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# The Question of Discrimination

Racial Inequality in the U.S. Labor Market

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## Chapter 9. Why Should We Care about Group Inequality?

**T**HIS ESSAY is about the ethical propriety and practical efficacy of a range of policy undertakings referred to as "affirmative action." These policies have been contentious and problematic, and a variety of arguments have been advanced in their support. Here I try to close a gap, as I see it, in this "literature of justification" that has grown up around the practice of preferential treatment, by offering what I term a "minimalist's argument" for departing from the color-blind standard. I consider how some forms of argument in support of preferential treatment not only fail to justify the practice but, even worse, work to undermine the basis for cooperation among different ethnic groups in the American democracy. As a practical matter the use of group preference can, under circumstances I detail, produce results far different from the egalitarian objectives that most often motivate their adoption.

It may seem fatuous in the extreme to raise as a serious matter, in the contemporary United States, the question "Why should we care about group inequality?" Is not the historical and moral imperative of such concern self-evident? Must not those who value the pursuit of justice be intensely concerned about economic disparities among groups of persons? The most obvious answer to the title question would seem, then, to be: "we should care because such inequality is the external manifestation of the oppression of individuals on the basis of their group identity."

Yet, this response, upon examination, is not entirely adequate. Why should the mere existence of group disparities evidence the oppressive treatment of individuals? There is little support in the historical record for the notion that, in the absence of oppression based upon group membership, all socially relevant aggregates of persons would achieve roughly the same distribution of economic rewards.<sup>1</sup> Indeed, to hold this view is to deny the economic relevance of historically determined and culturally reinforced beliefs, values, interests, and attitudes that define distinct ethnicities. Distinct cultures will necessarily produce

distinct patterns of interest and work among their adherents. And while this need not be an argument against egalitarianism, since distinct interests and different work need not receive different remuneration, it does serve to shift our focus from disparities among groups per se to disparities in the rewards to the different types of activities toward which various groups' members incline.

In fact, a subtle logical problem haunts the idea of equality among groups. To the extent that the arguments for equal group results presuppose the continued existence of general inequality, they end up (merely) demanding an equality *between groups* of a given amount of inequality *within groups*. They leave us with the question: why is inequality among individuals of the same group acceptable when inequality between the groups is not? Indeed, there is "group inequality" whenever there is inequality—one need only take those at the bottom to constitute a "group." This is precisely what a radical, class analysis of society does. The unanswered question here is why the ethnic-racial-sexual identification of "group" should take precedence over all others. It is a question usually avoided in popular discussions of the need to equalize group disparities.

It is, of course, possible to hold that the very existence of distinct beliefs, values, interests, and so forth in distinct groups is evidence of oppression. And it is surely true that one major consequence of domination is to alter the conception of self held by the dominated. Women are socialized into the acceptance as natural or desirable of roles that undermine their competitive position in the world of work. Minorities, so this argument goes, do not aspire to those professions in which there are presently few persons like themselves to serve as role models, to illustrate that the opportunity for success is really there. In this view group disparities evidence oppression even when arising most immediately out of differences in "tastes" among persons, since those differences are themselves due to oppression.

But this argument, if it were valid, would prove too much. The differentiating effect of oppression has sometimes worked to make a group of persons *more* effective in economic competition. And the differences of beliefs and values among various groups sometimes reflect centuries of historical development, in lands far removed from that which they currently occupy. If group differences in beliefs and values bearing on economic achievement are the fruit of oppression, then why not also those group differences in cultural style so much celebrated by cultural pluralists? If, for example, poor academic performance among black students reflects "oppression," why should not outstanding athletic performance stem from the same source? We re-

main, then, with two questions: when does group inequality constitute a moral problem, and what may appropriately be done about it?

In contemporary American society such disparities are often taken to constitute a moral problem and to occasion a public policy response. The use of racial preferences in education, employment, or even politics, a frequent policy response, has been controversial; courts and philosophers have sought to define the circumstances under which such preferences might legitimately be employed. Recently, both in the courts and in public discourse, questions have been raised about the legitimacy of government efforts on behalf of women, blacks, and other racial minorities. Some of these questions strike deeply at the philosophical foundation of preferential policies.

It is a tenet of long standing in American liberalism that the use by the state of ascriptive personal characteristics as a basis for discriminating among individuals, whether that discrimination be in their favor or to their disadvantage, is wrong. Such practice stigmatizes the individuals involved and reinforces private inclinations to make invidious distinctions based upon the same ascriptive characteristics.

The antidiscrimination principle, codified in so many statutes and court rulings of recent decades, is founded upon such a world view. Martin Luther King put it well when he said: "I have a dream that my four little children will one day live in a nation where they will not be judged by the color of their skin, but by the content of their character" (Broderick and Meier 1965). Plaintiffs' attorneys in the landmark *Brown* case and in oral argument before the U.S. Supreme Court made similar representations when urging the Court to overturn the "separate but equal" doctrine. Civil rights advocates in the legislature, working for the passage of the Civil Rights Act of 1964, offered extensive assurances that they sought only to enforce on the private sector such restrictions in their business practices as were consistent with assuring color-blind hiring and promotion standards.<sup>2</sup> Throughout this early history of the civil rights revolution, the classical liberal principle of aversion to the use of racial (or religious or sexual) classification was adhered to by the advocates of change. And this antidiscrimination principle has a noble intellectual pedigree, harking back to the Enlightenment-era challenge to hereditary authority and reflected in the "anonymity axiom" of modern social choice theory.<sup>3</sup>

Yet, in a historically remarkable transformation, this position of the liberal political community in our country has dramatically changed.<sup>4</sup> Today, King's dream that race might one day become an insignificant category in American civic life seems naively utopian. It is no small irony that, a mere two decades after his moving oration, the passionate evocation in public debate of his "color-blind" ideal is, for many, an

indication of a limited commitment to the goal of racial justice. The recalcitrant persistence of group disparity in the face of formal equality of opportunity has forced many liberals to look to race-conscious public action as the only viable remedy.

However, unlike the earlier antidiscrimination principle, color-conscious state action rests on rather less firm philosophical ground. The key court decisions supporting it are, in the main, closely divided ones. The arguments encountered in support of the practice seem, at least to this listener, to be more tortured and less compelling than those put forward on behalf of the color-blind principle.<sup>5</sup> Typically, these arguments demonstrate the invalidity of the notion that positions should be distributed according to the nebulous criterion of "merit" and follow that with a set of unsupported empirical claims about the benefits sure to flow from a more equal distribution of positions among groups.

There is, for example, a tendency in these arguments to obscure the distinction between group-conscious state actions whose main purpose is to prevent overt, but undetectable, private discrimination and those whose principal aim is to increase the representation of protected groups without any implication that their "underrepresentation" evidences illegal private behavior. The first set of policies, call them "enforcement-oriented," though requiring use by the state of what may be imperfect (i.e., color-conscious) means, aim to eliminate private practices and procedures that themselves violate the antidiscrimination principle. (They may be likened to the use of statistical market share data by antitrust authorities when seeking to determine whether a firm has engaged in illegal, but unobservable, business practices.) The second type of policies, call them "result-oriented," concern themselves with the outcome of private actions that may be wholly unobjectionable but that occur in the face of unacceptable de facto racial disparities. The two types of policies cannot be rationalized in the same manner. A coherent theory of the practice of affirmative action must be able to distinguish among them. How, if at all, can the "result-oriented" use of racial categories by the state be justified?

My "minimalist's" argument will, I hope, establish that a plausible specification of how multi-ethnic societies actually function will lead to the conclusion that *social justice is not consistent with a blanket prohibition on the use of group categories as a basis for state action*. I will rely on an intellectual tradition long familiar to economics—one that justifies departures from *laissez faire* when, due to some sort of market failure, the outcomes of private actions are socially undesirable. This market failure rests upon the very social behavior that in-

duces distinct racial and ethnic groups, as a permanent structural matter, among which inequality might arise in the first place.<sup>6</sup>

I will inquire whether, in theory, we should expect the continued application of racially neutral procedures to lead eventually to an outcome no longer reflective of our history of discrimination. If the answer to this query were negative, then adherence to a policy of equal opportunity alone would condemn those whose rights have historically been violated (and their progeny) to suffer indefinitely from what most would regard as ethically illegitimate acts. Since, presumably, this would be an ethically unacceptable state of affairs, a (weak) case for intervention would thereby be made. There are reasons to believe that the consequences of apparently innocuous and ubiquitous social behaviors systematically and intrinsically pass on from one generation to the next that group inequality originally engendered by historical discrimination.

Thus, I propose that we take certain aspects of the dynamic performance of an unrestrained market economy as a standard in evaluating the ethical legitimacy of affirmative action. The choice between public policy limited to what Douglas Rae (1981) has called "prospect-regarding equality of opportunity" or extended to some sort of color-conscious intervention should depend upon the extent to which we are confident of the ability of markets to naturally erode historically generated differences in status between groups. One part of this puzzle can be resolved if we seek to identify precisely what it is about *laissez faire* that leads us to expect (as supporters of affirmative action typically do) that, even in the absence of ongoing economic discrimination, genuine equality might not be attained without special state actions.

Imagine an economic model in which persons compete for jobs in competitive labor markets—where job assignments are made under conditions of equal opportunity and are based solely on an individual's productive characteristics—and in which the markets for jobs operate without regard to individuals' ascriptive characteristics. Suppose, however, that the individual's acquisition of productive characteristics is favorably influenced by the economic success of the individual's parents. Equal opportunity does not extend to the realm of social backgrounds, and differences in background are permitted to affect a person's access to training resources.<sup>7</sup> This model is much like the world in which we live. Persons begin life with endowments of what might be called "social capital," nontransferable advantages of birth that are conveyed by parental behaviors bearing on later-life productivity. In such a world, the deleterious consequences of past discrimination for (say) a racial minority are reflected in the fact that minority young

people have, on the average, less favorable parental influences on their skill-acquisition practices.

Further, imagine that families group themselves together into social clusters, or local "communities," and that certain "local public goods" important to subsequent individual productivity are provided uniformly to young people of the same community. These "local public goods" may be very general in nature. One thinks naturally of public education, but also important might be peer influences that shape the development of personal character, contacts that generate information about the world of work, and friendship networks that evolve among persons situated in the same or closely related "communities." What is critical is that these community "goods" (or, possibly, "bads") be provided *internally* to the social clusters in question and that outsiders be excluded from the consumption of such goods. I use the term *communities* to represent those private, voluntary associational behaviors common to all societies, in which persons choose their companions, often on the basis of common ethnicity, religion, or economic class. Since access to these "communities" could depend on parents' social status, this provides another avenue by which parental background influences offsprings' achievement—another source of social capital.

In order to pose the question most sharply, I assume that all individuals have identical preferences with respect to economic choices and that an identical distribution of innate aptitudes characterizes each generation of majority and minority workers.<sup>8</sup> Thus, in the absence of any historical economic discrimination, and notwithstanding the tendency for persons to cluster socially, we should expect the economic status of minority and majority group members to be equal, on average. I want now to inquire whether, in this idealized world, the competitive labor market would eventually eliminate any initial differences in the average status of the two groups that historical discrimination might have produced.

One can investigate this question by writing down a mathematical representation of this idealized world. The results obtained depend upon whether only family income or both family income and race influence the set of social clusters (i.e., "communities") to which a family may belong. When persons in society discriminate in their choice of associates on the basis of economic class, but not ethnic group, one can show (with a few additional, technical assumptions) that equal opportunity as defined here always leads (eventually) to an equal distribution of outcomes between the groups.<sup>9</sup> However, when there is social segregation in associational behavior along group as well as class lines, then it is not generally true that historically generated differences between the groups attenuate in the face of racially neutral

procedures. Examples may be constructed in which group inequality persists indefinitely, even though no underlying group differences in tastes or abilities exist.

This inequality persists because, when there is some racial segregation among communities—that is, when race operates as a basis of social but not economic discrimination—the process by which status is transferred across generations does not work in the same way for minority and majority families. *The inequality of family circumstances generated by historical economic discrimination is exacerbated by differential access to the benefits of those quasi-public resources available only in the affiliational clusters or “communities.”* A kind of negative intragroup “externality” is exerted, through local public goods provision, by the (relatively more numerous) lower-income minority families on higher-income minority families of the same communities. (Or, if you prefer, a positive intragroup externality is exerted by the relatively more numerous higher-income majority families on the lower-income majority families of the same communities.) And, because in a world of some social segregation the group composition of one’s community depends in part on the choices of one’s neighbors, this effect cannot be completely avoided by an individual’s actions.<sup>10</sup> As a consequence, the ability of equal opportunity to bring about equal results is impaired by the desire of majority and minority families to share communities with their own kind. This social clustering of the groups is, of course, an essential feature of a multi-ethnic society such as ours. Indeed, in its absence, there would not be selective mating by racial groups, and in short order (two to three generations) the “problem” of group inequality would be submergered by wholesale miscegenation.

We cannot expect *laissez faire* to produce equality of results between equally endowed social groups if these groups have experienced differential treatment in the past and if among the channels through which parents pass on status to their children is included the social clustering of individuals along group-exclusive lines. On this argument, state action that is cognizant of groups is *legitimized* by the claim that, in its absence, the consequences of historical wrongs could be with us for the ages. It is *necessitated* by the fact that individuals, in the course of their private social intercourse, engage in racial distinctions that have material consequences. These distinctions are reflected in this model by the “choice of community”—with whom to spend one’s time, in what neighborhoods to live, among which children to encourage one’s offspring to play, to what set of clubs and friendship networks to belong, and with what sort of person to encourage one’s children to mate. Such decisions, in our law and in our ethics, lie

beyond the reach of the antidiscrimination mandate. They are private matters that, though susceptible to influence and moral suasion about the tolerance of diversity and the like, are not thought to constitute the proper subject of judicial or legislative decree. The freedom to act upon our own prejudices and discriminations that induce each of us to identify ourselves with and make our lives among a restricted set of our fellows is, for many if not most Americans, among those inalienable rights to life, liberty, and the pursuit of happiness enshrined in our Declaration of Independence.

There are two points I wish to stress about the “minimalist’s” argument. First, it rests quite specifically on a conception of group differences in the transmission of status across generations and thus points to those state interventions that are intended to neutralize such disparities; racial preference is not defended here in the abstract, as a generalized remedy for racial inequality or repayment for past wrong. Rather, a specific mechanism that passes on, from past to present to future, the consequences of wrongful acts has been explicated. It is to neutralize *that* mechanism that “taking color into account” is legitimated. And, I would argue, any alternative justification for racial preference should be similarly grounded on an explicit delineation of the “fine structure” of social life that causes the need for such extraordinary state action to arise. The simple evocation of “two hundred years of slavery” or of “past discrimination against minorities and women” does not begin to meet this standard. The question remains: what have been the specific consequences of past deeds that require, for their reversal, the employment of racial classification? The attainment of equal educational opportunities through race-conscious public policy provides a good example. Racial criteria used in the siting or allocation of public housing units would be another. But those racial preferences that confer benefits upon minority group members who do not suffer background-related impediments to their mobility (e.g., minority business set-asides) only could be rationalized if the recipients’ connection to their less-fortunate fellows would ensure a sufficiently large beneficial spillover effect on the social mobility of the poor. Many current practices would have difficulty meeting this empirical test.

Moreover, other remedies, not dependent on race-conscious action but intended to reduce severely for all citizens the differential advantages due to poor social background (such as early childhood education, employment programs for disadvantaged urban youths, or publicly financed assistance in the acquisition of higher education) might also be sufficient to avoid the perpetuation of past racial wrongs.<sup>11</sup> In other words, the type of argument that the late Justice William O.

Douglas made in his *DeFunis* dissent, which acknowledges the legitimacy of taking social background into account when making admissions decisions at a public law school but nonetheless rejects explicit racial considerations, might well suffice to meet the concerns raised here. Again, it becomes an empirical question, resolved by inquiry into the explicit mechanisms of social mobility, on which the legitimacy of explicitly racial intervention would turn.

The second, perhaps more important, point is that, in addition to providing a rationale for extraordinary state action intended to limit the degree of group inequality, the underlying behavioral premises of this model suggest that there are *limits* on what one can hope to achieve through the use of racial classification by the state. As noted previously, the reach of civil rights laws will be insufficient to eliminate all socially and economically relevant discriminatory behavior. Evidently we are not willing to undertake the degree of intrusion into the intimate associational choices of individuals that an equalizing redistribution of social capital would require.<sup>12</sup>

Indeed, people enter into enormously important contractual relationships, as a result of which their social and economic status is profoundly affected but among which racial discrimination is routinely practiced. Choice of marital partner is but the most obvious. People discriminate here by race with a vengeance. A black woman, for example, does not have an opportunity equal to that of a white woman to become the wife of a given white man. This inequality in opportunity cuts both ways, but because white men are on the whole better-off financially than blacks, one could imagine calculating the monetary damages to black women of this kind of racial discrimination. A class-action suit might be brought on their behalf, alleging harm based on invidious racial discrimination by white men! That such a notion strikes most people as absurd is mere testimony to the fact that we all basically accept the legitimacy of the practice of racial discrimination in the intimate, personal sphere.

The point, though, is much more general than love and marriage. While we seek to maintain integration through race-conscious allocation of public housing units, it is clear that such practices cannot prevent disgruntled residents from moving away when the racial composition of their neighborhood changes contrary to their liking. And while racial school assignments may be needed, it is also clear that busing for desegregation cannot prevent unhappy parents (those who can afford it!) from sending their children to private schools or moving to another, more ethnically homogenous district. How intrusive we choose to be in restricting such responses is ultimately a political question, though it would seem that eliminating this kind of discrim-

ination altogether would not be a reasonable expectation in this society. Application of the nondiscrimination mandate has, in practice, been restricted to the domain of impersonal, public, and economic transactions (employment, credit, housing, voting rights); it has not been allowed to interfere much with personal, private, and intimately social intercourse.

Moreover, it seems likely that the state's use of racial classification will generally be insufficient in overcoming the economic consequences of this private discriminatory practice—for the fact that such exclusive social "clubs" do form along group lines has important economic consequences. There is an extensive literature in economics and sociology documenting the importance of family and community background as factors influencing a child's later success. Much evidence suggests that the social and economic benefits deriving from privileged access to the "right" communities cannot be offset easily through the state's use of racial classification.

Having offered a rationale for departure from the "color-blind" standard, one could ask at this point whether there are not unsound rationales for worrying about group inequality that have been offered in our public debates. I think this is decidedly so. As political theorists have long recognized, more is required in the achievement and maintenance of a just society than the writing of a philosophical treatise or a constitution that upholds essential principles of liberty and equality. It is also necessary to secure, as a practical matter, the means through which such principles might be lived by and followed in the everyday life of the polity. In a pluralist society such as ours, where distinctions of race and religion are deep and widespread, this is not a trivial matter. I would venture that, at this historical juncture, a sincere commitment in our government to reducing racial inequality is a necessary element of what is needed to establish a just political community in the United States. But this concern is not, by itself, sufficient to that task.

Indeed, certain features of our public discourse over the legitimacy of racial preferences undermine the maintenance of this kind of community. For example, affirmative action represents to many blacks not merely needed public action in the face of past wrong, but also a just recompense for that wrong. The distinction is vital. For many, affirmative action finds its essential rationale in an interpretation of history—i.e., in an ideology: that blacks have been wronged by American society in such a way that justice now demands they receive special consideration as a matter of right. This position can be contrasted with the means-end calculus that I have offered here as justification for the practice. The reparations argument, however, immediately raises a

question: why do the wrongs of this particular group and not those of others deserve recompense? Such a question can be poisonous for the politics of a pluralistic democracy.

There is, of course, a favored answer to this question—slavery—but it is one that does not really satisfy anyone, black or white. No amount of recounting the unique sufferings attendant to the slave experience makes plain why a middle-class black should be offered an educational opportunity that is being denied to a lower-class white. Many Americans are descended from forebears who suffered discrimination and mistreatment at the hands of hostile majorities both here and in their native lands. Yet, and here is the crucial point, these Americans on the whole have no claim to the public acknowledgment and ratification of their past suffering as do blacks under affirmative action. The institution of this policy, rationalized in this specific way, therefore implicitly confers special *public* status on the historic injustices faced by its beneficiary groups and hence devalues, implicitly, the injustices endured by others.

The public character of this process of acknowledgment and ratification is central to my argument. We are a democratic, ethnically heterogeneous polity. Racial preferences become issues in local, state, and national elections; they are the topic of debate in corporate board rooms and university faculty meetings; their adoption and maintenance require public consensus, notwithstanding the role the judicial decree has played in their propagation. Therefore, the public consensus requisite to the broad use of such preferences results, *de facto*, in the complicity of every American in a symbolic recognition of extraordinary societal guilt and culpability regarding the plight of a particular group of citizens. Failure to embrace such practice invites the charge of insensitivity to the wrongs of the past or, indeed, the accusation of racism.<sup>13</sup>

But perhaps most important, the public discourse around racial preference inevitably leads to comparisons among the sufferings of different groups—an exercise in what one might call “comparative victimology.” Was the anti-Asian sentiment in the western states culminating in the Japanese internments during the Second World War “worse” than the discrimination against blacks? Were the restrictions and attendant poverty faced by Irish immigrants to northeastern cities a century ago “worse” than those confronting black migrants to those same cities some decades later? And ultimately, was the Holocaust a more profound evil than chattel slavery?

Such questions are, of course, unanswerable, if for no other reason than that they require us to compare degrees of suffering and extent of moral outrage as experienced internally, subjectively, privately, by

different peoples. There is no neutral vantage, no Archimedean point, from which to take up such a comparison. We cannot expect that the normal means of argument and persuasion will reconcile divergent perceptions among ethnic groups about the relative moral affront that history has given them. We must not, therefore, permit such disputes to arise if we are to maintain an environment of comity among groups in this ethnically diverse society. Yet some critics of affirmative action can be heard to say “Our suffering has been as great”; and some defenders of racial quotas for blacks have become “tired of hearing about the Holocaust.”

These are enormously sensitive matters, going to the heart of how various groups in our society define their collective identities. James Baldwin, writing in the late 1960s in the face of Jewish objections to the use of quotas in New York City, declared what many blacks believe: “One does not wish to be told by an American Jew that his suffering is as great as the American Negro’s suffering. It isn’t, and one knows it isn’t from the very tone in which he assures you that it is” (1985, 427). And when, in 1979, Jesse Jackson visited Yad Vashem, the Holocaust memorial in Jerusalem, he deeply offended many Jews with what he may have considered a conciliatory remark: “The suffering [of the Jews during the Holocaust] is atrocious, but really not unique to human history” (1984, 21). By forcing into the open such comparative judgments concerning what amount to sacred historical meanings for the respective groups, the public rationalization of racial preference as payment for the wrongs of the past has fostered deeper, less easily assuaged divisions than could ever have been produced by a “mere” conflict of material interests.

So the legitimation of racial preferences is not simply a matter of whether *blacks* think our ancestors’ brutalization under slavery exceeded—in its inhumanity, its scale, its violence—the evil of Hitler’s ovens. By involving judgments arrived at through democratic processes, racially preferential treatment expresses the collective priorities of the nation as a whole. The special place of blacks in the practice of affirmative action is, therefore, doomed to be controversial, and in the end—should it become a permanent institution and its application continue to favor blacks of comfortable social backgrounds over whites of more modest circumstances—unacceptable to a majority of Americans. Individual citizens—be they Catholics, Jews, Armenians, blacks, or others—will ensure that their children are imbued with a keen sense of the wrongs done to their group in the past. It is important for many Americans to keep alive in the memory of successive generations what their ancestors endured; this is crucial to their knowing, fully, who they are. It is, however, another matter entirely when one

group of citizens requires all others to share such a private understanding—when, as a matter of proper social etiquette, all others must share a sense of guilt about the wrongs a particular group has endured.

There is something tenuous, and ultimately pathetic, about the position of blacks in this regard. Do not recoil here at the use of the word *pathetic*; that, after all, is what this issue is all about—evoking the pity, and the guilt, of whites. But, for that very reason, the practice is inconsistent with the goals of freedom and equality for blacks. One cannot be the equal of those whose pity or guilt one actively seeks. By framing the matter thus, the petitioner gives to those being petitioned an awesome power. He who has the capacity to grant your freedom evidently has the ability to take it away—you are therefore dependent upon his magnanimity.

How long can blacks continue to evoke the “slavery was terrible, and it was your fault” rhetoric and still suppose that dignity and equality can be had thereby? Is it not fantastic to suppose that the oppressor, upon hearing the extent of his crimes, would, in the interest of decency, decide to grant the claimants their every demand? The direct sociological role of the slave experience in explaining the current problem seems to be quite limited. The evocation of slavery in our contemporary discourse has little to do with sociology or with historical causation. Its main effect is moral; it uses the slave experience to establish culpability.

Yet the question remains: why should others—the vast majority of whom have ancestors who arrived here after the emancipation or who fought against the institution of slavery or who endured profound discriminations of their own—permit themselves to be morally blackmailed with such rhetoric? How long can the failures of the present among black Americans be excused and explained by reference to the wrongs of the past? Would not one expect that nonblack Americans would eventually become inured to the entreaties of blacks who explain teenage motherhood, urban crime, and low SAT scores with the observation that blacks have been in bondage for 400 years? When pummeled with this rhetoric nowadays, most whites sit in silence. Dare we ask: what does that silence mean? (And, indeed, what does the constant repetition of this litany do to blacks themselves?) At some point, won't resentment, contempt, and disdain for a group of people that sees itself in such terms begin to rise? Consider the contradictions: blacks seek general recognition of their accomplishments in the past and yet must insist upon the extent to which their ancestors were reduced to helplessness. Blacks must emphasize that they live in a nation that has never respected their humanity, yet ex-

pect that by so doing, their fellow countrymen will be moved to come to their assistance.

I would now like to explore some of the deleterious side effects that can issue from the use of color-conscious methods in the public or private sectors. Reliance on affirmative action to achieve minority or female representation in highly prestigious positions can have a decidedly negative impact on the esteem of the groups because it can lead to the general presumption that members of the beneficiary groups could not qualify for such positions without the help of special preference.

If, in an employment situation, say, it is known that racial classification is in use, so that differential selection criteria are employed for the hiring of different racial groups, and if it is known that the quality of performance on the job depends on how one did on the criteria of selection, then it is a rational statistical inference to impute a lower expected quality of job performance to persons of the race that was preferentially favored in selection. Using racial classification in selection for employment creates objective incentives for customers, co-workers, and others to take race into account after the employment decision has been made. Selection by race makes race “informative” in the postselection environment.

In what kind of environment is such an “informational externality” likely to be important? Precisely when it is difficult to obtain objective and accurate readings on a person's productivity and when that unknown productivity is of significance to those sharing the employment environment with the preferentially selected employee. For example, in a “team production” situation (like a professional partnership or among students forming study groups), where output is the result of the efforts of several individuals and individual contributions cannot be separately identified, the willingness of workers to participate in “teams” containing those suspected of having been preferentially selected will be less than it would have been if the same criteria of selection had been used for all employees.<sup>14</sup>

Also, when the employment carries prestige and honor because it represents an unusual accomplishment of which very few individuals are capable (an appointment to a top university faculty, for example), the use of preferential selection will undermine the ability of those preferred to garner for themselves the honorary, as distinct from the pecuniary, benefits associated with the employment. (And this is true even for individuals who do not themselves require the preference.) If, for example, Nobel prizes in physics were awarded with the idea in mind that each continent should be periodically represented, it would be widely suspected (by those insufficiently informed to make inde-



pendent judgments in such matters, and that includes nearly everyone) that a physicist from Africa who won the award had not made as significant a contribution to the science as one from Europe, even if the objective scientific merit of the African's contribution were as great. If law review appointments at a prestigious law school were made to ensure appropriate group balance, students belonging to preferred groups might never earn honor available to others, no matter how great their individual talents.

An interesting example of the phenomenon I am discussing here can be found in the U.S. military. Sociologist Charles Moskos (1986) published an article in *The Atlantic* describing the results of his investigation of the status of blacks in the U.S. Army. He noted that roughly 7 percent of all Army generals are now black, as is nearly 10 percent of the Army's officer corps. Moskos reports that among the black officers he interviewed, the view was widely held that in the Army blacks "[s]till . . . have to be better qualified than whites in order to advance." That is, racial discrimination still exists there. One senior black officer was "worried about some of the younger guys. They don't understand that a black still has to do more than a white to get promoted. . . . If they think equal effort will get equal reward, they've got a big surprise coming" (1986, 64). Yet, despite this awareness of racial discrimination, these officers were dubious about the value of racially preferential treatment in the military. Black commanders tended to be tougher in their evaluation of black subordinates than were white commanders of their white subordinates. Even those officers who thought affirmative action was necessary in civilian life disapproved of its use in the military. According to Moskos: "They draw manifest self-esteem from the fact that they themselves have not been beneficiaries of such [preferential] treatment—rather the reverse. Black officers distrust black leaders in civilian life who would seek advancement through racial politics or as supplicants of benevolent whites."<sup>15</sup>

Further illustration of unintended consequence, combining both the "team production" and "honor" effects, comes from the world of corporate management.<sup>16</sup> Many of those charged with the responsibility of managing large companies in the U.S. economy today are quite concerned with the state of their minority hiring efforts. The advent of affirmative action masks some serious, continuing disparities in the rates at which blacks, Hispanics, and women are penetrating the very highest ranks of power and control within these institutions. While equal opportunity could be said to be working tolerably well at the entry and middle-level positions, it has proven ineffective in helping these "newcomers" to advance to the upper echelons of their or-

ganizations. The problem is so widespread that a name has been invented for it—the *plateau phenomenon*.

Increasingly, able and ambitious young women and blacks talk of taking the entrepreneurial route to business success, only to feel stymied by their inability to get on the "fast track" within their companies. Wall Street brokerage and law firms, though they have increased the number of young black associates in their ranks, still have very few black partners and virtually no black senior or managing partners.<sup>17</sup> Many large companies now have their complement of minority vice presidents and staff personnel (especially in the governmental relations and equal opportunity areas), but they continue to have very few minorities at the rank of senior vice president or higher and a paucity of nonwhites in those authoritative line positions where the companies' profits and future leaders are made.

The failure of women and minorities to penetrate the highest levels of an organization involves factors beyond the raw competence of the individuals involved. While people differ in their abilities, no one today would suggest that there are no blacks or women with the aptitude and dedication to succeed at the highest levels in the corporate world. The fact that so very few of them do succeed suggests that the problem may well stem from subtle aspects of interpersonal relations within companies in addition to old-fashioned racism. When a company determines to increase the number of women and minorities in its management ranks, the normal method is to make the recruitment and retention of such persons an organizational goal and to evaluate the performance of those with authority to hire, in part, by the extent to which they succeed in advancing this goal. The company actually encourages its personnel decision makers to use racial (or gender) classification in addition to other employment screens. This practice of goal setting is done with an explicitness and seriousness that, of course, varies from company to company. Yet, the inevitable result is to confer some advantage upon minority and women employees in the competition for entry and mid-level positions in the company. Even when such preferential treatment is avoided by management, the perception among white male employees, in this era of constant focus on the need to increase minority and female participation, is likely to be that the "newcomers" are getting some kind of break that is not available to them.

In addition, minority or female employees may be hired or promoted into jobs for which they are not ready; better-qualified nonminority personnel may, from time to time, be passed over for promotion. Here too, nonfavored employees will often *perceive* that mistakes of this sort are being made even when in fact they are not. Resentments and

jealousies are likely to arise. Charges of "reverse discrimination" will, in all probability, be made more or less quietly among white men who see themselves as disadvantaged. It only takes one or two "disasters"—minority appointments that do not work out—to reinforce already-existing prejudices and convince many in the organization that all minority managers are suspect. *The use of racial or sexual employment goals is therefore likely to alter the way in which minority or women managers are viewed by their white male subordinates and superiors.*

Even though most minority employees may measure up to, or even exceed, the standards of performance that others in the firm must meet, the presence of just a few who do not casts an aura of suspicion over the others. Such uncertainty about so-called affirmative action hires—those who, it is suspected, would not have their jobs if they were not members of a minority or female—may only reflect the prejudice or bigotry of their coworkers. But, and this is crucial, to the extent that the suspicion is widely held, it can work to undermine the objective effectiveness of the minority manager.

Since competition for advancement from the lower rungs of the corporate ladder is sure to be keen, there is a natural tendency for those not benefiting from the organization's equal opportunity goals to see the progress of minorities or women as due in great part to affirmative action. If, to illustrate, four white men and one woman are competing for a position that ultimately is awarded to the woman, all four male employees may harbor the suspicion that *they* were unfairly passed over in the interest of meeting diversity goals, when in fact this supposition must be false for at least three of them.<sup>18</sup> When, as happens in many companies, the attainment of equal opportunity goals is seen as something that occurs only at the expense of productivity—as a price to be paid for doing business in the inner city or to "keep the feds off our backs"—these suspicions are given tacit confirmation by the organization's very approach to the problem of diversity.

Thus, the use of racial classification can entail serious costs. If not properly and carefully administered, it can create or promote a general perception that those minorities or women who benefit from the firm's interest in increasing diversity are somehow less qualified than others competing for the same positions. And when widely held, this general perception, whether well-founded or merely a reflection of prejudice, can work to limit the degree of success and long-term career prospects of minority and female managers. In a managerial environment, the productivity of an individual is not merely determined by the individual's knowledge, business judgment, industry, or vision. It depends as well on the ability of the manager to induce the cooperation, motivation, trust, and confidence of those whom he or she must lead. It

depends, in other words, on the extent to which the manager can command the *respect* of his or her colleagues and subordinates.

This observation illustrates the fact that general suspicion of the competence of minority or female managerial personnel can become a self-fulfilling prophecy. When the bottom-line performance of a manager depends on his or her ability to motivate others, and when those others begin with a lack of confidence in the ability of the manager, then even the most technically competent, hard-working individual may fail to induce top performance in his or her people. And the fact that top performance is not achieved only serves to confirm the belief of those who doubted the manager's competence in the first place.<sup>19</sup>

This self-reinforcing cycle of negative expectations is likely to be a particularly significant problem in the higher-level and line, as distinct from lower-level and staff, positions in an organization. Here an individual's contribution to company profitability depends heavily upon leadership and interpersonal qualities: securing the confidence and trust of peers, motivating subordinates to achieve up to their potential. Managerial performance at this level depends rather less on individual, technical skills. Whether one becomes really "good" at these jobs is determined, in part, by how "good" others believe one can be.

Another critical factor at this level of an organization is self-confidence, which also may be undermined by the use of racial classification. Among the questions most frequently asked by minority and female personnel about to assume a post of unusual responsibility is: "Would I have been offered this position if I had not been a black (or woman, or . . .)?" Most people in such a situation want to be reassured that their achievement has been earned and is not based simply on an organizational requirement of diversity. And not only that, they want their prospective associates and subordinates to be assured of this as well. When appointments are being made partly on a racial or sexual basis, recipients' beliefs that they are as good as their achievements would seem to suggest are weakened. A genuinely outstanding person who rises quickly to the mid-level of an organization without ever knowing for sure whether this career advance would have taken place in the absence of affirmative action may not approach the job with the same degree of self-assurance as otherwise would be the case.<sup>20</sup> And this absence of the full measure of confidence can make the difference between success and failure in the upper managerial ranks.

All of these potentially detrimental effects that I associate with the use of preferential treatment of nonwhite and female employees within an enterprise are reinforced by the general discussion of racial and sexual inequality in our society. The constant attention to numerical

imbalances in the number of blacks versus whites or women versus men who have achieved a particular rank in the corporate sector, in addition to placing what may be entirely warranted pressure on individual companies, serves to remind people—black and white, male and female—that such preferences are a part of their work environment. In order to defend affirmative action in the political arena, its advocates often seem to argue that almost no blacks or women could reach the highest levels of achievement without the aid of special pressures. Yet, this tactic runs the risk of presuming that all blacks and women, whether directly or indirectly, are indebted to civil rights activity for their achievements. And this presumption may reinforce the general suspicion about minority or female competence that already exists.

None of this discussion should be construed as an expression of doubt about the desirability of vigorously promoting diversity in corporate management or elsewhere in American society. What seems crucial is that, in light of the pitfalls discussed, the process of achieving diversity be *managed* with care, mindful of the dangers inherent in the situation. Affirmative action involves not simply the *rights* of individuals, as many lawyers are given to argue, but also the *prudence* of the particular means used to advance their interests. The plateau phenomenon, where able young minority or female managers find themselves unable to advance to the top ranks of their companies, undoubtedly reflects factors beyond those I have discussed. But it is the consensus of personnel managers with whom I have talked that the factors I have selected are involved in many cases. In particular, it seems quite probable that general distrust of the capabilities of minority and female managers will accompany and reinforce old-fashioned racist or sexist aversion to having “outsiders” join the “old boys network” within the organization. Such suspicions can, where occasionally validated by experience, provide the perfect excuse for preexisting prejudices, which are not merely “bad” behaviors that should be censured. They are a part of the environment in which these policies operate and may determine their success or failure.

In summary, I have suggested the need for a more rigorous justification of the departure from the simple “color-blind” interpretation of the antidiscrimination principle, which the contemporary practice of preferential treatment represents. I have tried to provide such a justification. My argument turns on the extent to which *social* discrimination among today’s citizens will perpetuate indefinitely the group inequality engendered by past *economic* discrimination. Because the antidiscrimination principle does not extend into the most intimate of private, associational choices, it is compatible with the continued

practice of racial discrimination in such choices. Yet this practice, together with a history of racial discrimination in the public sphere, will ensure that the consequences of past bigotry become a permanent part of the social landscape. To avoid this possibility, I argue, the use of group-conscious public action is justified.

Yet, I have recognized that such preferential policies may not be the only, or the best, response to persistent group inequality. And I have suggested that some of the arguments used to justify racial preferences seem likely to exacerbate, rather than diminish, the problems of racial conflict that continue to afflict our society. I have been particularly critical of the “reparations” argument, which justifies special treatment of today’s blacks because of mistreatment of blacks in the past. I have noted that such public practice implicitly elevates the past suffering of blacks to a privileged position—above that held by the mistreatments endured by other ethnic Americans—and does so in a way likely to be particularly controversial. This problem seems especially severe when the preferential practices in question benefit blacks of comfortable economic circumstances at the expense of ethnic whites who are more poorly situated.

Finally, I have noted that, even where justified, the use of racial preference may not always be wise. This is a prudential argument that is meant to have only restricted applicability. There are certain types of environments in which the danger of negative unintended consequences of racial preference seems particularly acute. In these environments I urge that much greater caution be employed when efforts to increase “out-group” participation are undertaken because the use of differential standards for members of different groups can work to undermine the capacity of the intended beneficiaries to garner for themselves the full benefits of their achievements and can even objectively impede their functioning.

The debate over affirmative action has been left too much to lawyers and philosophers and has engaged too little the interests of economists, sociologists, political scientists, and psychologists. It is as if for this policy, unlike all others, we could determine a priori the wisdom of its application in all instances—as if its practice were either “right” or “wrong,” never simply “prudent” or “unwise.” If I accomplish anything here, I hope it is to impress upon the reader the ambiguity and complexity of this issue, to make him or her see that in this area there is the opportunity to do much good but also the risk of doing much harm. The impassioned pursuit of justice, untempered by respect for a reasoned evaluation of the consequences of our efforts, obviously is not an advance over indifference.

## Notes

1. See, for example, Thomas Sowell (1983). Sowell chronicles numerous instances around the world in which group differences in economic status do not correspond to the presence or absence of oppression. Often, as with the Chinese in Southeast Asian countries or Indians in East Africa or Jews in Western Europe, those subject to oppression have done better economically than those in the role of oppressor.
2. Hubert Humphrey's speech to the Senate during the floor debate on the Civil Rights Act of 1964 is often cited in this regard.
3. For example, see Amartya Sen (1979). The anonymity axiom requires a social decision maker to be indifferent between two distributions of economic advantage that differ only in terms of who gets what reward but that have the same overall pattern of reward.
4. See, for discussion of this transformation, Bennett and Eastland (1976); and, with particular focus on the area of school desegregation, Wolters (1984).
5. I think here, for example, of Ronald Dworkin's (1977) essay "*DeFunis v. Sweat*," in which he attempts, with uncharacteristic inelegance, to distinguish between *DeFunis*, on the one hand, and *Sweat v. Painter* on the other. For a critical analysis of Dworkin's argument, see Michael Walzer (1981).
6. The following argument draws on my previous work. See Loury (1976, 1977, 1981, 1985a).
7. James Fishkin (1983) has discussed the philosophical implications of what he calls "background inequalities" for a liberal theory of status disparities. His notion of the "trilemma of equal opportunity"—an unresolvable tension between the ideals of equal opportunity, reward according to desert, and the autonomy of the family—is closely related to the argument offered.
8. In keeping with my earlier discussion, it would be possible to treat such differences in tastes that have economic consequences (e.g., occupational preferences, entrepreneurial inclinations) as a part of what is conveyed through parents' social capital.
9. See Loury (1977); for a rigorous mathematical treatment of this question, see Loury (1976).
10. See, for example, Schelling (1978), ch. 4, for an analysis of how even a very mild individual preference for association with one's own kind can lead, in the aggregate, to a highly segregated outcome. For instance, Schelling notes that if everyone would merely prefer to live in a neighborhood in which their group is in the majority, then only complete separation will satisfy the preferences of all members of both groups.
11. This, in essence, is what sociologist William Julius Wilson (1978, 1984) has been arguing with respect to the inner-city poor. He notes that the primary problems facing poor blacks derive from their economic plight and afflict poor whites as well. Moreover, he argues that political support for dramatic efforts to reverse these problems will be more readily had if those efforts are couched in racially universal terms.
12. The U.S. Supreme Court's decision in the Detroit cross-district busing case, *Milliken v. Bradley*, 418 U.S. 171 (1974), limiting the use of metropolitan busing to solve the "white flight" problem, gives a classic illustration of this point.
13. See Loury (1986) for more detail.
14. Recently, lawsuits have been brought by mid-level minority employees working in large bureaucracies, at IBM and the U.S. State Department, for example, alleging that they are not treated the same by supervisors and coworkers. Yet, if they were hired under different criteria than coworkers, they are not in fact the same on the average! Differential treatment, though regrettable, should come therefore as no surprise.
15. Indeed, in order to defend such programs in the private sector, it becomes necessary for advocates to argue that almost no blacks could reach the positions in question without special favors. When there is internal disagreement among black intellectuals, for example, about the merits of affirmative action, critics of the policy are

attacked as being disingenuous, since (it is said) they clearly owe their own prominence to the very policy they criticize. (See, for example, Cornel West 1986). The specific circumstances of the individual do not matter in this, for it is presumed that all blacks are indebted to civil rights activity for their achievements. The consequence is a kind of "socialization" of the individual's success. The individual's effort to claim achievement for himself or herself (and thus to secure the autonomy and legitimacy needed to deviate from group consensus) is perceived as a kind of betrayal. From the reasonable observation that all blacks are indebted to those who fought and beat Jim Crow, these intellectuals draw the conclusion that the group's most accomplished persons, by celebrating their personal achievements as being due to their ability and not to racial preferences, have betrayed their fellows!

16. The following account is drawn from an unpublished paper of mine, Loury (1985b).
17. Frank Raines, black partner in Lazard Freres, reported in an interview that there are only three black partners in Wall Street investment firms, two of whom handle public finance issues (local black governments being primary among their clients).
18. Psychological "incentives" exist for people to use this excuse even when it is not true. This gives them a good rationale for their own failure. As one colleague cleverly observed, "Affirmative action is a boon to mediocre whites—[it gives] them reason to think better of themselves than they otherwise could."
19. Consider the position of a female commander of troops in a combat situation. This person will be ineffective if, when issuing critical orders under duress, she is unable to inspire the obedience and confidence of her troops. Her troops' belief in her capacities is thus an objective determinant of her capacities. It would seem particularly unwise, in the face of widespread male suspicion of the performance capabilities of female commanders, to promote any woman into such a position who did not exhibit absolutely impeccable qualifications. That is, until the ability of women to function under combat conditions has been amply demonstrated, it would seem to be unwise to employ preferential criteria for the selection of women to such positions. To do so encourages precisely those beliefs that could undermine the effectiveness of the new commander.
20. Moreover, if you push too fast, good people may fail and be marked for life by that failure. Consider the case of the graduate student who would have done just fine at State U., but who ends up at the bottom of the class at Harvard.

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## PART THREE

Culture, Competition,  
and Discrimination