening, are going to be seen as being, in the way that most fundamentally counts for our politics and civic life, essentially like *us*. We are going to prudentially and constitutionally, but determinedly and expeditiously, move so as to tear down, or certainly build no higher, the boundaries of race that rend the body politic.
64. It is in this last domain, and only there, that I want to affirm colour-blindness. That is, I advocate colour-blindness as a moral idea neither with respect to promulgating the rules of public action – who’s admitted, hired, etc. I am prepared to depart from it there. Nor do I advocate colour-blindness with respect to the evaluation of putatively race-blind undertakings – should we not induce a recession because it is leading to a solution to a problem that has plagued us for fifty years with respect to the marginality of inner-city youth, or shouldn’t it be? I would allow a cognisance of race to enter in there too. But, I do want to affirm as an ideal that we would pursue the construction of a civic self-understanding, which is to the maximal extent possible not continually marred by the historical inheritance of racial hierarchy: “those people” who endanger our freedoms, who hold us back, etc. That kind of thinking I want to see rubbed out through public action, which might be pursued by race conscious instruments, or might be undertaken as a consequence or alternative courses of action then are themselves to some degree influenced by a cognisance of race.
65. There should be no race-mediated civic boundary, and where a boundary exists, it becomes our work to rub it out. That is a kind of race-blindness, too. Thus, when elite college presidents say, in effect, “*while administering multibillion dollar philanthropies that enjoy (for the public good) the protection of tax exemption, we endeavour, among other things, to construct an elite leadership cadre of African Americans at the end of the twentieth and at the beginning of the twenty-first century,*” they say a very modest thing. In the elite schools studied by Bowen and Bok (1998), the average admissions rate for whites is about twenty-five per cent. Getting rid of all the affirmative action is calculated to raise that rate to about twenty-seven per cent. So, for every seventy-five whites rejected under the regime of race-preferential admissions currently being practised, seventy-three would still be rejected after the eradication of affirmative action. Why, then, all the energy, why all the angst, why all the hand wringing, why the clamour, why all the concern that America is being run aground, that our standards are being trashed, that the barbarians are at the gates. Why? When in fact, as the data in that book show, the boundary of racial hierarchy is being erased just a little bit by the trickling few students who, at the margin, because of the colleges’ practice of affirmative action are being inducted into the leadership cadres of the US. I hold that there is nothing in political liberalism, rightly understood, that should lead us to reject that practice. There is nothing wrong with a liberal, concerned about social justice, undertaking to fight racial stigma. There is nothing wrong with constructing a racially integrated elite in America. There is nothing wrong with fretting over 1.2 million African-American young bodies under the physical control of the state. Indeed, I am led to wonder how any thoughtful person aware of the history and the contemporary structure of US society could conclude otherwise.

## REFERENCES

- Akerlof, George. "Social Distance and Social Decisions," *Econometrica*, September 1997, 65 (5), 1005-28.
- Anderson, Elijah. *Streetwise: Race, Class, and Change in an Urban Community*, Chicago: University of Chicago Press, 1990.
- Anderson, Elijah. *Code of the Streets*, New York: Norton (1999).
- Appiah, Kwame Anthony. *Sin My Father's House: Africa in the Philosophy of Culture*, Oxford: Oxford University Press, 1992.
- Arrow, Kenneth J. *Social Choice and Individual Values*, New Haven: Yale University Press, 1963.
- Bowen, William G., and Derek Bok. *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*. (Princeton: Princeton University Press, 1999).
- Connerly, Ward. *Creating Equal: My Fight Against Race Preferences*, San Francisco: Encounter Books, 2000.
- Cornell, Stephen and Douglas Hartmann. *Ethnicity and Race: Making Identities in a Changing World*, Thousand Oaks, CA: Pine Forge Press, 1998.
- Cutler, David and Edward Glaeser. "Are Ghettos Good or Bad?" *Quarterly Journal of Economics*, August 1997, 827-72.
- Elster, Jon and Aanund Hylland, eds. *Foundations of Social Choice Theory*, Cambridge University Press, 1986.
- Epstein, Richard. *Forbidden Grounds: The Case Against Employment Discrimination Laws*, Cambridge: Harvard University Press, 1992.
- Farley, Reynolds. *The New American Reality: Who We Are, How We Got Here, Where We Are Going*, New York: Russell Sage Foundation, 1996.
- Fishkin, James S. *Justice, Equal Opportunity, and the Family*, New Haven: Yale University Press, 1983.
- Goffman, Erving. *Stigma: Notes on the Management of Spoiled Identity*, New York: Simon and Schuster, 1963.
- Loury, Glenn C. "A Dynamic Theory of Racial Income Differences," in *Women, Minorities and Employment Discrimination*, edited by P.A. Wallace and A. Lamond, Lexington Books, 1977.
- \_\_\_\_\_. "Intergenerational Transfers and the Distribution of Earnings," *Econometrica*, July 1981, 49 (4), 843-67.
- \_\_\_\_\_. "Why Should We Care about Group Inequality?" *Social Philosophy and Policy*, Autumn 1987, 5, 249-71.
- \_\_\_\_\_. *One by One from the Inside Out: Essays and Reviews on Race and Responsibility in America*, New York: The Free Press, 1995.
- \_\_\_\_\_. "The Conservative Line on Race," *The Atlantic Monthly*, November pp. 1144-54 (1997).
- \_\_\_\_\_. "Discrimination in the Post-Civil Rights Era: Beyond Market Interactions," *Journal of Economic Perspectives*, Spring 1998 (a), 12 (2), 117-126.
- \_\_\_\_\_. "Foreword," paperback edition of *The Shape of the River*, William G. Bowen and Derek Bok, (pp. xxi-xxx), Princeton: Princeton University Press, 1998 (b).
- \_\_\_\_\_. "Twenty-Five Years of Black America: Two Steps Forward and One Step Back?" *Journal of Sociology and Social Welfare*, 27(1): 19-52, March 2000 (a).
- Massey, Douglas S. and Nancy Denton. *American Apartheid: Segregation and the Making of the Underclass*, Cambridge: Harvard University Press, 1993.
- Mills, Edwin S. and Luan Sendé Lubuele. "Inner Cities," *Journal of Economic Literature*, XXXV (2): 727-56, June 1997.
- Nozick, Robert. *Anarchy, State and Utopia*, New York: Basic Books, 1974.
- Patterson, Orlando. *Rituals of Blood: Consequences of Slavery in Two American Centuries*,

- Washington, DC: Civitas, 1998.
- Sandel, Michael. *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press, 1982.
- Sen, Amartya. *Collective Choice and Social Welfare*, San Francisco, Holden-Day, 1970.
- Sowell, Thomas. *The Economics and Politics of Race: An International Perspective*, New York: William Morrow and Co., 1983.
- Sugrue, Thomas J. *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, Princeton: Princeton University Press, 1996.
- Taylor, Charles. *Multiculturalism and the Politics of Recognition*, Princeton: Princeton University Press, 1992.
- Thernstrom, Stephan and Abigail Thernstrom. *America in Black and White: One Nation, Indivisible*, New York: Simon and Schuster, 1997.
- Tilly, Charles. *Durable Inequality*, Berkeley: University of California Press, 1998.
- Tonry, Michael. *Malign Neglect: Race, Crime, and Punishment in America*, New York: Oxford University Press (1995).
- United States, Office of the President. *Economic Report of the President*, Washington DC: US Government Printing Office, February 1998.
- Waldinger, Roger. *Still the Promised City: African-Americans and New Immigrants in Postindustrial New York*, Cambridge: Harvard University Press, 1996.
- Wilson, William Julius. *The Declining Significance of Race: Blacks and Changing American Institutions*, Chicago: University of Chicago Press, 1978.
- Wilson, William Julius. *When Work Disappears: The World of the New Urban Poor*, New York: Alfred A. Knopf, 1996.