

**Moffett '29 Lectures, University Center for Human Values, Princeton University**  
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Lecture 2: The Ethics of Racial Egalitarianism in the United States (Nov. 7, 2003)

**1. Introduction**

The concerns of this lecture are normative and conceptual. Seven generations after the end of slavery, and a half-century past the dawn of the civil rights movement, social life in the United States is still characterized by a significant degree of racial stratification and inequality. Numerous indices of well being – wages, unemployment rates, income and wealth levels, ability test scores, incarceration and criminal victimization 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 socioeconomic status between blacks and whites in the US will obtain in the foreseeable future.<sup>i</sup>

“So what?” one might reasonably ask. As long as the individual members of a disadvantaged racial minority group are not being discriminated against, why should citizens in the United States, or in any liberal democracy for that matter, care about racial inequality *per se*? This is an important question for anyone reflecting on matters of social justice in a pluralistic society. It is especially crucial for adherents of a certain version of political liberalism, who hold that a properly structured analysis of the justness of social arrangements should derive from a consideration of the welfare of individuals, and not from the economic or social position of population sub-groups.

I believe this position – that only individuals and never groups can be the subjects of a discourse on social justice – to be mistaken. As such, I undertake here to criticize the manner in which this “color-blind” version of liberal political theory deals with the ethical problems raised by the pronounced and durable social-economic disadvantage of African Americans. 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 expect not to get off so easily. Taking “racial” as modifier of “justice” inevitably raises hackles, because doing so hints that the well being of *groups* of persons – groups defined in terms of something called “race” – can have moral significance. Defenders of individual liberty (rightly) worry that the freedom, dignity, integrity, autonomy, and/or rights of persons may be trod underfoot in a mad rush to obtain justice for fictitious “races.” Just beneath the surface of what is ostensibly progressive rhetoric about “racial justice” some critics detect the distinct odor of an unjustifiable essentialism – a retrograde belief in racial essences. While acknowledging that “racial justice” talk courts these dangers, I nevertheless hold that such talk 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.

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 our ethical intuitions about social justice.<sup>ii</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. 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.) For, despite its apparent reasonableness, this position of race neutrality in the realm of social justice is profoundly counter-intuitive in the US, denying as it does the appropriateness of what has been a preoccupation for progressive social critics, scholars and activists over the past two generations. More generally, I call into question the adequacy of “color-blind” 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 this theory can give no good answers.<sup>iii</sup>

## **2. What’s Wrong with Color-Blind Liberalism?**

I believe that the phenomenon of racial stigma (which I discussed at length in yesterday’s lecture) poses intractable problems for liberal individualism. For there is a sphere of intimate social intercourse, governed to some degree by “raced” perceptions in individuals’ minds, that, 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 behavior 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 color-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 US.

*Indeed, I argue that color-blindness – a quintessential icon of liberal neutrality – is a superficial moral standard, one that reveals how starkly under-socialized 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 autonomous,

dignity-bearing subjects, who are the concern 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.<sup>iv</sup>

So, my core objection to color-blind 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 behavior, 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 behavior 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 don't 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.

My fundamental point 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.<sup>v</sup> 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. This leads to a rejection of color-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 stigmatized outsiders with so few good cards to play. My core concern is about racial stigma and development bias. 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.*

We have now in the US 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 behavior among poor blacks that 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 behavioral differences that lie at the root of racial inequality in the US today.<sup>vi</sup> But the deeper truth is that, for many generations now, political, social and economic institutions that, by any measure, must be seen as racially oppressive have shaped the communal experience of the descendants of the African slaves. When we look at the so-called “underclass culture” in US cities today we are seeing a product of that oppressive history.<sup>vii</sup> In the face of the despair, violence, and self-destructive behavior of these people, it seems to me 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.

Two distinct moral desiderata animate the discourse about race and social justice in America. One view I will call “race-blindness”—the conviction that racial identity should play no part in the way people are treated in public life, that we should be “blind” to race. The other view I will call “race-egalitarianism”—the conviction that, because of an unjust history, we should endeavor to reduce inequalities of wealth and power between racial groups, as such. It is instructive to contrast these two ideas. Race-blindness is a procedural standard. It deals with prerogatives of the individual. It emphasizes autonomy and impartiality. And it does not depend on history—either for its rationale or for its implementation. By contrast, race-egalitarianism focuses explicitly on the status of groups. It entails looking not only at the procedures employed in a society but also at social outcomes those procedures generate. And it finds its justification in a comprehensive understanding of how current racial disparities have come to be.

My moral argument asserts a priority of these concerns: race-egalitarianism over race-blindness. My view is that one cannot think sensibly about social justice issues in a racially divided society if one does not attend to the race-mediated patterns of social intercourse that characterize interpersonal relations in that society. Once the reality of these racially biased interactive patterns is taken into account, race-blindness begins to look much less attractive as a moral position, precisely because of its individualistic, a-historical, and procedural focus.

My critique of this “blindness” idea has two aspects: First, given that there is a compelling moral and political case for public policies aimed at reducing racial disparities, I argue (in the technical paper accompanying this lecture, “Color-Blind Affirmative Action”) that it can be very inefficient to require that any such race-egalitarian policies be implemented in a race-blind fashion. Second, and more fundamentally, I argue that this “blindness” idea becomes deeply problematic when one embeds it in the actual historical flow – especially when one recognizes that the “blindness” ideal has been systematically violated over the course of centuries prior to the contemporary era, not only by individuals, but by state and federal governments who were anything but blind. This systematic violation has created facts on the ground. It has led to the objective social backwardness of a racially identifiable set of our fellows. And, this historical violation of the color-blindness principle has fostered racial stigma, which is to say, it has contaminated the “mental maps” that citizens employ for understanding relations between themselves and others in society. These facts on the ground and the mental maps that accompany them, although originating with historical violations of

race-blindness, live on long after such violations have ceased. These “lingering effects” are the consequences of an ignoble history, present in our very midst. We look around and see that in fact we have a war against drugs has the predictable consequences that very large numbers of some of the most disadvantaged people in society are going to bear the brunt of the punitive cost of our reaction to a broad social malady. And yet, we say that we have to be blind to that, it doesn’t matter what their group is, all that matters is that they are persons and persons are to be treated equally irrespective of their identity. Or we say, why don’t they get over these identity problems? Why don’t they get beyond that? Why don’t they enter into the modern world? We stress that these identity considerations are matters over which persons must ultimately exercise choice; that the “true” self is a transcendental subject who floats high above the gritty entanglements of commitments to this or that particular tradition or way of life. But, I think this move abstracts too readily from the core of the problem: these transcendental subjects are caught-up in the flow of history and the web of culture. And, as “raced” subjects, they may not have the luxury or even the option of rising above this superficial identity. Indeed, their very struggles for dignity and survival may require of them that they embrace this identity and mobilize themselves, at least partly, in terms of it.

So race-blindness is problematic from an historical point of view. But, it also has its own internal, logical difficulties upon which I will expand momentarily.

### **3. Historical Causation and Social Justice**

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 contract, 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>viii</sup>

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>ix</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 color-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 though quantitative attribution of causal weight to distant historical events is not possible, one can still support qualitative claims.<sup>x</sup>

This distinction between quantitative and qualitative historically based claims is important, I think, because it casts doubt on the adequacy of purely procedural theories of justice when analyzing matters of race. Color-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.

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 labor 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 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 US.<sup>xi</sup>

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. Elsewhere I have demonstrated (in the context of a theoretical example) that notwithstanding the effective prohibition of discrimination in contract, historically engendered economic differences between racial groups can persist indefinitely when discrimination in contract continues to be practiced (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. Stated in terms of the language just introduced, my demonstration implies that the color-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. 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. *When the developmental prospects of an individual depend on the circumstances of those with whom he is socially affiliated, even a minimal commitment to equality of opportunity for individuals requires such policies.*

#### **4. The Affirmative Action Controversy and the Poverty of Proceduralism**

The current dispute affirmative action throws some light on the arguments being advanced here. My general view is that the affirmative action debate receives too much attention in US policy discourses about racial inequality, obscuring as much as it clarifies. However, by exploring some aspects of this hotly contested public question, I hope to illustrate more incisively the conceptual distinctions that drive my larger argument.

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 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.)

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 US 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 recognized as necessary to achieve just social policy.

For example, when a court ruling forbade the practice of affirmative action in college admissions in Texas, the 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. Can there be any doubt, had a

different color-blind proxy had been adopted in order to exclude black and Hispanic students from public institutions in Texas, that this would be morally unacceptable?

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 US most citizens 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.

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 color 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>xii</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 US, 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 community?

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.<sup>xiii</sup> And, it is *this* distinction – between “blindness” and “neutrality” – that I seek to emphasize, 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*).

The relevance of the affirmative action controversy to my larger argument about color-blind liberalism can now be seen more clearly. I have just asserted a priority of moral concerns – racial justice before race-blindness. The broad acceptance of this moral ordering in US 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 US.



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.

Yet, this is precisely what some critics of affirmative action have done, putting forward as their fundamental moral principle the procedural requirement that admissions policies be color-blind. “America, A Race-Free Zone,” screams the headline from a recent article by Ward Connerly, leader of the successful 1996 ballot campaign against affirmative action in California, and now at the helm of a national organization working to promote similar initiatives in other jurisdictions. Mr. Connerly wants to rid the nation of what he calls “those disgusting little boxes” – the ones applicants check to indicate their racial identities. He and his associates see the affirmative action dispute as an argument between people like themselves, who seek simply to eliminate discrimination, and people like the authors of *The Shape of the River*, who want permission to discriminate if doing so helps the right groups.<sup>xiv</sup>

This way of casting the question is very misleading. *It obscures from view the most vital matter at stake in the contemporary affirmative action debate – whether public purposes formulated explicitly in racial terms are morally legitimate, or even morally required.* Anti-preference advocates suggest not, arguing from the premise that an individual’s race has no moral relevance, to the conclusion that it is either wrong or unnecessary to formulate public purposes in racial terms. But this argument is a *non sequitur*. Moral irrelevance does not imply instrumental irrelevance. Nor does the conviction that knowing an individual’s race adds nothing to an assessment of personal worth require the conclusion that patterns of unequal racial representation in important public venues are irrelevant for accessing the moral health of our society.

The failure to make these distinctions is dangerous, for it leads inexorably to doubts about the validity of discussing social justice issues in the United States at all in racial terms. Or, more precisely, it reduces such a discussion to the narrow ground of assessing whether or not certain policies are race-blind. Whatever the anti-preference crusaders may intend, and however desirable in the abstract may be their color-blind ideal, their campaign is having the effect of devaluing our collective and still unfinished efforts to achieve greater equality between the races. Americans are now engaged in deciding whether the pursuit of racial equality will continue in the century ahead to be a legitimate and vitally important purpose in our public life. Increasingly, doubts are being expressed about this. *Fervency for color-blindness has left some observers simply blind to a basic fact of American public life: we have pressing moral dilemmas in our society*

*that can be fully grasped only when viewed against the backdrop of our unlovely racial history.*

The basic point needing emphasis here is this: The use of race-based instruments is typically the result, rather than the cause, of the wider awareness of racial identity in society. To forego cognizance of the importance of race, out of fear that others will be encourage to think in racial terms, is a bit like closing the barn door after the horses have gone. One cannot grasp the workings of the social order in which we are embedded in the US without making use of racial categories, because these socially constructed categories are etched in the consciousness of the individuals with whom we must reckon. Because they use race to articulate their self-understandings, we must be mindful of race as we conduct our public affairs. This is a cognitive, not a normative point. One can hold that race is irrelevant to an individual's moral worth, that individuals and not groups are the bearers of rights, and nevertheless affirm that, to deal effectively with these autonomous individuals, account must be taken of the categories of thought in which they understand themselves.

Indeed, one easily produces compelling examples where the failure to take race into account serves to exacerbate racial awareness. Consider the extent to which our public institutions are regarded as legitimate by all the people. When a public executive (like a governor naming judges to the bench in some state) recognizes the link between the perceived legitimacy of institutions and their degree of racial representation, and acts on that recognition, he or she has acted so as to *inhibit*, not to *heighten*, the salience of race in public life. When the leaders of elite educational philanthropies worry about bringing a larger number of black youngsters into their ranks, so as to increase the numbers of their graduates from these communities, they have acted in a similar fashion. To acknowledge that institutional legitimacy can turn on matters of racial representation is to recognize a basic historical fact about the American national community, not to make a moral error. The US Army has long understood this.<sup>xv</sup> It is absurd to hold that this situation derives from existence of selection rules – in colleges and universities, in the military, or anywhere else – that take account of race.

So much may seem too obvious to warrant stating but, sadly, it is not. In the 5th US Circuit Court of Appeal's *Hopwood* opinion, Judge Smith questions the diversity rationale for using racial preferences in higher education admissions. He argues that, because a college or university exists to promote the exchange of ideas, defining diversity in racial terms entails a pernicious belief that blacks think one way, whites another. But this argument is fallacious for reasons just stated. Suppose one begins with the contrary premise, that there is no "black" or "white" way of thinking. Suppose further that conveying this view to one's students is a high pedagogic goal. The students being keenly aware of their respective racial identities, some racial diversity may be required to achieve the pedagogic goal. Teaching that "not all blacks think alike" will be much easier when there are enough blacks around to show their diversity of thought. That is, *conveying effectively the ultimate moral irrelevance of race in our society may require functional attention by administrative personnel to the racial composition of the learning environment. Whether, and to what extent, this may be so is a prudential, not a principled, question. It cannot be resolved a priori.*

## 5. An Appropriate Venue for Color-Blindness

I would like to close this lecture by discussing what I would affirm to be an appropriate venue for applying the principle of race-blindness. Let us distinguish among three domains or venues of public action in a racially stratified society where the “blindness” intuitions of liberal neutrality might be applied.

First is the domain of policy implementation—where we decide on the instruments of public action. Here we are admitting students to college or hiring public employees or distributing social benefits. Some mechanism is being used to do this, and that mechanism may, or may not, take cognizance of a subject’s race. “Blindness” here means structuring public conduct so that people from different racial groups who are otherwise similar can expect similar treatment. This is what most people have in mind when they insist that the government should be “colorblind.”

Second is the domain of policy evaluation—where we assess the consequences of public action. Here we are deciding whether to build a prison or a school, and if it is a school, whether it should serve the general population or only the most accomplished students. We are fighting a war on drugs and deciding whether to concentrate on the buying or the selling side of illicit transactions. As a general matter, prior to choosing a course of public action we need to assess the relative costs and benefits of the alternatives before us. The impact of an alternative on particular racial groups may, or may not, be explicitly reckoned in this assessment. “Blindness” here means not seeing a policy as more or less desirable on account of the race of those affected. This is what the Anonymity Axiom of social choice theory requires.

Third is what I will call the domain of civic construction—where we develop our nation’s sense of shared purpose and common fate. Here we are building monuments, constructing public narratives, enacting rituals, and, most generally, pursuing policies that have an inescapably expressive as well as a directly instrumental effect. “Blindness” to race in this domain means deploying the instruments of civic pedagogy so as to promote a sense of national community that transcends racial divisions. This is what my Axiom 2 (on anti-essentialism) requires, when it is embraced without reference to empirical assessments.

Veterans of the racial preferences wars are most familiar with the questions—having mainly to do with the unfairness of racial discrimination—that arise in the domain of implementation. To get a glimpse of the subtle dilemmas that arise in the domain of evaluation, imagine that the central bank is trying to decide whether or not to induce a recession, so as to lower the risk of inflation. Would it be legitimate to tolerate a somewhat greater chance of inflation while maintaining a strong demand for labor because doing so also manages to hold the unemployment rate of black youth at humane levels for the first time in a half-century? Can we reckon that this is a good policy because it contributes to overcoming racial stigma, draws blacks more fully into the mainstream of society, and permits them to earn the respect of their fellow citizens? (Here I mean to suggest that, but for this racial benefit, a different decision might be taken.) In other words, can we explicitly count as a benefit to society what we calculate to be the racially progressive consequences (reducing black economic marginality) of what is a race-blind action (electing to take a greater risk of inflation)?

The issues arising in the domain of civic construction are also subtle. Consider the practice of capital punishment, which may or may not deter murder, but which is most

definitely the state-sanctioned killing of a human being. Would it be legitimate when deciding whether or not to undertake the powerfully pedagogic public ritual of executing lawbreakers to take note of what may be a large racial disparity in its application? (Here I am supposing for the sake of argument that the processes of policing, judging, and sentencing that lead to persons being executed are not racially biased, and I am asking whether we might nevertheless reject the use of capital punishment because of its racially disproportionate effects.) In other words, must we be blind to the possibility that such a racial imbalance could distort our civic self-understanding in the United States?

Or, to take a very different case, consider the conscious act of integrating the elite who exercise power and who bear honor in the society—the people to whom we delegate discretion over our lives. Suppose we undertake to ensure that there are, visibly, African Americans among that elite. Suppose this goal is pursued not to bestow benefits on black people, as such, but with the specific intent of integrating the national community by rubbing out in the consciousness of the populace a perception of racial difference in inherent capacities or deserved social standing. Would that be a valid enterprise? Such a project, after all, pays tribute to the idea of race-blindness, too: It seeks to diminish the sense within the polity that we consist of racial groups that are differently endowed or unequally worthy of respect, with some more deserving than others of inclusion in the prized venues of public life.

We have, then, these three domains—implementation, evaluation, and civic construction—giving rise to three classes of public questions: How should we treat individuals? How should we choose the goals to be pursued through our policies? And how much awareness ought we to have of the ways in which the conduct of public business can perpetuate into yet another generation the inherited stigma of race?

Color-blind liberalism seems to militate strongly in favor of “blindness” in both the first and the second domains. I think this is wrong on both counts, because it is a-historical and sociologically naïve. Color-blind liberalism fails, I will argue tomorrow, because (among other reasons) it is not closed to moral deviation. And a principled stand of race-indifference is unacceptable as well, because it rules out policies that are almost universally credited as being necessary and proper, given the history of race relations in this country. Few thoughtful people are prepared to import their love of the race-blind principle into the domain of evaluation. They may object to race-based selection rules, but they do not object to the pursuit of explicitly race-egalitarian outcomes through public policies that take no notice of race at the point of implementation. That is, using our linguistic convention introduced earlier, though they may embrace race-blindness they reject race-indifference.

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—politically or constitutionally—among most opponents of affirmative action.

I want to suggest that only in the domain of civic construction should some notion of race-blindness be elevated to the level of fundamental principle. The operative moral idea would be what the sociologist Orlando Patterson has called the principle of

infrangibility (that is, 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're 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 divide the body politic.

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. 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**

Appiah, K. A. 1992, *Sin My Father's House: Africa in the Philosophy of Culture*, Oxford University Press

Arrow, K. J. 1963, *Social Choice and Individual Values*, New Haven: Yale University Press

Bowen, W. G., and D. Bok 1999, *The Shape of the River: Long-Term Consequences of Considering Race in College and University Admissions*. Princeton University Press

Connerly, W. 2000, *Creating Equal: My Fight Against Race Preferences*, San Francisco: Encounter Books

Elster, J. and A. Hylland (eds.) 1986, *Foundations of Social Choice Theory*, Cambridge University Press

Farley, R. 1996, *The New American Reality: Who We Are, How We Got Here, Where We Are Going*, New York: Russell Sage Foundation

Fishkin, J. S. 1983, *Justice, Equal Opportunity, and the Family*, New Haven: Yale University Press

Goffman, E. 1963, *Stigma: Notes on the Management of Spoiled Identity*, New York: Simon and Schuster,

- Loury, G. C. 1977 , 'A Dynamic Theory of Racial Income Differences,' in Wallace, P.A and A. Lamond (eds.), *Women, Minorities and Employment Discrimination* Lexington Books
- Loury, G. C. 1987, 'Why Should We Care about Group Inequality?' *Social Philosophy and Policy*, 5: 249-71
- Loury, G. C. 1995, *One by One from the Inside Out: Essays and Reviews on Race and Responsibility in America*, New York: The Free Press
- Loury, G. C. 1998, 'Foreword,' paperback edition of *The Shape of the River*, Bowen W. G. and D. Bok, Princeton University Press pp. xxi-xxx
- Loury, G. C. 2000, 'Twenty-Five Years of Black America: Two Steps Forward and One Step Back?' *Journal of Sociology and Social Welfare*, 27: 19-52,
- Loury, G. C. 2002, *The Anatomy of Racial Inequality*, Cambridge: Harvard University Press
- Moskos, C. C. and J. S. Butler 1996, *All That We Can Be: Black Leadership and Racial Integration the Army Way*, New York: Basic Books
- Nozick, R. 1974, *Anarchy, State and Utopia*, New York: Basic Books
- Patterson, O. 1998, *Rituals of Blood: Consequences of Slavery in Two American Centuries*, Washington, DC: Civitas
- Sandel, M. 1982, *Liberalism and the Limits of Justice*, Cambridge, Cambridge University Press
- Sen, A. 1970, *Collective Choice and Social Welfare*, San Francisco:Holden-Day
- Sowell, ,T. 1983, *The Economics and Politics of Race: An International Perspective*, New York: William Morrow and Co.
- Sugrue, T. J. 1996, *The Origins of the Urban Crisis: Race and Inequality in Postwar Detroit*, Princeton University Press
- Taylor, C. 1992, *Multiculturalism and the Politics of Recognition*, Princeton University Press
- Thernstrom, S. and A. Thernstrom 1997, *America in Black and White: One Nation, Indivisible*, New York: Simon and Schuster
- Tilly, C. 1998, *Durable Inequality*, Berkeley: University of California Press

Tonry, M. 1995, *Malign Neglect: Race, Crime, and Punishment in America*, New York: Oxford University Press

United States, Office of the President 1998, *Economic Report of the President*, Washington DC: US Government Printing Office, (February)

## End Notes:

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<sup>i</sup> See, e.g., United States, Office of the President (1998) chapter 4, Farley (1996) chapter 6, Loury (2000), and Loury (2002: Appendix) for documentation of these claims.

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

<sup>iii</sup> I am using the term “color-blind liberalism” here and throughout this lecture in order to distinguish the object of my criticism from the broad theory of political liberalism as set out, for example, in the work of John Rawls. I am mindful of the fact that the embrace of this latter theory does not necessarily entail an endorsement of “color-blindness” as a fundamental moral principle. However, so far as I know, the implications of Rawls’s political liberalism for the questions of racial egalitarianism with which I am here concerned remain to be worked out in any comprehensive way. Doing so, in my opinion, remains an urgent philosophical project.

<sup>iv</sup> Just what might this mean in practice? I will argue (implicitly) below that a proper theory of social justice suitable for a “raced” society like the U.S. would be one satisfying the following desiderata: a. the social position of racial groups count in the moral assessment; b. social mobilization along lines of racial identity is recognized as a necessary instrument of resistance for groups subject to historical racial subordination; c. racial stigma is seen as a legitimate, and indeed urgent, object of social approbation; d. in the face of dramatic racial disparities in social performance, the imputation of responsibility to individuals for their “choices” is qualified by a recognition of the racially conditioned environments within which these individuals have to operate.

<sup>v</sup> My critique of liberalism is thus similar in spirit to the communitarian arguments found in the work of Michael Sandel (1982) and Charles Taylor (1992), among others. As mentioned in note (iii) above, the philosophical problem of deducing with some specificity what Rawls's political liberalism [RPL] implies about the problem of racial justice in the contemporary US and like societies around the world remains an open one. Early critical discussion of this question in the literature -- eg., Charles Mills's critique of liberal theory [LT] in "The Racial Contract" ("LT pretends to a universalism that it never obtains; the actual 'contract' is deeply and subtly a racial one" -- Mills) or Michael Sandel's more profound critique in "Liberalism and the Limits of Justice" (LT suffers from sociological naivete and an inadequate philosophical anthropology [this regarding the nature of the self]: If the right is prior to the good then the self must be prior to its ends; but what manner of self might this be?" -- Sandel) -- do not seem to me to be adequate. Although RPL does not imply the "color-blindness" of today's anti-affirmative action racial libertarians, it remains unclear (despite much useful recent work on related questions by Amartya Sen, Anthony Appiah, Elizabeth Anderson and Will Kymlicka, among others) as to just what, in a more positive vein, RPL does require for the just arrangement of social institutions (for the design of economic, political, educational, social welfare and criminal justice institutions, more specifically), given the fact of persistent social inequality between historically significant and culturally salient racial groups. Although it is not my subject here, In subsequent work I hope to make some small progress toward closing this gap in the philosophical and political theoretic literatures.

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

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<sup>vii</sup> This point about the long historical shadow of racial categorization is powerfully developed in Thomas Sugrue's Bancroft Prize winning study of race and inequality in postwar Detroit (Sugrue 1996).

<sup>viii</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 followed. In my 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>ix</sup> Thomas Sowell is perhaps the leading exponent of this view. A representative work is Sowell (1983).

<sup>x</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. What seems conceptually important, though, is to clarify that, while some reckoning with the racist history of the US remains to be done, it may not be appropriate to cast this reckoning 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.

<sup>xi</sup> Nozick (1974) provides a prototype of the procedural approach, in the sense being criticized here. I 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.

<sup>xii</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>xiii</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.

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

<sup>xv</sup> See Moskos and Butler (1996) for documentation of this rationale for racial affirmative action in the US Army personnel policies.