

**Who Cares about Racial Inequality?**  
**Steine Lecture**  
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**Introduction**

I have been known over the years as a critic of affirmative action policies. However, in the wake of a successful ballot initiative banning affirmative action in the state of California, I now find it necessary to reiterate the old, and in my view still valid, arguments on behalf of explicit public efforts to reduce racial inequality. In doing so, I want to stress that I am not defending racial quotas, or race-based allocations of public contracts, or racial double standards in the workplace, or huge disparities in the test scores of blacks and whites admitted to elite universities. These practices are deservedly under attack. But, I do defend the U.S. Army's programs to commission more black officers, the public funding of efforts to bring blacks into science and engineering, the attempts by urban law enforcement agencies to recruit black personnel, and the goal of top universities – public and private – to retain some racial diversity in their student bodies. The mere fact that these efforts take race into account, I will argue here, should not be disqualifying.

My basic position is that the current campaign against “preferences” goes too far by turning what prior to Proposition 209 had been a reform movement to which I was happy to belong into an abolitionist's crusade that I feel constrained to oppose.<sup>1</sup> True enough, the slogan “mend it, don't end it” was a cynical device, used by a president heavily dependent on black political support who sought to avoid genuine reform. But, taken seriously, this slogan describes pretty well what our national policy should be.

The most zealous affirmative action abolitionists hold as their fundamental principle that knowing the race of the persons burdened or benefited by a public action can never legitimately influence the desirability of that action. Yet, moral queasiness about the use of race arises for historically specific reasons – namely, slavery and Jim Crow segregation. Those reasons centrally involve the caste-like subordination of blacks, a matter that, in actual historical fact, was not symmetrical as between the races. As such, to take account of race while trying to mitigate the effects of this subordination, thought certainly ill advised or unworkable in specific cases, should not be viewed as morally equivalent to the acts of discrimination that affected the subjugation of blacks in the first place.

It is important to distinguish here between legal and ethical modes of reasoning. Justice Scalia's famous dictum that “the rule of law requires a law of rules” militates in favor of the simple prohibition of all racial discrimination by public agents. But, the moral case is not so straightforward. I stipulate that an isolated individual's race, as such, is ethically irrelevant. That is, the weight given to an affected person's welfare when selecting a course of public action should not depend on race. Nevertheless, there are circumstances where the ability of a public policy to advance the general interest of all persons is enhanced by taking cognizance of the racial identities of particular persons. Under these circumstances, the steadfast refusal to take into account how a policy might impact members of different racial groups, in the name of legal consistency, can turn out to be an act of moral obtuseness.

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<sup>1</sup> This point is developed more fully in Loury (March 1998).

## Social Ethics

Of course it is a basic principle of political liberalism—sometimes called the “non-discrimination principle”—that personal characteristics like race, sex, and ethnicity should have no moral relevance.<sup>2</sup> People are to be valued as individuals, not as the representatives of groups. In the economic theory of social choice, for example, this idea is captured by the concept of “anonymity”: the idea that the legitimacy of any given government benefit depends upon the fact that it is distributed without regard to the identities, as distinct from the conditions, of those who get the benefit and those who do not. This is the ideal.

However, ordinary people are not as fastidious as are social choice theorists. They do care, sometimes passionately, about the social identities of those who are helped or harmed by their government’s policies. As Tip O’Neill once said, all politics is local. This implies that no politics can be truly anonymous. Government must be responsive to a public that is often motivated by group loyalties and antagonisms. At the same time, ideally it should not distribute benefits or burdens to citizens based on traits that are morally irrelevant, such as race.

For multicultural America, this poses a permanent, intractable dilemma. How can we manage it? Some say that all government policies should be “color-blind.” And, given our troubled racial history, the simplicity and clarity of this color-blind formulation can, indeed, seem compelling. But, the problem is more complicated than this “simple” position can accommodate. For, by focusing intensely on how government treats citizens in discrete encounters, advocates of color-blindness give too little weight to the purposes government is trying to achieve when it acts. I maintain that procedural color blindness is neither a necessary nor a sufficient condition for the attainment of substantive racial justice. Public policy can be color-blind yet unfairly contrary to the interests of a racial minority—“benign neglect” being the most obvious example. Conversely, policies that are intended to have wide beneficial impact, regardless of race, may require that cognizance be taken of the reality of racial identity. This occurs, for example, when a president, to enhance the legitimacy of his government among the nation as a whole, tries to ensure that his top appointments are, to some degree, racially representative.

The distinction between procedural and substantive justice, between means and ends, is of little interest to the color-blind purist, however. In fact, these days you often hear conservatives spuriously likening the defenders of affirmative action to the southern segregationists. For instance, Todd Gaziano wrote in the May-June 1998 issue of *Policy Review*, published by the Heritage Foundation, as follows: “Forty years ago many Americans felt anger and disgust toward segregationists such as Arkansas Governor Orval Faubus who earned their place in history as leaders of the massive resistance to desegregation. Today’s massive resistance to racial equality is led by another former governor of Arkansas, Bill Clinton.” This is irresponsible hyperbole bordering on the absurd.

Is it not obvious that the racial sentiments to which Orval Faubus was responding to were morally illegitimate and undeserving of ratification by government action? And, is it not equally obvious that not all racial sentiments are of this kind?

Thus, we arrive at the fundament question: *Why should we care about racial inequality per se?* What is wrong with a situation in which blacks are roughly 12 percent of the U.S. population, but some 40 percent of welfare recipients, 50 percent of incarcerated felons, and 3 percent of newly graduating engineers? Why should we care about the racial composition of the police forces in large cities, of Presidential appointees to the federal bench, or of the freshman class at a state university? Why should a large corporation actively seek a qualified black candidate for a position in its upper management? After all, thinking in the abstract, a growing welfare population or an increasing number of incarcerated felons

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<sup>2</sup> The discussion in this section draws on Loury (August 1998).

is a problem for society no matter what the color of those citizens. What matters is that we reduce the total numbers, right?

Actually, I will argue that this is not right, or at least not for America, not today. A President who appoints hundreds of local federal judges among whom there are no blacks invites a wholly unnecessary political firestorm. He would rightly find himself in trouble. A corporation that neglects to bring along some blacks into upper management exposes itself needlessly to potential difficulties with its customers or its lower-level employees. A racially diverse big city fielding a nearly all white police force is asking for big trouble the next time a drunken black motorist has to be forcibly subdued. A freshman class devoid of blacks teaches its students some lessons about our society that are not listed in the course catalog. And to accept with equanimity the blackening of our prisons or welfare rolls is to be indifferent, I suggest, to an important aspect of social justice.

## Reasons to Care

### A. Racial Identities Matter

One reason to care about racial inequality is that race forms an important part of the personal identity of many citizens. Ideally, these racial identities should be irrelevant to our dealings with one another. Yet clearly they are not. As a result, all kinds of circumstances, having nothing to do with “racial preferences,” require a government to depart from the strictly “color-blind” treatment of its citizens in order to discharge its legitimate function. A front page story in the October 28, 1996 *San Francisco Chronicle* makes the point nicely. Reporting on an FBI investigation into excessive fighting among inmates at the Corcoran California state prison, the story traces the trouble to “an obscure prison edict issued during the 1980s—the integrated yard policy...[which] required all prison yards to be integrated by race and gang affiliation.” This article quotes a veteran prison guard calling that policy “naïve and stupid...[A]nybody that’s worked inside a prison would say that.” Yet for a prison warden to allocate exercise time among inmates as to minimize racial conflict, he would have to behave in something other than a color-blind manner.

This example is not trivial. In the summer of 1996, the conservative federal judge Richard Posner (in *Wittmer v. Peters*, Nos. 95-3729, 95-4034 (7<sup>th</sup> Cir. July 2, 1996)) upheld the preferential hiring of a black prison guard in an Illinois boot camp for young offenders. He argued that, with an inmate population that was three-quarters black, and given that “aversive training” methods familiar to marine enlistees were to be employed at the boot camp, the state might have a compelling and thus constitutionally justifiable interest in providing for some racial diversity in the camp’s officer corps.

Faced with such examples, supporters of the “color-blind” position invariably reply that race here simply serves as a proxy for some non-racial trait—like the ability to win the trust of black inmates. But this response is insufficient, for the crux of the matter is not the state’s use of race as a proxy for some desirable characteristic in an employee, but rather some citizens’ tendency to view the world through a racially tinted lens. In the boot camp, a young inmate is bullied mercilessly by guards who either have his best interests at heart or do not. When black youths refuse to believe that this bullying is for some useful purpose when none of the guards are black, then the success of the training technique requires racial diversity on the staff. And this is true no matter how sophisticated the prison personnel office may be at discovering, without using race, whether an applicant “truly cares” about his prospective charges.

### B. Race Conveys Information

Another reason to care about racial inequality is that race is an important source of information in many situations. Race is an easily observable trait that, as an empirical matter, is correlated with some

hard-to-observe traits about which employers, lenders, police officers and others are concerned.<sup>3</sup> Direct evidence from employer interviews indicates that both black and white employers are reluctant to hire black, urban young males who exhibit lower-class behavioral styles. Racial identity is also used as information in a variety of ways by police. Some evidence indicates that it shapes their law enforcement decisions. Indeed, the dramatic disparity between the races in the rates of arrest and incarceration for criminal offenses must be taken into account when discussing racial differences in the labor market experiences of males, though the direction of causality is difficult to untangle.

Racial-statistical discrimination can be quite damaging to both the efficiency of market allocations and to equity. This is due to the very real possibility that the empirically valid statistical generalizations lying at the heart of such discrimination can be self-fulfilling prophecies. There is an informational externality present whenever decision takers take actions based on group inferences. It is not difficult to give straightforward economic accounts of how this process might work in a variety of contexts.

Suppose only a few taxi drivers will pick up young black men after a certain hour. Given that behavior by taxi drivers as a class, it is plausible through a process of adverse selection that the “types” of young black men who will attempt to hail taxis during those hours contain an especially large fraction of potential robbers. This makes it rational to avoid them. But if most drivers willingly picked up young black men, then this behavior might induce a less threatening set of black males to select taxi transportation after dark, confirming the rationality of the drivers’ more tolerant behavior.

Or, suppose employers have an a-priori belief that blacks are more likely to be low effort trainees than are whites. Then, they will set a lower threshold for blacks on the number of mistakes needed to trigger dismissal, since they will be quicker to infer that black workers have not tried hard enough to learn the job. But knowing that they are more likely to be fired for making a few mistakes, more black employees may elect not to exert high effort during the training period in the first place, thus confirming the employers’ initial beliefs.

Or, if car dealers believe that black buyers have higher reservation prices than whites, then dealers will be tougher when bargaining with blacks than with whites. Given this experience of tough bargaining, a black buyer anticipates less favorable alternative opportunities and higher search costs than a white buyer, and so may rationally agree to a higher price. This behavior confirms the dealers’ initial presumption that “color” predicts bargaining power.

Such stories are not difficult to produce, and at least to my ear, they have a certain ring of truth about them. The key to all of these examples is their self-reinforcing nature: they begin with racial beliefs that then bring about their own statistical confirmation. These examples are not unrelated to the historical problems of race, as they have developed in our society. Race is an easily discernable characteristic that has salience in our culture, making it operate powerfully in many venues because it is common knowledge that people are taking it into account.

### C. Social Networks

Yet another reason to care about racial inequality is that race influences the social networks that are open to individuals, and these networks in turn have a major effect upon individuals’ opportunities.<sup>4</sup> Here are two observations that illustrate the key to my argument: First, all societies exhibit significant *social segmentation*. People make choices about whom to befriend, whom to marry, where to live, to which schools to send their children and so on. Factors like race, ethnicity, social class, and religious affiliation influence these choices of association. Second, the processes through which individuals develop their productive capacities are shaped by custom, convention, and social norms, and are not fully responsive to

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<sup>3</sup> For a more complete discussion, see Loury (*Journal of Economic Perspectives*, Spring 1998).

<sup>4</sup> These ideas are developed more fully in Loury (1997).

market forces, or reflective of the innate abilities of persons. Networks of social affiliation are not usually the result of calculated economic decisions. They nevertheless help determine how resources important to the development of the productive capacities of human beings are made available to individuals.

One can say that an adult worker with a given degree of personal efficacy has been “produced” from the “inputs” of education, parenting skills, acculturation, nutrition, and socialization to which he was exposed in his formative years. While some of these “inputs” can be bought and sold, some of the most crucial “factors of production” are only available as by-products from activities of social affiliation. Parenting services are not to be had for purchase on the market, but accrue as the consequence of the social relations between the custodial parents and the child. The allocation of parenting services among a prospective generation of adults is thus the indirect consequence of social activities undertaken by members of the preceding generation. An adolescent’s peer group is similarly a derivative consequence of processes of social networking.

I concede that this is an artificial way of thinking about human development, but the artifice is quite useful. For it calls attention to the critical role played by social and cultural resources in the production and reproduction of economic inequality. The relevance of such factors, as an empirical matter, is beyond doubt. The importance of networks, contacts, social background, family connections, and informal associations of all kinds has been amply documented by students of social stratification.

I can put this somewhat less abstractly. There is one view of society in which we are atomistic individuals, all of us pursuing our own paths to the best of our ability, given the opportunities available in the marketplace. Some of us work harder, some are luckier, some are more talented than others, and so the outcomes are not equal. That is one view, but it is a false, or at least an incomplete, view of the way in which our society actually works. For the fact is that each and every one of us is embedded in a complex web of associations, networks, and contacts. We live in families, we belong in communities, and we are members of collectivities of one kind or another. We are influenced by these associations from the very first day that we draw breath. Our development – what and who we are become – is nourished by these associations.

It is a severe disadvantage to be born to parents who are not interested in your development. It is a great impediment for a talented youngster to be embedded in a social network of peers whose values do not affirm the activities the youngster must undertake to develop his talent. Children do not freely choose their peers. To a significant degree they inherit these associations as a consequence of where they live, what their parents believe, what social group they belong to, and so on. In American society, given our history, racial identity is one important component of that complex of social characteristics that define the networks in which we live. Opportunity travels along the synapses of these networks. We learn about what we can do with our talents from the conversation taking place over dinner, from the family friend who says “Why doesn’t your kid do this or that?,” from the business owner who offers a summer job. These kinds of opportunity-enhancing associations are not just out there in the marketplace to be purchased by the highest bidder. Nor are they allocated randomly so as to create some kind of level playing field.

## **Racial Justice**

Now as someone who values liberty it is my view that we cannot and should not seek to equalize for all persons access to such networks of social affiliation. They are to a large degree the inheritance of history, and we must take them as they come. But we do not have to accept the inequalitarian consequences of these structures without reflection, nor must we impute naturalness or an inevitability to those unequal consequences.

We do not, in other words, have to take one seventeen-year-old who has grown up in a suburban, affluent, two-parent family with wholesome neighbors and peers, attending schools that work, and compare him with another seventeen-year-old who has grown up under less felicitous circumstances, and then stamp on the forehead of the former the big “M” for merit and say of the latter, “He has not earned the right to further develop his talents.” When it comes time to allocate state-funded opportunities for the intellectual development of the two youngsters, we need not pretend that the playing field has been level all the time and that, by favoring the first kid, we are merely giving scarce opportunities to the most deserving recipient.

I am arguing that inalienable non-marketed social and cultural resources play a critical role in the production and reproduction of economic inequality. In this context, it is crucial to realize that even the values, attitudes and beliefs held by an individual – of central import for the attainment of success in life – are shaped by the cultural milieu in which that person develops. *Whom* one knows affects *what* one comes to believe, and in that way influences what one can do with one’s God-given talents. Do we collectively, as a society, have any responsibility for the debilitating, even pathological cultural milieus that exist in our midst? This is an important component of the racial inequality of our day. Are these subcultures of despair just facts of nature about “those people,” toward whom the rest of us have no obligations whatsoever? Or are they products of a history in which we are implicated?

My claim here is that the “social pathology” to be observed in some quarters for our society did not come out of thin air, but to some extent is a consequence of historical practices, including, in the case of blacks, the practice of racial oppression.<sup>5</sup> Moreover, the ongoing racial segmentation of our society – most clearly visible in the social isolation of today’s urban black poor – is an important social inequity that helps to perpetuate the consequences of our troubled racial history. I believe this analysis has an important ethical implication: *Because the creation of a skilled workforce is a social process, the meritocratic ideal – that in a free society individuals should be allowed to rise to the level of their competence – should be tempered with an understanding that no one travels that road alone.* We should not embrace the notion that individuals have “merit” that must be rewarded without some awareness of the processes by which that merit is produced. These are social processes, with a racial dimension. It should be evident that, notwithstanding the establishment of a legal regime or equal opportunity, historically engendered economic differences between racial groups could well persist into the indefinite future, and not as some have argued, perniciously, because of the genetic inferiority of blacks. Thus, the pronounced racial disparities to be observed in American cities are, at least, in part, the product of an unjust history, propagated across the generations by segmented social structures of our race conscious society. This is what I mean by the problem of racial injustice.

For this reason I would argue that, as a matter of social ethics and social science, there should be collective public effort to mitigate the economic marginality of those who are languishing in the ghettos of America. Prevailing social affiliations, including the extent of racial segregation in our society, influence the development of the intellectual and personal skills of the young. As a result, the 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 reflect overt racial exclusion, the propriety of the contemporary order is called into question.

I stress that this is not a reparations argument. I am not saying that some individuals are due something because of what was done to their ancestors. Neither is this a group entitlement argument, in which racial collectivities are seen as having “rights” that take precedence over those of individuals. Indeed, my argument here is entirely consistent with individualism as a core philosophical premise. I am simply acknowledging the additional fact that in society, people are not atoms. They are, rather situated within systems of mutual affiliation. And in our society, these systems are defined, in part, by race.

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<sup>5</sup> For a more complete argument in this vein, see Loury, *Brookings Review*, Spring 1998.

Taking note of this situatedness and understanding its historical roots leads me to some recognition of race as a legitimate factor in consideration of social justice. When the developmental prospects of individuals depend on the circumstances of those with whom they are socially affiliated, and when social affiliation reflects a tendency toward racial segregation, even a minimal commitment to equality of opportunity for individuals can require, I am arguing, a willingness to take racial identity into account. In our divided society, given our tragic past, this implies that public efforts to counter the effects of historical disadvantage among blacks are not only consistent with, but indeed are required by widely embraced, individualistic, democratic ideals.

### **Color Blind Extremists**

This argument leads naturally to the question of whether affirmative-action policies are necessary and justified. To emphasize that racial group disparities can be transmitted across generations through subtle and complex social processes is not necessarily to endorse employment or educational preferences based on race. But recognizing the importance of social segmentation does cause one to doubt the ethical viability, and indeed the logical coherence, of “color-blind absolutism” – the notion that the Constitution requires government agents to ignore the racial identity of citizens. Ironically, recent claims by some conservatives<sup>6</sup> to this effect bear an eerie resemblance, in form and in substance, to the similarly absolute claims of some card-carrying civil libertarians on behalf of a “wall of separation” between church and state.

Consider that, as a practical matter, the government cannot enforce laws against employment discrimination without taking note of a gross demographic imbalance in an employer’s work force. Yet, the government’s requiring that employment data be reported by race is already a departure from pure color-blind behavior. So too is the practice, nearly universal in the public and private sectors, of targeted outreach efforts designed to increase the representation of blacks in the pool of persons considered for an employment opportunity. Accordingly, the more intellectually consistent of the color-blind absolutists now recommend, as logic would require, that we repeal the civil-rights laws and abandon even those efforts to achieve racial diversity which do not involve preferential treatment. But is that stance consistent with fairness?

Coming up with cases that challenge the absolutist claim is not difficult. How can a college educator convey to students the lesson that “not all blacks think alike,” with too few blacks on campus for this truth to be evident? Can the police consider race when making undercover assignments? Can a black public employee use health insurance benefits to choose a black therapist with whom to discuss race-related anxieties? Can units in a public housing project be let with an eye to sustaining a racially integrated environment? What about a National Science Foundation that encourages gifted blacks to pursue careers in the fields where few now study? Clearly, there is no general rule that can resolve all of these cases reasonably.

### **Costs of Racial Preferences**

I want to be clear. This criticism of color-blind absolutism is not an unqualified defense of the affirmative action status quo. There are many reasons to suspect that in particular contexts the costs of using racial preferences will outweigh the benefits.<sup>7</sup> One such reason for questioning the wisdom of affirmative action in certain contexts is that the widespread use of preference can logically be expected to erode the perception of black competence. This point is often misunderstood, so it is worth spelling out in some detail. The argument is not a speculation about the feelings of persons who may or may not be

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<sup>6</sup> For example, *America in Black and White* (1997) by Abigail and Stephan Thernstrom.

<sup>7</sup> See Loury (Spring 1997).

the beneficiaries of affirmative action. Rather, it turns on the rational, statistical inferences that neutral observers are entitled to make about the unknown qualifications of persons who may have been preferred, or rejected, in a selection process.

The main insight is not difficult to grasp. Let some employer use a lower threshold of assessed productivity for the hiring of blacks than whites. The preferential hiring policy defines three categories of individuals within each of the two racial groups which I will call “marginals,” “successes,” and “failures.” Marginals are those whose hiring status is altered by the policy – either whites not hired who otherwise would have been, or blacks hired who otherwise would not have been. Successes are those who would be hired with or without the policy, and failures are those who would be passed over with or without the preferential policy. Let us consider how an outsider who can observe the hiring decision, *but not the employer’s productivity assessment*, would estimate the productivity of those subject to this hiring process.

Notice that a lower hiring threshold for blacks causes the outside market to reduce its estimate of the productivity of black successes, since, on average, less is required to achieve that status. In addition, black failures, seen to have been passed over despite a lower hiring threshold, are thereby revealed as especially unproductive. On the other hand, a hiring process favoring blacks must enhance the reputations of white failures, as seen by outsiders, since they may have been artificially held back. And white successes, who are hired despite being disfavored in selection, have thereby been shown to be especially productive.

We have thus reached the result that, among blacks, only marginals gain from the establishment of a preferential hiring program – they do so because the outside observer lumps them together with black successes. They thus gain a job and a better reputation than they objectively deserve. Moreover, among whites, only marginals are harmed by the program, for only they lose the chance of securing a job and only they see their reputations harmed by virtue of being placed in the same category as white failures. In practical terms, since marginals are typically a minority of all workers, the outside reputations of most blacks will be lowered, and that of most whites enhanced, by preferential hiring. The inferential logic that leads to this arresting conclusion is particularly insidious, in that it can serve to legitimate otherwise indefensible negative stereotypes about blacks.

Another reason for being skeptical about the practice of affirmative action is that it can undercut the incentives for blacks to develop their competitive abilities. For instance, preferential treatment can lead to the patronization of black workers and students. By “patronization,” I mean the setting of lower standards of expected accomplishment for blacks than for whites because of the belief that blacks are not as capable of meeting a higher, common standard. In the 1993 article “Will Affirmative Action eliminate Negative Stereotypes?”<sup>8</sup>, Stephen Coate and I show how behavior of this kind can be based on a self-fulfilling prophesy. That is, observed performance among blacks may be lower precisely because blacks are being patronized, a policy that is undertaken because of the need for an employer or admissions officer to meet affirmative-action guidelines.

Consider a workplace in which a supervisor operating under some affirmative-action guidelines must recommend subordinate workers for promotion. Suppose further that he is keen to promote blacks where possible, and that he monitors his subordinates’ performance and bases his recommendations on these observations. Pressure to promote blacks might lead him to de-emphasize deficiencies in the performance of black subordinates, recommending them for promotion when he would not have done so for whites. But his behavior could undermine the ability of black workers to identify and correct their deficiencies. They are denied honest feedback from their supervisor on their performance and are encouraged to think that one can get ahead without attaining the same degree of proficiency as whites.

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<sup>8</sup> See Coate and Loury (1993).

Alternatively, consider a population of students applying to professional schools for admissions. The schools, due to affirmative action concerns, are eager to admit a certain percentage of blacks. They believe that to do so they must accept black applicants with test scores and grades below those of some whites whom they reject. If most schools follow this policy, the message sent out to black students is that the level of performance needed to gain admission is lower than that which white students know they must attain. If black and white students are, at least to some extent, responsive to these differing expectations, they might, as a result, achieve grades and test scores reflective of the expectation gap. In this way, the schools' belief that different admissions standards are necessary becomes a self-fulfilling prophecy.

### **Developmental Affirmative Action**

The common theme in these two examples is that the desire to see greater black representation is pursued by using different criteria for the promotion or admission of black and white candidates. But the use of different criteria reduces the incentives that blacks have for developing needed skills. This argument does not presume that blacks are less capable than whites; it is based on the fact that an individual's need to make use of his abilities is undermined when that individual is patronized by the employer or the admissions committee.

This problem could be avoided if, instead of using different criteria of selection, the employers and schools in question sought to meet their desired level of black participation through a concerted effort to enhance performance, while maintaining common standards of evaluation. Call it "developmental," as opposed to "preferential," affirmative action. Such a targeted effort as performance enhancement among black employees or students is definitely not color-blind behavior. It presumes a direct concern about racial inequality and involves allocating benefits on the basis of race. What distinguishes it from preferential hiring or admissions, though, is that it takes seriously the fact of differential performance and seeks to reverse it directly, rather than trying to hide from that fact by setting a different threshold of expectations for the performance of blacks.

For example, given that black students are far scarcer than white and Asian students in the fields of math and science, encouraging their entry into these areas without lowering standards – through summer workshops, support for curriculum development at historically black colleges, or the financing of research assistantships for promising graduate students – would be consistent with my distinction between "preferential" and "developmental" affirmative action. Also consistent would be the provision of management assistance to new black-owned businesses, which would then be expected to bid competitively for government contracts, or the provisional admission of black students to the state university, conditional on their raising their academic scores to competitive levels after a year or two of study at a local community college. The key is that the racially targeted assistance be short-lived and preparatory to the entry of its recipients into an arena of competition where they would be assessed in the same way as everyone else.

### **Conclusion**

In conclusion, I am arguing that if our interest is achieving a just society, then there is nothing in the sorry history of affirmative action abuses that requires us to tie our hands with a color-blind formalism. Consider the common sense observation that, in this country, an army where blacks are one-third of the enlisted personnel but only three percent of the officer corps is likely to function poorly. The U.S. Army cares about the number of black captains because it needs to sustain effective cooperation among its personnel across racial lines. That the racial identities of captains and corporals sometimes matters to the smooth functioning of a military institution is a deep fact about our society, one that cannot

be wished away.<sup>9</sup> Now, monitoring the number of blacks promoted to the rank of captain, and formulating policies to increase that number, are activities that inherently involve taking account of some individual's race. Yet, depending on how they are undertaken, such activities need not entail the promulgation of racial double standards, nor need they seem to declare, as a matter of official policy, that racial identity is a determinant of an individual's moral worth. As the military sociologist Charles Moskos is fond of pointing out, the Army is the only place in American society where large numbers of whites routinely take orders from blacks. Ironically, the irrelevance of race to a person's moral worth may be more evident to the members of this institution than elsewhere in our society precisely because the government has taken account of race in the conduct of its military personnel policies.

The color-blind principle, while consistent as a self-contained legal rule, is in my opinion neither morally nor politically coherent. It requires that we not care about racial inequality, per se, when, as I have argued above, there are many compelling reasons to reject that position. For instance, the color-blind principle would seem to imply that we should discontinue all racial classifications associated with the collection of government statistics. To what proper use could the agencies possibly put the racial information – on crime, housing, employment, welfare receipt, test scores – which they collect? Yet, monitoring the racial dimension of social and economic trends is an obviously vital public function. Why? For one reason, consider that these data are the sole source of our knowledge that discrimination has declined over the years, a key aspect of the case for reforming the practice of affirmative action. Moreover, without these data, the vast over representation of blacks among imprisoned felons in this country could not be rationalized in such a way as to refute the charge of systematic racism in the administration of criminal justice. These examples illustrate how, despite the moral irrelevance of race at the individual level, there remains an operational need to attend to racial disparity in the conduct of our public affairs.

Moreover, as I have suggested, racially targeted recruitment and racially defined anti-discrimination enforcement mechanisms inevitably entail a form of mild “reverse discrimination,” because they guarantee a labor market environment in which the targeted group receives more favorable treatment. Color-blind employment policy, if faithfully and uniformly pursued, must mean the abolition of racial representation as a goal. (See, eg., the recent Silberman decision for DC Circuit in *Lutheran Church - Missouri Synod v. Federal Communications Commission*, No. 97-1116 (D.C. Cir. September 15, 1998), where a federal judge seems prepared to go this far.)

All of this shows the confusion of those color-blind advocates who offer the criminalization of employment discrimination as a quid pro quo for the abolition of affirmative action. Jailing employers for not finding enough black workers would only lead to a dramatic increase in the amount of covert, reverse discrimination against white job-seekers. Indeed, since all anti-discrimination enforcement requires classifying, monitoring, and counting employees by race, the only fully consistent color-blind position is to advocate the repeal of the Civil Rights Act of 1964. I respect the intellectual consistency, but doubt the moral probity of those like Richard Epstein of the University of Chicago Law School, who so advocate.

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<sup>9</sup> See *All that We Can Be* (1997), by Charles Moskos and John Sibley Butler, for an informative discussion of affirmative action in the U.S. Army.

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