Edited by

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Ethnicity, Social Mobility and Public Policy

Comparing the US and UK

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20 Race, inequality, and justice in the USA: some social-philosophic reflections

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1 Introduction

The concerns of this essay 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 socio-economic status between blacks and whites in the USA will obtain in the foreseeable future.[1]

"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 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 subgroups.

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 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 words 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. Liberals (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."[2] Just beneath the surface of what is ostensibly progressive rhetoric about "racial justice" liberals 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 USA. 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.[3] 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 counterintuitive in the USA, 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 political liberalism as a normative theory, in view of the historical facts of racial subordination, and the continuing reality of racial inequality. There seem to be questions of social justice arising under these conditions, in societies such as the United States that are sharply stratified along racial lines, to which liberalism gives no good answers.

2   What's wrong with liberalism?

The argument to be advanced here relies on the vast body of empiri-
cal work in the social sciences that has been devoted to establishing the
central place of race in the *relational structures* that mediate social life in
the USA. These are matters having to do with patterns of family forma-
tion, with the shaping of personal identities, with adolescent peer inter-
actions, residential segregation, and job referral networks. My position is
that the normative issues of concern require for their proper exploration
that attention be paid to patterns of interaction among persons within
and across those social boundaries that have come through history to be
organized around the category of race.[4]

This argument is also constrained by a baseline presumption that I have
elsewhere called *anti-essentialism* (Loury 2002). Explaining protracted
and durable racial inequality becomes relatively easy if one admits the
possibility of inherent racial differences in human attributes that signifi-
cantly influence the ability of individuals to act effectively (intelligence,
for example). I reject this possibility *a priori*. Although adopted as a pos-
tulate, I believe this stance is empirically plausible. The evidence that
inherent racial differences can account for the observed socioeconomic
disparity between blacks and whites in the USA does not persuade me.
But I think it necessary to stipulate the anti-essentialist position *a priori* for
two reasons: one cannot prove empirically that innate racial differences do
not exist. One can only show this view to be more or less plausible, and
not everyone will be persuaded. More importantly, in a "raced" polity
committed to democratic values, public discourses imputing inherent
incapacity to some "raced" group of citizens are fundamentally inconsis-
tent with espoused democratic ideals. Policy argument in such a political
setting, I hold, must as a matter of civic duty proceed under the main-
tained hypothesis of anti-essentialism.

This anti-essentialist position amounts to the assertion that, like the
social convention of "race" itself, the social fact of widespread, durable,
large-scale disparity in the status of different racial groups within the
same society is also a constructed, not a natural, outcome. It follows,
then, that a successful and consistent theory will need to account for the
relatively disadvantaged position of African-Americans by reference to
processes that systematically block the realization of the human potential
of the members of this racial group. One can account for racial inequality
without reference to essential racial difference in only two ways: one can
show that the rewards accruing to members of the disadvantaged group,
given their productivity, are lower than the rewards garnered by others; or,
one can show that, through processes unrelated to their innate capacities,
members of the disadvantaged racial group lack opportunity to realize

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

In the first mode of argument, one shows that, systematically, productivity is rewarded differently for members of distinct racial groups. Call this the *reward bias* argument. In the second mode, one shows that, systematically, opportunity to acquire productivity is unequally available to the members of distinct racial groups. Call this the *development bias* argument. There is a significant distinction to be drawn between these two modes of argument, one that is critical for the enterprise being undertaken here.

Another name for the reward bias argument is *discrimination*. I am not high on this concept, and would like to see it demoted, removed from its current prominent place in the conceptual discourse on racial inequality in American life. Instead, I argue that the concept of *racial stigma* should have a more prominent place in this discourse. While I cannot here develop a theory of racial stigma, it is desirable to give some general sense of the intellectual work I hope the concept can do, and the place it occupies within my larger theoretical enterprise. The basic point is that racial discrimination, as an analytical category, deals mainly with the reward bias problem, and cannot effectively reach the problem of development bias. And yet, it is development bias, not reward bias, that explains more fully the extent and durability of current racial inequality.

Racial stigma, on the other hand, takes us some way toward understanding the persistence in US society of development bias affecting African-Americans. Confronted with the experience of racially disparate achievement, racially disproportionate transgression of legal strictures and racially unequal development of productive potential, observers need to give an account. They need to tell themselves a story. They must, in effect, answer the question: where do the problems lie – with US or with THEM? Their willingness to examine taken-for-granted assumptions about the extent to which their nation's civic arrangements correspond to its professed ideals will depend upon the answers they give to this question. Indeed, their very processes of social cognition, of discernment, their awareness of anomaly, their capacity for empathy, their stirrings of conscience are all conditioned by beliefs in this regard. Faced with manifestations of extreme marginality and dysfunction among some of the racially marked, will the citizenry indignantly cry out, "What manner of people are THEY, who languish in that way?" Or, will they be moved, perhaps after overcoming an instinctual revulsion, to ask themselves reflectively (and reflexively!), "What manner of people are WE who accept such degradation in our midst?"

I hold the latter response ("What manner of people are WE . . .") to be less likely, the greater credit is given to the essentialist view (that the "races" really differ in some deep ways that can account for durable and pronounced racial inequality). And, I understand a "raced" population subgroup to be *stigmatized* in the perception of an external observer when this latter response comes less easily to that observer's mind. "Racial stigma," then, is (tacitly) presuming an essentialist cause for racial inequality, thereby ascribing a "virtual social identity" to (some) blacks that implies they are, in some inherent sense, "damaged goods," "not like the rest of us," "people for whom negative social outcomes are not particularly anomalous or surprising."

I believe that the phenomenon of racial stigma 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 USA 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 me 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 USA.

Indeed, I argue that color-blindness – a quintessential icon of liberal neutrality – is a superficial moral standard, one that reveals how starkly undersocialized 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 naïveté. I do not attack liberalism in a wholesale manner. But I long to see liberalism enriched by taking seriously the relational structures that mediate the contacts between the autonomous, dignity-bearing subjects of liberal political theory. I want the socially situated context of these subjects to be integrated into the philosophical project itself. Thus, I do not defend simple-minded 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.

So, my core objection to liberalism has to do with this sociological naïveté 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.[5] 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.*

3   Beyond discrimination

Most discussion of the topic of race and social justice in the United States, whether in the social sciences or in social philosophy, has been centered on the concept of *discrimination*. It was animus against racial discrimination that prompted those monumental achievements – the Supreme Court's 1954 *Brown* decision and the Civil Rights Act of 1964 – that ultimately established equality of citizenship for the descendants of slaves as a matter of law in the USA. The legal apparatus erected on this foundation endeavors to enforce equality of treatment of individuals in public and quasi-public spaces – the public schools, the labor market, the voting booth. Although this is a classic way of stating the problem of group-based social injustice, I nevertheless suggest that a focus on the discriminatory treatment of individuals is now misplaced, because it obscures the most crucial normative questions raised by the fact of large racial disparities in life chances.

   To see this more clearly, consider an elemental distinction between two kinds of behavior – *discrimination in contract* and *discrimination in contact*. The phrase "discrimination in contract" is meant to invoke the unequal treatment of otherwise like persons based on race in the execution of formal transactions – the buying and selling of goods and services, for instance, or the interactions with organized bureaucracies, public and private. By contrast, "discrimination in contact" refers to the unequal treatment of persons on the basis of race in the associations and relationships that are formed among individuals in social life, including the choice of social intimates, neighbors, friends, heroes, and villains. It involves discrimination in the informal, private spheres of life. An important difference is to be noted between these types of discrimination. Discrimination in *contract* occurs in settings over which a liberal state could, if it were to choose to do so, exercise review and restraint in pursuit of social justice (subject, of course, to the limitations of information and authority that inhibit any regulatory enterprise.) Thus, the US courts no longer enforce racially restrictive covenants in real estate deeds, or allow employers to advertise that "no blacks need apply," etc. Such discrimination is legally proscribed, and this proscription is regarded not only as consistent with, but as necessary for, the realization of liberal ideals.

   However, in any liberal political order some forms of discrimination in *contact* must remain a prerogative for autonomous individuals. Preserving the freedom of persons to practice this discrimination is essential to the maintenance of liberty. This is so for two reasons. The social exchanges from which such discrimination arises are so profoundly intimate and cut so closely to the core of our being that all but the most modest

interventions in this sphere would have to be avoided if liberty and autonomy are to have any real meaning. More fundamentally, while the ethical case against racial discrimination in formal (e.g., market) transactions is relatively easy to make, it is far less obvious that there is anything wrong in principle with forming or avoiding close association with another person based, in part, on racial identity.[6]

So we have on the one hand a formal sector of *contract*. We have on the other hand, what I am referring to as the informal sector of *contact*. When discrimination in contract takes place, the tendency is to say that individuals are being treated unfairly, not given their due. But when discrimination in contact occurs, it is more likely to be seen as a necessary if not always desirable consequence of our commitment to liberal principles. Given that individuals socialized in the USA understand themselves partly in racial terms, and that they must in any liberal political order be endowed with autonomy regarding their choices of association, it is inevitable that the selective patterns of social intercourse that are the stuff of discrimination in *contact* will arise.

And yet, *mechanisms of status transmission and social mobility depend critically upon the nature of social interactions in both spheres – that is, on the patterns of contact as well as on the rules of contract*. The provision of resources fundamental to the development of human beings is mediated both by formal and informal, by contractual and non-contractual, social relations. I have in mind here the roles played in the shaping of persons by the family, the social network, and (using the word advisedly) the "community." I am thinking about infant and early childhood development, and about the influences of the adolescent peer group. I mean to provoke some reflection on how people come to hold the ideas they, in fact, do hold concerning who they are (their identities), which other persons are essentially like them (their social identifications), and what goals in life are worth striving toward (their ideals). The fundamental empirical claim, taken here to have important philosophic implications, is this: In US society, where of historical necessity patterns of social intercourse are structured by perceptions of race, it is inevitable that developmental processes operating at the individual level will also be conditioned by race. From this I hold it to follow that, in a racially divided society like the USA, fighting discrimination in the sphere of *contract* while leaving it untouched in the sphere of *contact* will generally be insufficient to produce a baseline circumstance of equality of opportunity for all individuals. And yet, a commitment to political liberalism would seem to require precisely this – hence the dilemma.[7]

There are, however, influential traditions of social inquiry in which this basic point seems to have been insufficiently appreciated. For instance,

the scholarly literature on racial inequality in economics focuses almost entirely on the differential treatment of individuals, based on race, in formal market transactions (jobs, housing, credit, etc.). Little attention is paid to underlying social processes that lead to racial differences in the acquisition by individuals of productive skills. The primary normative claim in this approach is that such discrimination (in *contract*) is morally offensive, a legitimate object of regulatory intervention, and a significant contributor to the scourge of race and sex inequality in society. These claims are true. But implicit here also is the notion that, to the extent that racial inequality is due to supply-side differences – in the skills presented to employers by black and white employees, for example – the same moral issues are not raised, nor is comparable warrant given for intervention. This notion I hold to be both wrong and dangerous.

In the USA, while it is clear that some discrimination in contract against blacks still exists, it is also clear that such discrimination can no longer be taken as the major explanation of racial inequality. Indeed, it is entirely possible that ending discrimination in markets will not lead, even in the very long run, to a solution for the problem of racial economic inequality. The substantial gap in skills between blacks and whites is a key factor in accounting for racial inequality in the labor market. Yet, this skills gap is itself the result of processes of social exclusion that deserve to be singled out for explicit study and, where possible, for policy remedy. This skills gap is in part a reflection of social and historical factors – geographic segregation, deleterious norms and peer influences, and poor educational quality – all of which have racial dimensions.[8] In this view, inequality between blacks and whites in the USA is a phenomenon that cannot be understood, or remedied, with a focus on market discrimination alone.

There is a long history of justified concern that approaching the problem of racial inequality with less of a focus on employer discrimination and more on skills differences could foster dangerous stereotypes and undermine arguments for policies to narrow the racial wage gap. In the decade after the enactment of US anti-discrimination laws, researchers who began to find evidence of a decline in labor market discrimination were sometimes criticized for giving aid and comfort to political conservatives.[9] This reaction, however, accepts the implicit normative assumption that racial inequality based on skill disparities is not as important a moral problem and does not warrant as vigorous a corrective intervention as does inequality based on *discrimination in contract* (in the labor market, say). But that assumption is much less compelling when one recognizes that persistent racial skill disparities are in part the result of *discrimination in contact*.

4   Social capital and social opportunity

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

Opportunity travels along the synapses of these social networks. Thus, a newborn is severely handicapped if its parents are relatively uninterested in (or incapable of) fostering the youngster's intellectual development in the first years of life. A talented adolescent whose social peer group disdains the activities that must be undertaken for that talent to flourish is at risk of not achieving his or her full potential. An unemployed person without friends or relatives already at work in a certain industry may never hear about the job opportunities available there. An individual's inherited social situation plays a major role in determining his or her ultimate economic success.

In earlier work, I introduced the term "social capital" to suggest a modification of human capital theory designed to provide a richer context within which to analyze group inequality.[10] This idea builds upon the observation that family and community backgrounds play an important role, alongside factors like individual ability and human capital investments, in determining individual achievement. Some important part of racial inequality, in this view, is seen to arise from the way that geographic and social segregation along racial lines makes an individual's opportunities to acquire skills depend on present and past skill attainments by others in the same social group.[11]

In cities across the country, and in rural areas of the Old South, the situation of the so-called black underclass and, increasingly, of the black lower-working classes, is bad and getting worse. This is certainly a race-related problem. The plight of the black poor is not rightly seen as another (albeit severe) instance of economic inequality, American-style. But conventional market discrimination is only one small part of it. These black ghetto dwellers are a people apart, susceptible to stereotyping, ridiculed for their cultural styles, isolated socially, experiencing an internalized sense of helplessness and despair, with limited access to communal networks of mutual assistance.[12] Their purported criminality,

sexual profligacy, and intellectual inadequacy are the frequent objects of public derision. They suffer a stigmatized, pariah status (Goffman 1963). It should not require enormous powers of perception to see how this degradation relates to the history of black–white race relations in the USA.

Here is where the implicit normative model that accompanies the emphasis on discrimination in contract is most seriously flawed. And, here is where the challenge to political liberalism is also the greatest. Given social segregation along race lines, the effects of past discrimination can persist over time by adversely affecting the skills and social contacts acquired by the victims of discrimination, to be sure, but also by those closely connected to them – their children, for instance. Moreover, discrimination in one market can leave its victim less well prepared to compete in another market. The cumulative impact of an act of discrimination – within a single lifetime, over generations within a family, or between various venues of social interaction – should be no less problematic, as an ethical matter, than was the original offense. But these effects will be far more difficult to counter because such historical causal processes are near impossible to quantify. One can rarely say with any confidence what portion of an observed racial disparity is due to the indirect effects of past *discrimination in contract*, as mediated and reinforced by contemporary *discrimination in contact*. Moreover, the most effective means of disrupting these causal chains usually run afoul of the cherished liberal ideal of individual autonomy.

Thus, we have now in the USA 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 which lead to seemingly self-imposed limits on their acquisition of skills, the tendency of many who think only in terms of market discrimination is to argue that society is not at fault. This is the grain of truth in the insistence of some conservative observers that, while overt racism was implicated in the past, it is behavioral differences that lie at the root of racial inequality in the USA today.[13] But the deeper truth is that, for many generations now, the communal experience of the descendants of the African slaves has been shaped by political, social, and economic institutions that, by any measure, must be seen as racially oppressive. When we look at the so-called "underclass culture" in US cities today we are seeing a product of that oppressive history.[14] 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.

This analysis would seem to have an important ethical implication: because the creation of a skilled work force is a social process, the meritocratic ideal should take into account that no one travels the road to economic and social success alone. The facts that generations overlap, that much of social life lies outside the reach of public regulation, and that prevailing social affiliations influence the development of the intellectual and personal skills of the young imply that present patterns of inequality – among individuals and between groups – must embody, to some degree, social and economic disparities that have existed in the past. *To the extent that past disparities are illegitimate, the propriety of the contemporary order is called into question.*

5   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 contact, disadvantages blacks by impeding their acquisition of skills. But it is nearly impossible to say with any quantitative precision just *how much* of current racial inequality is due to this source of disadvantage.[15]

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.[16] 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.[17]

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 USA.[18]

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 counteractions 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 contact 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.*

6   The affirmative action controversy and the poverty of proceduralism

The current dispute about 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.[19]

Consider, then, the issue of achieving (or not) racial integration at selective colleges and universities in the USA. In a recently published study, two former Ivy League university presidents assert a prerogative on behalf of administrators in the great American educational philanthropies: that these decision-makers be granted sufficient autonomy in their affairs to pursue a vitally important educational objective – more racial diversity in their student bodies.[20] William Bowen and Derek Bok present data to suggest that, through the prudent use of racial identity in the admissions process, this objective is being achieved at a tolerable cost. The evidence offered in support of these claims persuades me, though, of course, reasonable people can disagree. Yet, even if the evidence were more equivocal, the authors' articulate defense of their goal – to integrate elite higher education by race – would remain enormously controversial, and it is useful to ask why. I see two reasons for the intensity of this controversy. First, the goals and purposes openly espoused by a nation's leading colleges are public purposes. (And, given their considerable influence on national life and culture, this is no less true of the private institutions. What a Harvard or a Princeton seeks to achieve is, in some measure, what America strives after.) Public purposes are worth arguing about, and these arguments necessarily entail disputed moral judgments.

Second, the venue of this dispute – elite higher education – heightens its intensity. Education is a special, deeply political, and almost sacred, civic activity. It is not a merely technical enterprise – providing facts to the untutored. Inescapably, it is a moral and aesthetic enterprise – expressing to impressionable minds a set of convictions about how most nobly to live in the world. Moreover, this is a venue where access to influence and power is rationed. As a result, the selection of young people to enter prestigious educational institutions amounts to a visible, high-stakes exercise in civic pedagogy. These "selection rituals" are political acts with moral overtones. Their perceived legitimacy is crucial in a stratified society where one's place in the status hierarchy can turn on access to elite institutions. (Imagine, for example, what it would mean for civic life in the USA if, due to the expense, only wealthy families could send their children to the most prestigious institutions.)

Two normative concerns appear to be elemental in this controversy:

(1) To establish non-discrimination, or race-blindness, as a procedural ideal. People should be treated without regard to their racial identity. Race is a morally irrelevant trait. [Race-blindness]

(2) To pursue racial equality, or racial justice, as a substantive public good. Given a history marred by racial injustice, we should try to reduce group inequalities in wealth and power. [Race-egalitarianism]

Both of these concerns bear on the issue of race and social ethics, but in different ways. The first looks to how people are treated in discrete encounters, affirming as a value that such treatment should not be conditioned on race. The second normative concern looks to broad patterns of social disparity between racial groups, advancing as an ethical ideal that such differences should be reduced. The first concern deals with the rights of individuals; it is process-oriented, and a-historical. The second concern is motivated by the status of groups; it is focused on outcomes, and rooted in history.

Among the most important conclusions emerging from *The Shape of the River* is that, though not mutually inconsistent, these two ideals are in tension with one another: pursuit of racial equality can be powerfully abetted by violating race-blindness. This is because, given the differences in test score distributions among blacks and whites, achieving racial integration at highly selective colleges requires the admission probability conditional on test scores to be higher for black than for white applicants. As a matter of simple logic, a college with limited places to fill can achieve more racial diversity only if some black applicants are admitted who would otherwise have been rejected, while some nonblack applicants are rejected who would otherwise have been admitted. Selective institutions will naturally try to reject the least qualified of the otherwise admissible nonblack applicants, while admitting the most qualified of those black applicants who would otherwise have been rejected. Yet, in doing so, the college necessarily uses a racially preferential admissions policy. Thus, with resources limited, and with a college committed to remaining highly selective, the two normative concerns come clearly into conflict with one another. A choice between them must be made.

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-indifferent" – 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-indifferent." I can now restate my claim: the key moral question in matters of race is about indifference, 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-indifference 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-indifference are, and should be, evaluated asymmetrically: those that harm blacks are universally suspect, whereas non-indifferent 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-indifferent. 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 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 indifference, and not blindness. The moral intuition being drawn on in the example derives from the fact that in the USA most citizens see reversing the effects of our history of immoral race relations as a good, while seeing the perpetuation of those effects as 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-indifferent public purposes are sometimes most effectively pursued by non-race-blind (shall we say, "race-sighted"?) means.

Consider, to further illustrate, a state's governor who seeks to appoint judges to the courts. He might reason as follows:

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

Maintaining the legitimacy of the institution of the court is not a racial goal; it is something that everybody has a stake in. And yet in order to do it, the governor might have to take racial identity into account to see whether his or her list of possible appointees contains a sufficient number of racial minority group members.

   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 nonracial 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.[21] As a result of this and similar policies, out of the 2 million people under lock and key on any given day in the USA, 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 USA 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 dispro-portionate effects.[22] And, it is *this* distinction – between "blindness" and "indifference" – 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 discus-sion of public issues that is formulated in racial terms (arguing that such discussions should be *race-indifferent*).

   The relevance of the affirmative action controversy to my larger argu-ment about 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 pow-erful 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 USA.

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.[23]

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.*

Consider the stubborn social reality of race-consciousness in US society. A standard concern about racial preferences is that they promote an unhealthy fixation on racial identity among students. By classifying by race, it is said, we are further distanced from the goal of achieving a color-blind society. Many proponents of race-blindness as the primary moral ideal come close to equating the use of racial information in administrative practices with the continued awareness of racial identity in the broad society. Yet, consciousness of race in the society at large is a matter of subjective states of mind, involving how people understand themselves, and how they perceive others. It concerns the extent to which race is taken into account in the intimate, social lives of citizens. The implicit assumption of race-blind advocates is that, if we would just stop putting people into these boxes, they would oblige us by not thinking of themselves in these terms. But, this assumption is patently false.[24] Anti-preference advocates like to declare that we cannot get beyond race while taking race into account – as if someone has proven a theorem to this effect. But, no such demonstration is possible.

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 forgo cognizance of the importance of race, out of fear that others will be encouraged 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 USA 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 the hypothetical governor considered above) 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.[25] It is absurd to hold that this situation derives from the 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.

7   Concluding observations

There is, however, an objection to be raised to the position being developed here that I wish to consider. At the consequentialist level, a critic may concede that some departures from color-blindness are needed, though they should be "narrowly tailored" to meet only the most "compelling interest" as the language of recent Supreme Court rulings on affirmative action would have it. But at the most profound moral level, doesn't someone who abhors the consequences of racial stigma have to affirm a kind of moral blindness to the race of agents? I think this is in fact the case, and am not the least bit reluctant to say so, but I continue to urge clarity on this point. Let us distinguish between three distinct domains of concern about race-based behavior in a racially divided society. One is the *domain of policy implementation*. Here we are admitting students to college, hiring firefighters, distributing public benefits, and the like. A second is the *domain of evaluation of the consequences of public action*. Here we are deciding whether to build a prison or a school and if a school, then at what level of elite pedagogy to focus it. We are framing a war on drugs and deciding whether to focus attention on the buying or selling side of the transaction, we are determining whether it is necessary to induce a recession in order to prevent a bout of inflation, and so on. Finally, there is the *domain of the construction of national community* – the development of our sense of nationhood, through civic pedagogic enterprises of all sorts – the building of monuments, proffering of public ritual, and, of course, the making of public policy which, inescapably has an expressive as well as more directly instrumental dimension. (Capital punishment either does or does not deter murder. It most definitely, however, is the state-sanctioned taking of human life which, for good or for ill, contributes to civic pedagogy in the sense in which I intend that term here. So, too, does the racial imbalance imbedded in the practice of capital punishment.)

   Now, eschewing the use of race in the domain of implementation is what most critics of affirmative action mean by race-blindness. No more of those "disgusting little boxes," as Ward Connerly, leader of the national political campaign to end affirmative action, has put it. I wish here to stress that, given US history, fewer people are prepared to import their love of the race-blind principle into the domain of evaluation of public

actions. That is, while they may object to race-based selection rules, they do not object to the pursuit of explicitly race-egalitarian outcomes through public policies taking no notice of race at the point of implementation. That is, using my linguistic convention introduced above, though they may embrace race-*blindness* they reject race-*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 – either politically or constitutionally – among most affirmative action opponents.

Now consider the domain of the construction of civic community. What would race-blindness mean here? Roughly what I have in mind is what the sociologist Orlando Patterson has called the *principle of infrangibility* (i.e., the absence of boundary) – saying that we are One Nation, Indivisible, and taking that idea seriously enough to try to act (whether in a race-blind or a race-sighted fashion) so as to bring that circumstance about. Those people, languishing at the margins, even if they are strange and threatening, are going to be seen as being, in the way that most fundamentally counts for our politics and civic life, essentially like *us*. We're going to move prudentially and constitutionally, but determinedly and expeditiously, so as to tear down, or certainly build no higher, the boundaries of race that rend 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. Thus, when elite college presidents say, in effect, "while administering multibillion dollar philanthropies that enjoy (for the public good) the protection of tax exemption, we endeavor, among other things, to construct an elite leadership cadre of African-Americans at the end of the twentieth and at the beginning of the twenty-first century," they say a very modest thing. In the elite schools studied by Bowen and Bok (1998), the average admissions rate for whites is about 25 percent. Getting rid of all the affirmative action is calculated to raise that rate to about 27 percent. So, for every seventy-five whites rejected under the regime of race-preferential admissions currently being practiced, seventy-three would still be rejected after the eradication of affirmative action. Why, then, all the energy, why all the angst, why all the hand wringing, why all the clamor, why all the concern that America is being run aground, that our standards are being trashed, that the barbarians are at the gates. Why? When in fact, as the data in that book show, the boundary of racial

hierarchy is being erased just a little bit by the trickling through of a few students who, at the margin, because of the colleges' practice of affirmative action are being inducted into the leadership cadres of the US. I hold that there is nothing in political liberalism, rightly understood, that should lead us to reject that practice. There is nothing wrong with a liberal, concerned about social justice, undertaking to fight racial stigma. There is nothing wrong with constructing a racially integrated elite in America. There is nothing wrong with fretting over 1.2 million African-American young bodies under the physical control of the state. Indeed, I am led to wonder how any thoughtful person aware of the history and the contemporary structure of USA society could conclude otherwise.

NOTES

1. See, for example, United States, Office of the President 1998: Chapter 4, Farley 1996: Chapter 6, Loury 2000, and 2002: Appendix for documentation of these claims.
2. There has been much discussion among social philosophers writing in the liberal tradition about the ontological status of "race" – are there any things in the world that may be taken as corresponding to the word "race," etc. (See, for example, Appiah 1992: Chapter 2). Some writers have even taken to putting that word in quotation marks, by way of emphasizing its problematic scientific and philosophical status. Their claim is that no objective criteria are available – biological, cultural, or genealogical – through use of which the set of human beings can be consistently partitioned into a relatively small number of mutually exclusive, collectively exhaustive subsets that may be taken as "races." Belief in the existence of races, on this view, is rather like belief in the existence of witches – mischievous superstition, nothing more.

    I do not dispute the core claim here, but neither do I find this exercise in linguistic philosophy to be of much interest. Rather, as any good social scientist would be, I am impressed by the fact that so many behaviors have come to be organized around the "race" category, despite its evident lack of an objective basis in human biology. This is what needs to be explained. Objective rules of racial taxonomy are not required to study, as I do here, the subjective use of racial classifications. It is sufficient that influential observers (policemen, employers, bankers, and passersby on the street) have classificatory schemes, and act on those schemes. They need not make the schemes explicit. Their classificatory methods may well be mutually inconsistent. They are unlikely to be able to give cogent reasons for adopting these methods; but then, they are also unlikely to be asked to do so. Still, if a person is aware that others in society are classifying him or her by reference to certain markers, and if this classification, in turn, constitutes the basis of differential actions affecting his or her welfare, then such markers will become important to this person. He or she will attend to them, become conscious (and self-conscious) in regard to them. He or she will, at some level, understand and identify himself or herself as "raced." This, I assert, will be a rational cognitive stance on this person's

part, not a belief in magic of some kind, and definitely not a moral error. Thus, following Cornell and Hartmann (1998) I define "race" as:

> a human group defined by itself or others as distinct by virtue of perceived common physical characteristics that are held to be inherent. A race is a group of human beings socially defined on the basis of physical characteristics. Determining which characteristics constitute the race – the selection of markers and therefore the construction of the racial category itself – is a choice human beings make. Neither markers nor categories are predetermined by any biological factors. These processes of selection and construction are seldom the work of a moment. Racial categories are historical products and are often contested. (p. 24)

3. Further elaboration can be found in Arrow 1963 and Sen 1970.
4. I am much encouraged in this way of thinking by Charles Tilly's recent contribution to social theory (1998) and, in particular, by his emphasis on *categorical inequality*:

> Durable inequality among categories arises because people who control access to value-producing resources solve pressing organizational problems by means of categorical distinctions. Inadvertently or otherwise, those people set up systems of social closure, exclusion, and control. Multiple parties – not all of them powerful, some of them even victims of exploitation – then acquire stakes in those solutions . . . Through all of these variations, we discover and rediscover paired, recognized, organized, unequal categories such as black/white, male/female, married/unmarried, and citizen/noncitizen. (pp. 7–8)

One may regard the present essay as an initial exploration of some of the philosophical implications of this social theoretic point of view.
5. 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.
6. Recall, in this context, that even the Civil Rights Act of 1964, which undertook to regulate discriminatory behavior only in the formal, contractual sector of US society, was (and still is, see Epstein 1992) opposed by libertarian conservatives worried about the threat to personal liberty posed by laws of this kind.
7. My argument here is influenced by the work of James Fishkin (1983). Fishkin defines a "tri-lemma" for liberalism, insofar as it is committed at one and the same time to the ideals of equality of opportunity, reward according to merit, and autonomy of the family. He observes that autonomous but differentially endowed families will pass along developmental advantages to their children who, because rewards are distributed in reference to merit alone, will have superior life chances, unearned by them, thus defeating the goal of achieving equal opportunity. A difficult choice, he concludes, must be made among these ideals.
8. I cannot here undertake to review the voluminous literature that supports this claim. Loury (1998a) cites some of this literature. It should be noted that some recent work in economics, both empirical (Cutler and Glaeser 1997) and theoretical (Akerlof 1997) moves in the direction I urge here.
9. A classic example is the reception by some on the political left of William Julius Wilson's book, *The Declining Significance of Race* (1978).

10. See Loury 1977, 1981, 1987, and 1995.
11. There is fairly strong support for this view of the lagging economic position of blacks in the literature. Akerlof (1997) provides a theoretical argument, supported by a wealth of evidence from social anthropology, for the notion that concerns for status and conformity are primary determinants of individuals' educational attainment, childbearing, and law-breaking behavior. Anderson (1990, 1999) provides ethnographic accounts of life in inner-city Philadelphia, where peer influences significantly inhibit skill acquisition by adolescents in poor neighborhoods. Waldinger (1996), in a study of immigrant labor in New York City, concludes that poor blacks suffer less from the racism of employers than from the fact that they do not have access to the ethnic networks through which workers are recruited for jobs in construction and service industries. Glaeser and Cutler (1997), comparing US cities with varying degrees of racial population concentration, find blacks to be significantly disadvantaged by residential segregation; they estimate that a 13 percent reduction in segregation would eliminate about one-third of the black–white gap in schooling, employment, earnings, and unwed pregnancy rates. Mills and Lubuele (1997) argue that a central problem for students of urban poverty is to explain why "low income black residents actually or potentially eligible for jobs that have moved to suburbs (have) not followed such jobs to the suburbs."
12. See Wilson 1996 for an extended discussion.
13. See Thernstrom and Thernstrom 1997 for an example of this conservative view, and Loury 1997 for a vigorous critique of it.
14. 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 (1996).
15. 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 counterfactual 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.
16. Thomas Sowell is perhaps the leading exponent of this view. A representative work is Sowell 1983.
17. A sharp contrast can be drawn between two different ways of dealing with the problem of a morally problematic racial history. One seeks "reparations," conceiving the problem in compensatory terms. The other conceives the problem, let us say, in interpretative terms – seeking public recognition of the severity, and (crucially) contemporary relevance, of what transpired. In this latter view, the goal is to establish a common baseline of historical memory – a common narrative, if you like – through which the past injury and its ongoing significance can enter into current policy discourse. (A crude analogy might

be drawn here, suggested by the debate over the Truth and Reconciliation Commission in post-apartheid South Africa: the compensatory approach is rather like putting as many past offenders as possible on trial, punishing them for their wrong doing and getting justice for survivors of the victims. The interpretative approach is a bit like waiving the pursuit of individual criminal liability in the interest of bringing to public light the true nature of what took place under apartheid.) What seems conceptually important, though, is to clarify that, while some reckoning with the racist history of the USA remains to be done, this reckoning may, for political as well as epistemological reasons, be inappropriately specified when cast in terms of "reparations." What is required, instead, is a commitment on the part of the public, the political elite, the opinion-shaping media, etc., to take responsibility for such situations as the contemporary plight of the urban black poor, and to understand them in a general way as a consequence of an ethically indefensible past. Such a commitment would, on this view, be open-ended and not contingent on demonstrating any specific lines of causality.

18. 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.
19. The argument of this section draws on the previously published essay, Loury 1998b.
20. Bowen and Bok 1998.
21. See Tonry 1995 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.
22. 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.
23. Connerly's recently published memoir, *Creating Equal* (2000), provides an extended exposition of his views.
24. Thernstrom and Thernstrom (1997) argue explicitly in just this way.
25. See Moskos and Butler 1996 for documentation of this rationale for racial affirmative action in the US Army personnel policies.

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