**WHY SHOULD WE CARE ABOUT GROUP INEQUALITY?**

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Introduction, H. Gene Blocker

Although most people in the world today claim to believe in universal human rights, the theory faces many problems. Many of the clashes of human rights concern the priority of what is often referred to as “freedom” versus “equality.” The early eighteenth-century individual liberties rights “negatively” protecting the individual from governmental interference (e.g., freedom of speech) are often lumped together as rights of “freedom.” The later nineteenth-century social welfare rights “positively” ensuring individuals a more equal standard of living (food, shelter, medical care, and so on) are often lumped together as rights of “equality.” Where rights of the first sort clash with those of the second sort, which they often do, the controversy is called the debate between “freedom” and “equality.”

In the great civil rights controversy of 1963 a debate raged over the Public Accommodations Act which, if passed (and it eventually did), would outlaw the practice of refusing service and lodging to blacks. Some who opposed racial discrimination and favored ending legally required segregation nonetheless opposed legislating an end to discrimination, arguing that the person who does not wish to do business with a person of another race is claiming a human right to deal with persons of his own choosing. The harm caused by the refusal of the restaurant or hotel owner to associate or deal with that person is, on this view, insufficient to outweigh this right. The proposed legislation, the argument goes, would limit freedom and impose moral standards on those who do not share them. Individuals ought to be free to deal and associate with whom they please. This shows us that equality and freedom may conflict, since ending discrimination also limits the freedom to choose.

More recently arguments for and against “preferential treatment” and “affirmative action,” sometimes called “reverse discrimination,” are also framed in terms of competing rights—the right of an individual to be awarded a job or university placement solely on the basis of his or her merit and qualifications, which may clash with the right of individuals of groups historically discriminated against, e.g., blacks and women, to preferential
treatment, based on race and gender, to compensate for past discrimination against members of their minority group and to their right to more equal treatment and a more equal share of the economic pie.

This raises many important questions, one of which is whether groups, as well as individuals, have rights. If members of a group were discriminated against in the past, should we now show preferential treatment to different members of that same group who may not themselves have been discriminated against in the past? And should members of groups who discriminated against these minorities suffer “reverse discrimination” today for acts of discrimination in the past in which they themselves did not participate? For example, suppose a West African and a Danish family immigrated to the United States in the 1980s. And suppose further that in applying to the same law school the daughter of the Danish family scores slightly higher than the son of the West African family. Is it fair for the admissions board to admit the West African because he is black and reject the Danish girl because she is white, when neither they nor their families either suffered or participated in racial discrimination?

In defending the justice of preferential treatment, Glenn Loury of the John F. Kennedy School of Government at Harvard University shifts the argument from the question of the rights of individuals to the rights of groups. Whatever my particular family history, he argues, I enjoy and have enjoyed benefits simply by being white, or I suffer and have suffered penalties simply by being black. After all, in most cases, racial preference and discrimination are rather impersonal. The black family is not kept out of a white neighborhood because of anything peculiar to them individually but simply and only because of their membership in a larger group—just because they are black. Similarly, benefits resulting from living in an affluent middle-class, mostly white neighborhood are not conferred on individuals because of their individual talents or personality traits but simply because of their membership in a group—because they happen to be white. This would apply even in the case of the West African and Danish families in our example. Even though the West African family suffered no discrimination in the past they will probably be at a disadvantage living in the United States simply because they are black. And the Danish family will similarly benefit from being white in American society, regardless of their individual actions.

Notice that it is possible to defend preferential treatment without referring to rights or justice or equal treatment. From a utilitarian perspective we may decide that whether it is just or unjust, whether it violates anyone’s sup-
posed rights or not, the whole country would be better off having more diversity in the workplace—ideally, the proportion of minorities mirroring their proportion of the population. This would have the benefits of providing role models for minority children and moving historically poorer groups into the professional middle class. Nonetheless, from the point of human rights, do you think groups as well as individuals have rights, and if so, which should take precedence in cases where group rights clash with individual rights, as in the case of preferential treatment?

This essay is about the ethical propriety and practical efficacy of a range of policy undertakings which, in the last twenty years, has come to be 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” which has grown up around the practice of preferential treatment.

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 regards. Indeed, to hold this view is to deny the economic relevance of historically determined and culturally reinforced beliefs, values, interests, and attitudes which constitute the defining features of 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, there is a subtle logical problem which 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 which 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 belief 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, to put the matter in simplistic but illuminating terms, poor academic performance among black students reflects “oppression,” why then should not outstanding athletic performance stem from the same source? We remain, then, with the question:
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 occasion a public policy response. The use of racial preferences in education, employment, or even politics is a frequent policy response. This 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 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.” Plaintiffs’ attorneys in the landmark Brown cases, in oral argument before the Supreme Court, made similar representations when urging the Court to overturn the “separate but equal” doctrine. Civil rights advocates in the legislature, when 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 colorblind hiring and promotion standards. 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.

Yet, in a historically remarkable transformation this position of the liberal political community in our country has dramatically changed. 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 King’s 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, this more recent practice of 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 in the ordinary political discourse of the nation seem, at least to this listener, to be more tortured and less compelling than those put forward on behalf of the colorblind principle. Typically, these arguments take the form of demonstrating the invalidity of the notion that positions should be distributed according to the nebulous criterion of “merit,” followed by a set of unsupported empirical claims regarding 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 which 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 which may be wholly objectionable, but which 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, it would seem, must be able to distinguish among them. How, if at all, can the “result-oriented” use of racial categories by the state be justified?

I want to make here what might be called a “minimalist’s” argument for departure from the colorblind standard. My purpose will be, in the first instance, to establish that a plausible specification of how multi-ethnic societies actually function will lead to the conclusions that social justice is not
consistent with a blanket prohibition on the use of group categories as a basis for state action. In making this argument I will rely on an intellectual tradition long familiar to economics—one which justifies departures from laissez faire when, due to some sort of market failure, the outcomes of private actions are socially undesirable. The market failure to which I refer, it will be seen, rests upon the very social behavior which induces there to exist, as a permanent, structural matter, distinct racial and ethnic groups among which inequality might arise in the first place.

My approach to this problem will be to 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 had 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. My point is that there are reasons to believe that the consequences of apparently innocuous and ubiquitous social behaviors are such as to 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 has called “prospect-regarding equality of opportunity” or extended to some sort of color-conscious intervention, I submit, should depend upon the extent to which we are confident of the ability of markets naturally to erode historically generated differences in status between groups. I suggest, in other words, that one part of this puzzle can be resolved if we seek to identify precisely what it is about laissez faire which 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 on competitive labor markets, where job assignments are made under conditions of equal opportunity, 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 suc-
cess of the individual’s parents. That is, and this is key, the notion of 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. This 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 which 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 processes.

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 which shape the development of personal character, contacts which generate information about the world of work, and friendship networks which 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. What I am calling here “communities” are to represent the 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. Thus, in the absence of any historical economic discrimination, and notwithstanding the tendency for persons to cluster socially, we should expect that the economic status of minority and majority group members would be equal, on average. I want now to inquire whether, in this idealized world, the competitive labor market would function in such a way as eventually to eliminate any initial differences in the average status of the two groups which historical discrimination might have produced.
One can investigate this question by writing down a mathematical representation of this idealized world. It can be shown that 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. 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 happens because, when there is some racial segregation among communities—that is, when race operates as a basis of social discrimination, though 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 which I have called 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. 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 (2–3 generations) the “problem” of group inequality would be submerged by wholesale miscegenation.
This discussion suggests that, as a general matter, we cannot expect _laissez faire_ to produce equality of result 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 are included the social clustering of individuals along, group-exclusive lines. On this argument, state action which is cognizant of groups is _legitimated_ 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 which have material consequences. These distinctions are reflected in this model by what I referred to as 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 which, 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. Freedom to act on the prejudices and discriminations which induce each of us to seek our identities with and to make our lives among a specific, restricted set of our fellows, are 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 this “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 which are intended to neutralize such disparities. That is, 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 which 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 which 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. For the question remains: what specifically have been the consequences of past deeds which 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 which confer benefits upon minority group members who do not suffer background related impediments to their mobility (e.g., minority business set-asides) could only be rationalized in this way if it could be demonstrated that the recipients’ connection to their less fortunate fellows was such as to insure a sufficiently lame beneficial spillover effect on the social mobility of the poor. This is a difficult empirical test for many current practices to meet.

Moreover, other remedies, not dependent on race-conscious action, but intended severely to reduce 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. In other words, the type of argument which the late Justice William O. Douglas made in his *De Funis* 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 above, our political and philosophical traditions are such that the reach of civil rights laws will be insufficient to eliminate all socially and economically relevant discriminatory behavior. That is, we are evidently not willing to undertake the degree of intrusion into the intimate associational choices of individuals which an equalizing redistribution of social capital would require.

Indeed, there are enormously important contractual relationships into which people enter, 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. And though this inequality in opportunity cuts both ways,
since 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 upon invidious racial discrimination by white
men! That such a notion strikes most people as absurd is mere testimony for
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 resi-
dents 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 politi-
cal question, though it would seem that elimination altogether of this kind of
discrimination would not be a reasonable possibility 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) but 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 to overcome the economic consequences of this pri-
ivate 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 which documents the
importance of family and community background as factors influencing a
child’s latter success. Much evidence suggests that the social and economic
benefits deriving from privileged access to the “right” communities cannot
be easily offset through the state’s use of racial classification.

Having offered a rationale for departure from the “colorblind” standard,
one could ask at this point whether there are not unsound rationales for wor-
rying about group inequality which 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 which 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 policy. 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 rather 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 is to be contrasted with the means-end calculus which I have offered above as justification for the practice. This reparations argument, however, immediately raises the question: Why do the wrongs of this particular group and not those of others deserve recompense? This can be a poisonous question for the politics of a pluralistic democracy.

There is, of course, a favored answer to this question: slavery. But this answer does not really satisfy anyone—black or white. For 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 which is being denied to a lower-class white. It is manifestly the case that many Americans are descended from forebearers who had, indeed, 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 requires public consensus, notwithstanding the role that 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 the consensus in favor of such practice invites the charge of insensitivity to the wrongs of the past or, indeed, the accusation of racism.

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 interments during World War II “worse” than the discrimination against blacks? Were the restrictions and attendant poverty faced by Irish immigrants to Northeast 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 extents of moral outrage as experienced internally, subjectively, privately, by different peoples. There is no neutral vantage, no Archimedian 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 which history has forced upon 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 on this subject, 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.” 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—that he now better understood “...the persecution complex of many Jewish people that almost invariably makes them overreact to their own suffering, because it is so great.” 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 preference 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 process, 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 should 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 other—will, of course, understand it as an important responsibility to 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, it is required that all others 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 is all about—evoking the pity, and the guilt, of whites. But, for that very reason, the practice is inconsistent with the goal 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, whom strident racial advocates take such joy in denouncing, would in the interest of decency, upon hearing the extent of his crimes, 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 in order 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, in due course, non-black Americans would become inured to the entreaties of the black who explains 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?) Must not, after some point, there begin to be resentment, contempt, and disdain for a group of people which sees itself in such terms? 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 which has never respected their humanity, yet expect that by so doing, their fellow countrymen will be moved to come to their assistance.

I would like to explore some of the deleterious side-effects which can issue from the use of color-conscious methods in the public or private sectors. There is the danger that 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 would not be able to 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 dif-
ferent 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, absent further information, to impute a lower expected quality of job performance to persons of the race which was preferentially favored in selection. Using racial classification in selection for employment creates objective incentives for customers, co-workers, and so forth, to take race into account after the employment decision has been made. Selection by race makes race “informative” in the post-selection environment.

In what kind of environments 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 effort of several individuals, though each individual’s contribution 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.

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 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 independent 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 insure appropriate group balance, it could become impossible for students belonging to the preferred groups to earn honor available to others, no matter how great their individual talents.

Further illustration of the kind of unintended consequence which should be taken much more seriously by proponents of affirmative action, combining
both the “team production” and the “honor” effects, comes from the world of corporate management. 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 exceedingly difficult for these “newcomers” to advance to the upper echelons of their organizations. The problem is so widespread that a name has been invented for it—the “plateau-ing phenomenon.”

Increasingly, able and ambitious young women and blacks talk of taking the entrepreneurial route to business success, feeling stymied by their inability to get on the “fast track” of rapid promotion to positions of genuine power within their companies. Wall Street brokerage and law firms, though increasing the number of young black associates in their ranks, still have very few black partners and virtually no senior or managing partners. Though many large companies now have their complement of minority vice-presidents and staff personnel (especially in the governmental relations and equal opportunity areas), they remain with very few minorities at the rank of senior vice-president or higher, and with 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 the organization involves factors beyond the raw competence of the individuals involved. While people differ in their abilities, no one today suggests that there do not exist 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, in addition to old-fashioned racism, the problem may well stem from subtle aspects of interpersonal relations within companies. When a company determines to increase the numbers of women and minorities in its management ranks, the normal way of proceeding 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. That is, the company 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 which, 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 which 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 mumbled more or less quietly among white men who sense themselves disadvantaged. It only takes one or two “disasters,” in terms of minority appointments which 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.

And even though most minority employees may measure up to, or even exceed, the standards of performance which 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 minority or female—may only reflect the prejudice or bigotry of their co-workers. 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.

Given that 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 which 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 who would not have been promoted in any case. When, as happens in many companies, the attainment of equal opportunity goals is seen as something which 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”—then 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. It can, if not properly and carefully administered, 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 this general perception, when widely held, 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. For it is plausible to hold that in such 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 who are to be motivated 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.

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. That is, whether or not 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. This, too, may be undermined by the use of racial classification. Among the questions most frequently asked by minority 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 the 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, the inevitable result is to weaken the extent to which the recipients can confidently assert, if only to themselves, that they are as good as their achievements would seem to suggest. A genuinely outstanding person who rises quickly to the midlevel of an organization without ever knowing for sure whether or not 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. And this absence of the full measure of confidence which the person’s abilities would have otherwise produced can make the difference between success and failure in the upper managerial ranks.

All of these potentially detrimental effects which I associate with the use of preferential treatment of non-white 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 numbers of blacks vs. whites, or women vs. 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—of the fact 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 establishing the presumption that all blacks or women, whether directly or indirectly, are indebted to civil rights activity for their achievements. And this presumption may reinforce general suspicion about minority or female competence which already exists.

None of this 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 above, the process of achieving diversity be managed with care, mindful of the dangers inherent in the situation. What is involved with affirmative action is not simply the rights of individuals, as many lawyers are given to argue, but also the prudence of 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 judgment of personnel managers with whom I have talked that these factors 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” of those holding real power within the organization. Such suspicions can, where occasionally validated by experience, provide the perfect excuse for preexisting prejudices. These prejudices are not merely “bad” behaviors which should be sanctioned. They are a part of the environment in which these policies operate and may determine their success or failure. . . .

The debate over affirmative action has been too much left to lawyers and philosophers, and has too little engaged 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 see that there is in this area 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, is not obviously an advance over indifference.